

(2000) 03 P&H CK 0072

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 861 of 1981

Kartar Singh

APPELLANT

Vs

Punjab State and another

RESPONDENT

Date of Decision : 08-03-2000

Acts Referred:

Citation : (2001) 1 ICC 251 : (2000) 4 RCR(Civil) 38

Hon'ble Judges : S.S.Sudhalkar, J

Advocate : Mr. B.D. Sharma, Advocates., Mr. B.S. Sidhu, Advocates for
appearing Parties

Judgement

S.S. Sudhalkar, J.

1. All these three appeals arise from the award of the learned Additional District Judge, Faridkot by which he has decided the cases of the appellants in RFA 863 of 1981 (separate judgment) and the cases of the appellants in RFAs No. 861 and 862 of 1981 by common judgment. The areas of the lands for which the compensation is claimed are as under :

In RFA No. 861 of 1981

6 Kanals 8 Marlas

In RFA No. 862 of 1981

11 Kanals

In RFA No. 863 of 1981

13 Kanals 10 Marlas

2. The sale instances for consideration are as under :

Instances on which the claimants relied on:

Exhibit

Date of sale

Area covered

Nature of land

Sale consideration

Per acre

Ex.A.2

3.9.74

0K10M

Plot

Rs. 3000/

Rs. 48000/

Ex.A.3

3.9.74

0K10M

Plot

Rs. 3000/

Rs. 4800/

Ex.A.4

3.9.74

0K11M

Plot

Rs. 3300/

Rs. 48000/

Ex.A.5

22.8.77

0K11M

Plot

Rs. 9000/

Rs. 144000/

Ex.A.6

22.8.77

0K10M

Plot

Rs. 9000/

Rs. 144000/

Ex.A.7

8.11.76

600 sq. ft.

Plot

Rs. 2000/

Rs. 145200/

Ex.A.8

8.11.76

1800 sq.ft

Plot

Rs. 5000/

Rs. 145200/

Ex.A.9

12.4.78

4K3M

Plot

Rs. 25000/

Rs. 48200/

Instances on which the respondents relied

Village

Ex.R.1

12.4.77

10K18M

Giddarbaha

Rs. 10000/

Rs. 7630/

Ex.R.2

14.11.77

49K17M

Bharu

Rs.40000/

Rs. 6400/

Ex.R.3

31.3.77

26K16M

Bharu

Rs. 20000/

Rs. 6019/

Ex.R.4

11.7.78

8K3M

Bharu

Rs. 10000/

Rs. 9760/

Ex.R.5

11.7.78

8K3M

Bharu

Rs. 10000/

Rs. 9760/

Ex.R.6

15.6.78

14K15M

Giddarbaha

Rs..20000/

Rs. 10725/

Ex.R.7

26.6.78

5K9M

Bharu

Rs 4000/

Rs. 5860/

Ex.R.8

22.7.78

8K0M

Giddarbaha

Rs. 75000/

Rs. 7500/

3. Out of the sale instances, learned Additional District Judge has taken into consideration the price per acre in Ex.A.2 to Ex.A.4 and Ex.A.9. The lands being larger in size than the lands in the above mentioned exhibits, the learned Additional District Judge imposed a cut of 1/3rd in cases of appellants in RFAs No. 861 and 862 of 1981 and cut of 1/2 (one half) in the case of appellants in RFA No. 863 of 1981. Taking Rs. 48000/ per acre to be the value, giving a cut of 50%, Rs. 24000/ per acre was awarded in the case of appellants in RFA No. 863 of 1981 and after a cut of 1/3rd on the sale price, Rs. 32000/ per acre was awarded to the appellants in RFAs No. 861 and 862 of 1981. Being dissatisfied from the award, the appellants have come in appeals before this court.

4. I have heard learned counsel for the parties.

5. Learned counsel for the appellants have cited before me the case of State of Gujarat v. Shri Devji Bechar (through L.Rs.), A.I.R. 1991 Gujarat 187. The principle regarding assessment of the compensation in case of lands having larger area, when instances were of small plots have been considered in the said judgment. It has been held therein as under :

"..... It is true that it is a well recognised principle of valuation of lands not to value large areas of land on the basis of sales of small areas without making suitable deductions from sale price of small plots of land on account of the largeness of the size of the land sought to be evaluated with reference to the said small plots. But, in our opinion, neither the valuer nor the Court would be justified in rejecting the sale instance of a small plot as one that is not a comparable sale instance only on the ground of difference in size, and a large

plot of land may, in a given case, justly be valued on the basis of the sale instance of small plot of land after making suitable deductions and allowances from the sale price of the small plot of land on account of the largeness of the size of the land sought to be evaluated. Ordinarily, a large tract of land cannot be valued on the same basis as a small plot of land. The reasons therefor are obvious. The number of intending purchasers competing for the purchase of a small plot would be far greater than that for a large plot, with the result that the seller of a small plot is likely to obtain comparatively higher price than the seller of a big plot of land. Furthermore, when a small plot is purchased, the actual rate at which it is purchased may not be very carefully or properly scrutinized, the whole cost of purchase being small. The investment which would be required to be made in the purchase of a large plot of land would be relatively very much higher and the risk which the purchaser of such a plot undertakes would in its magnitude be also great. It is commonly known that a person who has to sell a large tract of land may not be able to sell it all at once unless there is a brisk market and keen demand for the lands in the locality and as such also the market value of such land would be less."

6. There is no dispute regarding the proposition. However, learned counsel for the appellants has argued that the comparable sale incidents (instances ?) were not considered and the percentage of the cut imposed in these cases was higher. Counsel for the respondents on the contrary argued that the sale instances should be ignored because the instances are of plots which are very small in area and the instances given by the respondents should be considered.

7. Learned counsel for the appellants has read over to me the reasons given by the learned Additional District Judge for rejecting the sale instances cited by the respondents. It is held by the learned Additional District Judge that out of the instances cited by the respondents only Exs.R.1, R.6 and R.8 relate to village Giddarbaha and rest are of village Bharu. He has further observed that these instances are irrelevant as location of the lands are the same. No site plan is produced to indicate it. So far as these observations are concerned, it is not shown as to why the same should not be accepted. Learned Additional District Judge was, therefore, right in rejecting the instances cited by the respondents.

8. So far as the instances cited by the appellants are concerned, the land was acquired by notification under section 4 of the Act issued on 24.11.1979. The notification under section 6 of the Act was also issued on the same day as mentioned by learned Additional District Judge in his award. This being so out of the sale instances, the instances of 1977 Ex.A.5 and Ex.A.6 would have been more appropriate to have been considered than the instances of 1974 Exs.A.2 to A.4. No reason is shown as to why the instances of 1977 should have been excluded.

9. So far as cuts are concerned, it has been held in the case of *State of Gujarat v. Shri Devji Bechar* (supra) as under : The basic value should be considered at Rs. 1,44,000/ per acre instead of 48000/ per acre.

".... If the intending purchaser of a very large plot of land enters into the transaction with the idea of parcelling it out into small plots and selling it to different purchasers, he takes into account the cost of development which may have to be incurred in demarcating the plots, deducing the area for accommodation, laying roads, providing for water and electricity supply and other amenities and in otherwise making the smaller plots marketable. He has also to provide for the costs which may have to be incurred on advertising the project, paying commission to land agents and brokers and conveying such a large number of small plots to different buyers. He has also to make allowance for the loss of interest on the investment made in the purchase of large plot because some period of time is bound to elapse before all the small plots may be sold and he must also contemplate the possibility of some of the smaller or interior plots remaining unsold."

10. Looking to the dimensions of the lands in these appeals, there appears to be no reason to make a distinction so far as cuts are concerned qua the land in RFA 862 of 1981 i.e. 11 Kanals and RFA 863 of 1981 i.e. 13 Kanals 10 marlas. In view of the lands the sale instances of which have considered, I find that in RFA 862 of 1991 and RFA 863 of 1981, a cut of 40% can be made. However, the cut of 33% in case of lands in RFA 861 of 1991 is maintained.

11. So far as RFA 861 of 1981 is concerned, the award should be at the rate of Rs. 95040/ per acre and so far as lands in RFAs 862 and 863 of 1981 is concerned, the award should be Rs. 86400/ per acre.

12. Counsel for the appellants has cited the case of Bhag Singh and others v. Union Territory of Chandigarh, 1987 R.R.R. 473 : A.I.R. 1985 Supreme Court 1576 in which it has been held that it is not proper to deny the benefit of the enhanced compensation only because initially proper court fee was not paid. It is observed in that case as under :

"We are, therefore, of the view that, in the present case, the Division Bench as well as the learned Single Judge should have allowed the appellants to pay up the deficit courtfee and awarded to them compensation at the higher rate or rates determined by them."

13. So far as solatium and interest are concerned, the learned Additional District Judge has awarded interest at the rate of 6% and solatium on the land at the rate of 15%. Counsel for the appellants argued that this was also not in consonance with the provisions of law. In the case of Bhag Singh (supra), it has been held by the Supreme Court that the amended provisions of section 23, subsection (2) and Section 28 of the Land Acquisition Act would apply in determining the amount of compensation where proceedings are either pending at the date of commencement of amending Act or are filed subsequent to the date, whether before the Collector or before the Court or before the High Court or the Supreme Court. In that case, the Supreme Court awarded solatium at the rate of 30% and interest at the rate of 9% on the enhanced amount of

compensation. The same award shall follow in the present case also.

14. In the result, these appeals are allowed to the extent mentioned in the preceding paragraphs.

Appeals allowed.