
(2010) 04 P&H CK 0104
In the Punjab And Haryana At Chandigarh

Joginder and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 22-04-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 24, 4, 6

Citation : (2010) 04 P&H CK 0104

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajesh Bindal J.—This order will dispose of a bunch of above mentioned appeals, as common questions of law and facts are involved.

2. The land owners are in appeal seeking further enhancement of compensation for the acquired land.

3. The acquisition in the present case was carried out for construction of New Baroda Sub Minor and I.R. Baroda Sub Minor. The land pertained to two villages, namely, Khanpur Khurd and Baroda, falling in Tehsil Gohana, District Sonapat. R.F.A. Nos. 4837 to 4843 of 2008 pertain to village Khanpur Khurd, whereas RFA Nos. 1672 to 1682 of 2007 pertain to village Baroda.

4. Briefly, the facts are that vide notification dated 26.3.2002, issued u/s 4 of the Land Acquisition Act, 1894 (for short, 'the Act'), the State of Haryana acquired land measuring 3.65 acres, situated in village Khanpur Khurd, Hadbast No. 31 and 11.32 acres, situated in village Baroda Hadbast No. 12. The same was followed by notification dated 11.10.2002, issued u/s 6 of the Act. The Land Acquisition Collector (for short, 'the Collector') assessed the market value of the acquired land at Rs. 2,00,000/- per acre for chahi/nehri and Rs. 1,50,000/- per acre for barani and gair mumkin kind of land pertaining to village Khanpur Khurd, whereas for the land pertaining to village Baroda, the Collector assessed the market value at Rs. 2,00,000/- per acre for Nehri/Chahi land and Rs.

1,50,000/- per acre for Barani/Gaur Mumkin kind of land. Feeling dissatisfied, the land owners preferred objections. On reference, as far as land pertaining to village Khanpur Khurd is concerned, the learned court below enhanced the compensation to Rs. 2,50,000/- per acre for all kinds of land, whereas in the case of land pertaining to village Baroda, the award of the Collector was upheld. It is against the aforesaid awards that the land owners are before this Court seeking further enhancement.

5. While seeking enhancement of compensation for the land pertaining to village Khanpur Khurd, learned Counsel for the land owners submitted that for the purpose of construction of same sub-minor, land of other village, namely, Khandrai was also acquired for which the award of the Collector himself was Rs. 3,50,000/- per acre. Village Khandrai is adjoining the boundaries of villages Khanpur Khurd and Baroda. The Collector without any valid reason has given different awards for the land pertaining to adjoining villages. The land owners, in fact, are entitled to at least the same rate as was granted for acquisition of land pertaining to village Khandrai. Besides that, it is not disputed that there was no documentary evidence led on the file to prove that the amount of compensation awarded to the land owners pertaining to the land of village Khanpur Khurd was inadequate. He further submitted that though the acquisition of land in the present case was for construction of a minor, which necessarily divided the land owned by the land owners into two parts, but still nothing has been awarded as damages on account of severance.

6. As far as land pertaining to village Baroda is concerned, learned Counsel for the land owners submitted that the learned court below has failed to consider the sale deed (Ex. P1) produced on record, in terms of which the value of the land was Rs. 2,81,318/- per acre, whereas the compensation awarded by the Collector was less. Besides this, there was no material produced on record for the purpose of assessment of compensation or to discharge the onus to show that value of the acquired land, as assessed by the Collector, was not just and fair. He further submitted that nothing has been awarded as damages on account of severance.

7. On the other hand, learned Counsel for the State submitted that considering the evidence produced by the land owners on record, it cannot be said by any stretch of imagination that the land owners are entitled to any increase in the amount of compensation awarded by the learned court below. The award for acquisition of land pertaining to a different village cannot possibly be relied upon for the purpose of assessment of compensation. The land owners in the present case have not produced any material on record to show that the land pertaining to two villages was comparable in quality, location and other factors. The Collector always assesses the value of the land in the area on the basis of sale deeds registered there, which always depend upon the value of the land in that area. The value of the land pertaining to 3-4 villages, though may be in the neighbourhood, can be different on account of various reasons. As far as claim

on account of severance is concerned, he submitted that the land owners did not raise any claim to that effect and this issue was not even pressed before the court below and on that account, they are not entitled to any amount of compensation.

8. Heard learned Counsel for the parties and perused the relevant referred record.

9. What can be opined from the material on record is that the land owners in the present case have failed to lead clinching evidence which could enable the Court to reach to a conclusion that fair value of the acquired land was in terms of the claim made by them. For the purpose reliance was sought to be placed on the oral statements of the witnesses which in my opinion is not enough as the onus to prove that the compensation as assessed by the Collector was not adequate is always on the land owners, who is in the position of a plaintiff. Reference for the purpose can be made to Para 28 of the judgment of Hon''ble Supreme Court in Sangunthala (Dead) through LR's. v. Special Tehsildar (L.A.) and Ors. 2010 (2) RAJ 286.

28. It is settled that the burden of establishing/proving the market value of the lands is always on the claimants. In Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, , this Court held that it is the duty of the Court to determine just and fair market value. It was further held that the claimants should produce necessary evidence on the value of land since the burden of proof is on them to establish the higher compensation claimed. While agreeing with the judgment in Periyar and Pareekanni Rubbers Ltd (Supra), this Court in the case of Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., , held that in a claim for enhancement of compensation the burden of proof was on the claimants that land was capable of fetching higher compensation. Further in the case of Kiran Tandon Vs. Allahabad Development Authority and Another, , it was held that the burden of proving that the amount of compensation awarded by the Collector is inadequate lies upon the claimant and he is in the position of a plaintiff.

10. In Viluben Jhalejar Contractor (D) By LR's. v. State of Gujarat 2005 (2) RCR (Civil) 492, the Hon''ble Supreme Court laid down certain broad principles for determination of compensation for the acquired land. Relevant paras are reproduced hereunder:

17. Section 23 of the Act specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification under Sub-section (1) of Section 4.

18. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification u/s 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition. The positive and negative facts are as under:

Positive facts Negative factors

(i) smallness of size (i) largeness of area (ii) proximity to a road (ii) situation in the interior at a distance from the road (iii) frontage on a road (iii) narrow strip of land with very small frontage compared to depth (iv) nearness to developed (iv) lower level requiring area the depressed portion to be filled up (v) regular shape (v) remoteness from developed locality (vi) level vis-a-vis land under (vi) some special under acquisition disadvantageous factors which would deter a purchaser (vii) special value for an owner of an adjoining property to whom it may have some very special advantage.

21. Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price.

11. In Haridwar Development Authority, Haridwar v. Raghubir Singh etc. 2010 (2) RCR (Civil) 301, the Hon''ble Supreme Court opined as under:

6. The question whether the acquired lands have to be valued uniformly at the same rate, or whether different areas in the acquired lands have to be valued at different rates, depends upon the extent of the land acquired, the location, proximity to an access road/Main Road/Highway or to a City/Town/Village, and other relevant circumstances. We may illustrate:

(A) When a small and compact extent of land is acquired and the entire area is similarly situated, it will be appropriate to value the acquired land at a single uniform rate.

(B) If a large tract of land is acquired with some lands facing a main road or a national highway and other lands being in the interior, the normal procedure is to value the lands adjacent to the main road at a higher rate and the interior lands which do not have road access, at a lesser rate.

(C) Where a very large tract of land on the outskirts of a town is acquired one end of the acquired lands adjoining the town boundary, the other end being two to three kilometers away, obviously, the rate that is adopted for the land nearest to the town cannot be adopted for the land which is farther away from the town. In such a situation, what is known as a belting method is adopted and the belt or strip adjacent to the town boundary will be given the highest price, the remotest belt will be awarded the lowest rate, the belts/strips of lands falling in between, will be awarded gradually reducing rates from the highest to the lowest.

(D) Where a very large tract of land with a radius of one to two kilometres is acquired, but the entire land acquired is far away from any town or city limits, without any special Main road access, then it is logical to award the entire land, one uniform rate. The fact that the distance between one point to another point in the acquired lands, may be as much as two to three kilometres may not make any difference.

12. In *Thakur Kuldeep Singh (D) Thr. L.R. and Ors. v. Union of India and Ors.* 2010 (2) RCR (Civil) 372, the Hon"ble Supreme Court opined as under:

6. Sections 23 and 24 of the Act speak about the matters to be considered and to be neglected in determining compensation. Let us consider whether the appellants are entitled to higher compensation than that of the one fixed by the High Court or Union of India is justified in seeking reduction of the market value/ compensation for the acquired land. While fixing compensation, it is the duty of the Land Acquisition Collector as well as the Court to take into consideration the nature of the land, its suitability, nature of the use to which the lands are sought to be acquired on the date of notification, income derived or derivable from or any other special distinctive feature which the land is possessed of, the sale transactions in respect of land covered by the same notification are all relevant factors to be taken into consideration in determining the market value. It is equally to consider the suitability of neighbourhood lands as are possessed of similar potentiality or any advantageous features or any special characteristics available. The Land Acquisition Collector as well as the Court should always keep in their mind that the object of assessment is to arrive at a reasonable and adequate market value of the land. While doing so, imagination should be eschewed and mechanical assessment of evidence should be avoided. More attention should be on the bona fide and genuine sale transactions as guiding star in evaluating the evidence. The relevant factor would be that of the hypothetical willing vendor would offer for the land and what a willing purchaser of normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of notification u/s 4(1) of the Act. In other words, the Judge who sits in the armchair of the willing buyer and seek an answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the court proposed to fix for the acquired lands in the available market conditions. The market value so

determined should be just, adequate and reasonable.

13. In the present case, as far as land pertaining to village Khanpur Khurd is concerned, the learned court below has already enhanced the compensation for the acquired land from Rs. 1,50,000/- and Rs. 2,00,000/- to Rs. 2,50,000/- per acre for all kinds of land. Except relying upon the award of the Collector pertaining to land of village Khandrai, that too on the basis of oral evidence on record, no material has been produced on record by the land owners to justify their claim. This fact was also stated by an official of the Land Acquisition Office, but there is no site plan on record to show the exact location of the land pertaining to village Khanpur Khurd and village Khandrai, which could enable this Court to compare the exact location thereof and other locational advantages or disadvantages. Merely because the land was acquired for the same purpose cannot be a ground to equate the land pertaining to two different villages at the same rate. There being no other evidence on record, in my opinion, no case for any enhancement of compensation can possibly be made out.

14. As far as valuation of land pertaining to village Baroda is concerned, all what has been relied upon in evidence is sale deed (Ex. P1) pertaining to 4 kanals and 11 marlas of land. The aforesaid sale deed was registered on 8.7.2005 for a total sale consideration of Rs. 1,60,000/-, i.e., Rs. 2,81,318/- per acre. It is not in dispute that notification u/s 4 of the Act in the present case was issued on 26.3.2002. The sale deed relied upon by the land owners having been registered more than three years after the date of acquisition cannot possibly be relied upon for the purpose of assessment of compensation for the acquired land. There being no other material on record, this Court has no option but to uphold the award of the learned court below as far as compensation for the acquired land is concerned.

15. Nothing can be awarded on account of severance as no such claim was either made before the Collector or the learned court below.

16. The appeals are, accordingly, dismissed.