
(2009) 08 SHI CK 0049
In the High Court Of Himachal Pradesh

Jaswant Lal Kuthiala

APPELLANT

Vs

Land Acquisition Collector and Another

RESPONDENT

Date of Decision : 10-08-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 54

Citation : (2009) 08 SHI CK 0049

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Ahuja, J.—This is a Regular First Appeal filed by the appellant u/s 54 of the Land Acquisition Act, against the award passed by the learned District Judge, Shimla, on 1.7.1999.

2. Briefly stated, the facts of the case are that the land of the appellant was encroached upon by respondent No. 2. and the appellant filed a writ petition in this Court. The writ petition was disposed of on 30.6.1994 by this Court directing that Khasra No. 467 belonging to the appellant and encroached upon by respondent No. 2 by converting into a car parking without resorting to the provisions of Land Acquisition Act should be acquired and the Whether reporters of Local Papers may be allowed to see the judgment? Yes. compensation should be paid to the appellant. It was alleged that the proceedings under the Land Acquisition Act were initiated by the State and on conclusion of the proceedings, the compensation was awarded to the appellant as Rs. 95,268/- for land, Rs. 19,771/- for trees, Rs. 12,879.40 for structure standing thereon alongwith interest @ Rs. 12% and solatium @ Rs. 30% Rs. 38,375/-.

3. Being aggrieved by the award passed by the Land Acquisition Collector, the appellant filed a petition u/s 18 of the Land Acquisition Act before the learned District Judge, claiming that the value of the structure was Rs. One Lac and for trees compensation of Rs. Two Lacs was claimed. He further claimed Rs.10,000/-

per square yard as value of the land. The learned District Judge vide his impugned award, awarded a sum of Rs.1,232/-per square yard for the land and increased the total amount awarded to the appellant by a sum of Rs. 51,504/- then what was assessed by the Land Acquisition Collector. The other claims were rejected by the learned District Judge.

4. Being aggrieved, the appellant has filed the present appeal.

5. A notice of the appeal was issued to the respondents.

6. I have heard the learned Counsel for the parties and have gone through the record.

7. The submissions made by the learned Counsel for the appellant were that the learned trial Court had not relied upon the copies of the awards placed on record or other sale deeds proved in evidence by the appellant and, therefore, the learned trial Court had failed to assess the market value correctly. In regard to the sale deed proved on record by the respondents, which has been relied upon by the learned District Judge in enhancing the amount of compensation, it was submitted that the learned trial Court had failed to take the notice of the fact that the land in question was near The Mall Road surrounded by three roads and was fit for construction of hotel and accordingly, the compensation awarded cannot be said to be adequate.

8. The learned Counsel for the appellant had relied upon the following decisions to substantiate his submissions:

9. The decision in Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., shows that the burden is on claimants to establish that the land was capable of fetching higher market value. It was also observed that it is the duty of the Court to scrutinize and objectively assess the evidence tendered by the parties. Some guesswork is permissible but mechanical assessment of evidence should be avoided.

10. The decision in Cement Corporation of India Ltd. Vs. Purya and Others, was relied upon. A perusal of this decision shows that the contents of the document produced should not be treated as a conclusive proof of the transaction contained therein or that the Court must raise a mandatory presumption in relation thereto. The presumption of genuineness of such a document is rebuttable. The Court can rely on such presumption only if the same is not rebutted by other evidence. The observations were made in regard to a certified copy of the registered sale transaction proved in evidence, which permits the acceptance of such transaction without examination of the vendor or vendee. The word used is 'may' and it permits the production of a certified copy of the registered sale transaction in evidence but permits the acceptance of such transaction without examination of the vendor or vendee. However, by using the word 'may' the provision confers a discretion on the Court in that regard, which has to be exercised judicially i.e. upon taking into consideration the relevant factors. 11. On the other hand, the

learned Assistant Advocate General for respondent No. 1 and learned Counsel for respondent No. 2 had supported the impugned award passed by the learned trial Court. It was submitted that the other documents were rightly not relied upon by the learned trial Court and the appellant has been held entitled to enhanced compensation on the basis of the sale deed proved by the respondents and in case, the appellant is not satisfied in regard to the compensation awarded on that basis, the sale deed proved in evidence by the respondents can be ignored and the appellant shall not be entitled to any compensation even as awarded by the learned trial Court.

12. Before I refer to the sale deed relied upon by the learned trial Court proved in evidence by the respondents, I deem it necessary firstly to refer to the sale deeds and copies of awards not relied upon by the learned trial Court and as to whether they were not relied upon rightly by the learned trial Court.

13. Before I refer to the above point, it will be necessary to refer to some of the dates relevant for present discussion as well the area of the land.

14. The material dates are date of issuance of notification u/s 4, which was issued on 4.3.1995. The same was published on 25.3.1995. The area of the land in question is 119.1 square yards comprised in Khasra No. 467, situated in Station Ward Bara Shimla, Tehsil and District Shimla.

15. The first document is sale deed Ext. PW11/A dated 24.11.1988. PW-11 Shanta Lal Chopra has deposed that he had purchased 842 square yards area situated near Comberemere Bridge, Shimla, for a consideration of Rs. 37,50,000/-. The property purchased by the witness is situated on the Mall, which is the posh area. It is situated at a distance of 500 Mtrs. From the Mall, as per the statement of PW-6 Arun Bhanwra as observed by the learned trial Court. The learned trial Court had rightly held that the acquired property is situated in a residential area, whereas the land in the sale deed was near the Mall and, therefore, it was rightly held that the acquired property cannot be equated with the property purchased by PW-1 Shanta Lal Chopra.

16. The next part of the evidence consists of the statement of PW-7 Bal Krishan Kuthiala, contractor, who stated that he had constructed 23 flats on 520.8 square yards area belonging to Catholic Diocese and out of those 23 flats, he gave 7 flats and Rs. 3 Lacs in cash to the owner on account of the price of the site. He further stated that the value of 7 flats was Rs. 34,75,000/-. He also tendered in evidence copy of the agreement Ext. P-4 which refers to the payment of Rs. 3 Lacs in cash to the owner of the site for the maintenance of external common services and not on account of the price of the site. A perusal of the brochure Ext. P-5 shows that the area of each flat was 700 square feet. The flats were constructed in the year 1991. The learned trial Court had concluded that the value of the site of the flats which measured 520.8 square yards, comes to Rs. 14,70,000/-.

17. The learned trial court while referring to this part of the evidence had also

observed that from late eighties to the year 1992, the rates of the urban properties in the State of Himachal Pradesh registered alarming increase because of the militancy problem in the State of Punjab. The observation has been made in general and may not be incorrect and that in case increase in price was due to this factor, it was to be stated by the Sub-Registrar, who could only prove that the value increased of the property or land increased during this period. The general observations made, therefore, may not be incorrect but is not the only factor to be considered on the basis of the evidence. The learned trial Court had rightly concluded that this part of the evidence do not serve as a guiding factor for determining the acquired property. The other part of the evidence consisting of the statement of PW-12 Jaswant Lal Kuthiala, petitioner, who deposited that once his attorney PW-9 Kanwar Singh, had told him that PW-4 Ram Singh wanted to purchase his property for Rs. 5 Lacs. He had stated that he had demanded Rs. 6 Lacs but the proposal did not materialise. The learned trial Court had referred to the contradictions in the statement of the witnesses regarding the purpose for which the property was sought to be purchased by PW-4 Ram Singh. There is no written agreement on record and keeping in view of the contradictions, the learned trial Court had rightly rejected the evidence being of no help for arriving at the market value of the land when it was acquired.

18. A perusal of Ext. PW12/G shows that it contains only the name of the parties in a case decided by a Division Bench of this Court in RFA No. 40/1989. It does not help the appellant since nothing can be made out of this single page proved in evidence. A perusal of Ext. PW12/H, a copy of the judgment of the Division Bench of this Court in a civil writ petition. It is also not relevant since it is a decision in a writ petition and cannot be treated as an award in any land acquired by the State Government and therefore, is irrelevant. Both these documents were not helpful and have not been referred to by the learned trial Court. The copy of the letter Ext. P-6 proved is not relevant and does not help the appellant.

19. The only document relied upon by the learned trial Court and proved in evidence is Ext. RA, copy of the sale deed, per which a plot with a frame work of RCC pillars, beams and one slab standing on an area of 155.8 square yards, which had fetched a price of Rs. 1,92,000/-. The sale deed is dated 6.4.1995. The vendor or vendee were not examined by the respondents but the copy of the sale deed having been proved in evidence and relied upon by the respondents themselves can be legally read in evidence. There is no substance in the plea raised by the learned Counsel for the respondent that in case the appellant is not satisfied in regard to the compensation awarded on that basis, the sale deed proved in evidence by the respondents can be ignored. The Court has to consider the evidence led by both the parties and, therefore, the document which has been relied upon by the learned trial Court cannot be ignored since the appellant is claiming more compensation than what has been awarded on the basis of this sale deed Ext.RA. Before this document Ext.RA is relied upon and considered by the Court, it has to be seen as to where the property comprised in Ext. RA was situated and as to the location of the acquired land in question. RW-1 Darvesh

Singh, Tax Inspector, had stated that the property sold through Ext. RA is situated in Daisy Estate. He further stated that the property sold through Ext. RA is situated 50 to 60 yards from the acquired property. The date of the sale deed is 6.4.1995, the area was 155.8 square yards, which had fetched a price of Rs. 1,92,000/-. He further stated that the subject matter of Ext.RA is at a distance of 200 to 250 yards from the Ridge surrounded by trees and so the plot is in a shady area and not sunny.

20. Coming to the property acquired and its location, PW-9 Kanwar Singh has stated that he is managing the property of the petitioner as his agent. He stated that the acquired property is at a distance of 60 to 70 Mtrs. from the Ridge Maidan. On three sides of this property, there are motorable roads. There are three shops situated near the acquired property. One hotel known as Mehman Hotel is also situated quite close to the acquired site. PW-12 Jaswant lal Kuthiala, petitioner, has stated that in the acquired property there existed a toilet block consisting of a bath room, latrine and water taps. People living in the servant quarters attached to his quarters across the road used to use the aforesaid toilet. He further stated that there are shops on three sides of the acquired property which has got very good commercial potential. 5-6 hotels are also operational near the acquired property. He stated that no Nallah passes through his acquired land but Nallah is on one side of the acquired land. RW-2 Harkishan Lal, Junior Engineer from Municipal Corporation, also admitted that on one side of the acquired property there is a road and on the other side, there is a small bridge. On the third side there is a link road, which is maintained by the Municipal Corporation. He also admitted that there were latrine, toilets etc. on the site. He admitted that close to the acquired land, there is a hotel known as Mehman Hotel but there are no other hotels.

21. These facts stand established from the evidence that the acquired land was connected by the roads and it was at some distance only from the main Ridge as has come up in evidence but this fact stands concluded that the location of this land and the land comprised in Ext.RA are comparable because of their proximity to the Ridge and keeping in view the location of these two sites.

22. The petitioner had also led evidence to prove that the Municipal Corporation had been getting sufficient income after acquiring this land and converting it into a parking lot. To prove this assertion, the petitioner also examined PW-2 Hari Chand from Municipal Corporation to prove the income of respondent from this property as Rs. 30,400/- in the year 1993-94, Rs. 24,500/- during the year 1994-95 and Rs. 30,100/-during 1995-96. In my view, this fact cannot be considered as to what income was derived by the respondents by putting to use the property so acquired and converting it into a parking lot. The above evidence is only in regard to the income and not in regard to the expenses that may have been incurred for maintaining the parking lot or for how much contract was given, if any, for running the parking lot. The purpose to which the property is put is not material and income so derived is not a relevant consideration for

determination of the market value at the time the land was acquired.

23. I have already held above that the property in question was nearer to Ridge and was comparable to the land sold vide Ext. RA. In regard to the contention that the property was fit to be converted into a hotel since there was Mehman hotel or some other hotels in the nearby vicinity, I am of the opinion that the petitioner should have examined an official from the Municipal Corporation, who could prove the fact that that the permission can be granted for construction of a hotel on a small piece of land measuring about 119.1 square yards. I have no material on record to show as to how much minimum land is required to be there before permission is granted for constructing a hotel, particularly when such permissions normally are not given until and unless there is sufficient open space for parking etc.

24. In view of the above detailed discussion, it is clear that no sale deed proved by the petitioner was relevant and had not been rightly considered by the learned trial Court. However, the only document proved in evidence by the respondents which was considered relevant by the learned trial Court is the document Ext. RA since the land was comparable in accordance to their location and proximity to the main Ridge. Therefore, it was rightly considered by the learned trial Court to enhance the compensation on the basis of the document Ext. RA, which findings do not call for an interference by this Court, since the learned trial Court had come to a right conclusion. The appellant was not entitled to any other enhancement.

25. In view of the above discussion, I accordingly hold that there is no merit in the appeal filed by the appellant, which is dismissed. However, the parties are left to bear their own costs.