
(1991) 04 P&H CK 0125

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 279 of 1984

Kehar Singh and Others

APPELLANT

Vs

Punjab State and Others

RESPONDENT

Date of Decision : 11-04-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : (1992) 101 PLR 148

Hon'ble Judges : Naresh Chander Jain, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : M.L. Sarin, Hemant Sarin and Alka Sarin, for the Appellant; H.S. Mattewal, A.G. and Sukhbir Singh, for the Respondent

Final Decision : Allowed

Judgement

N.C. Jain, J.—This judgment of ours would dispose of Letters Patent Appeals No. 88, 227 to 234 and 279 to 286 of 1984 as they arise out of common notification and common judgment of the learned Single Judge.

2. In pursuance of a notification dated 1-4-1976 published on 9-4-1976 in the official gazette u/s 4 of the Land Acquisition Act (hereinafter referred to as "the Act"), the State of Punjab acquired 550 Bighas and 5 Biswas of land equivalent to 116.30 acres situated within the municipal limits of Bhatinda for a public purpose, namely, for water supply scheme prepared by the State and the Municipal Committee, Bhatinda. Later on, another purpose, namely "rose garden" was also added to. The Land Acquisition Collector by his Award dated 20-3-1979 assessed the market value of the acquired land abutting on Bhatinda-Barnala Road upto a depth of 100 yards at the rate of Rupees 50,000/- per acre and the rest of the land was evaluated at Rupees 15,000/- per acre. The land-owners felt dissatisfied with the Award of the Collector and sought references u/s 18 of the Act. On reference, the Additional District Judge instead of maintaining two belts created three belts and determined the market value of the acquired land at the following rates :-

1. For the first belt on Bhatinda- Rs. 1,30,000/- per Barnala road upto a depth of acre. 50 yards 2. For the second belt on the Rs. 60,000/- Per aforesaid road beyond the acre. depth of 51 yards upto 100 yards 3. For rest of the land Rs. 50,000/- per acre. Feeling dissatisfied with the Award of the Land Acquisition Court, the land owners filed Regular First Appeals which were disposed of by a learned Single Bench. The learned Single Bench by his Award dated September 12, 1983 restored the two belts which were created by the Collector and evaluated the land situated on Bhatinda-Barriala Road upto a depth of 100 yards at the rate of Rupees 1,50,000/- per acre and for rest of the land compensation at the rate of Rupees 65,000/- per acre was granted.

3. Mr. M. L. Sarin, Senior Advocate, learned counsel for the appellant claimants has in the first instance argued that this Court should rely upon the sale deeds which have taken place before the issuance of the notification and, in any case, such sale deeds must be relied upon which are out of the acquired land. The argument does not carry conviction. The perusal of the sale deeds and the chart given by the learned Single Judge clearly shows that all the sale transactions pertain to small areas of land which cannot be said to be comparable vis-a-vis the acquired land which runs into 558 Bighas and 5 Biswas equivalent to 116.30 acres. This Court in view of the smallness of the areas sold is disinclined to place any reliance upon the sale transactions besides the other reasonings given by the Additional District Judge and the learned Single Judge with which this court concur.

4. Faced with this situation, the learned counsel for the appellants while referring to the general principles of law laid down in several judicial pronouncements has argued that there is absolutely no justification in resorting to the belting system in view of the factum of the land being situated within the municipal limits and the location of the land which has had potentialities for being developed as residential and commercial area. The learned counsel argued that the entire land is in one compact block and has got excellent surroundings. The learned counsel has brought to the notice of this Court the following rulings-Radhey Shyam v. State of Haryana 1988 L. J. 77, Zora Singh v. Union of India and Anr. 1987 L. A. C. C. 541, Mukesh Kumar v. Collector, Land Acquisition Colonization Department, Punjab, Chandigarh (1987) 93 P. L. R. 370, Amar Lal and Ors. v. State of Haryana through Land Acquisition Collector, Kurukshetra 1988 L. A. C. C. 447 and Buta Singh and Anr. v. Union of India (1991) 99 L. R. 330, in order to contend that the factors of location of the land within the municipal limits, the compactness of the acquired land and the land having potentialities for being developed into residential and commercial area and the excellent surroundings have always weighed with this Court for abolishing the belting system.

5. Before noticing the relevant case law, referred to above, it is necessary, in the first instance to have a look at the location and the surroundings of the acquired land. The acquired land, as per the findings recorded by the learned Additional District Judge and the learned Single Judge, abuts on the Bhatinda-Barnala road.

The acquired land had come within the municipal limits of Bhatinda town before the issuance of notification u/s 4 of the Act. Even the respondent's witness, namely R. W. 1 Hukam Chand has stated that the acquired land was surrounded on one side by Thermal Colony, shopping centre in front of the acquired land apart from the two cinemas near it. The existence of residential hotels at a distance of about 500/600 yards was also noticed. It has further been noted by the learned Additional District Judge there was a market just across the road apart from the truck union office. It was further found that the residential colony was on one side of the acquired land and the cantonment was at a very little distance. The land, according to the learned Additional District Judge, has great potentialities for being put to residential, commercial and the industrial purposes. Even the learned Single Judge after making a reference to plan Exhibit A. 92 has recorded the following finding in favour of the appellants:-

"Plan Exhibit A. 92 shows that the acquired land abuts on Sirhind Canal towards the West and beyond the Sirhind Canal is the Thermal Colony Towards the South, the acquired land abuts on the Bhatinda-Barnala road. Central Aviation Microwave Centre is also towards the South of the acquired land. The Aviation Centre also abuts on the aforesaid road. Bhatinda-Mansa-Talwandi Sabo road joins the Bhatinda-Barnala road just in the middle of the acquired land towards the West. There is a bridge over the Sirhind Canal for the Bhatinda-Barnala road. There are two cinemas besides numerous residential houses on both sides of that road besides several homes on the Bhatinda-Barnala road. There is a residential Colony in Khasra No. 1978."

6. In view of the afore-mentioned factual position which could not be denied during the course of hearing by the learned counsel for the respondents, no doubt has been left in our mind that the land had all the potentialities for being developed into residential, commercial and industrial area and in view of the location of the land there is absolutely no justification to create belts either on facts or in law to which reference is going to be made in the latter part of the judgment.

7. Adverting to the case law, we would first take up the earliest judgment rendered by a Division Bench of this Court in Radhey Shyam's case (supra) in which categorisation of land acquired for section 28 along the Delhi-Mathura Road adjacent to Sector 19 in Faridabad town was held illegal on the basis of potentialities of land for being used for industrial, commercial and residential purposes. The following observations of the Division Bench may be noticed :-

"Before dealing with the instances, the location of the Sector deserves to be highlighted. In the map of the record, the location of Khasra No. 53/1 has been shown. Out of this Khasra, the land acquired for Sector 28 has also been depicted. It abuts on the Delhi-Mathura highway and is in line with sectors 19, 16-A, 15-A and 12 of the Faridabad Complex which also abut on the Delhi-Mathura highway. Sector 28 is nearest to Delhi, then comes Sector 19 and so on. The Land Acquisition Collector had found and the Additional District Judge also

accepted that the land acquired was surrounded by the Abadi which had the potentiality and higher market value as it was near the Delhi-Mathura road and on this basis, did not fix compensation on the basis of the quality of the land, but made only two categories.-(i) for path-ways and (ii) for the remaining land. This clearly shows the potentiality of the land in dispute for being used for industrial, commercial and residential purposes and as such the two categories made by the Land Acquisition Collector and upheld by the Additional District Judge, do not deserve to be sustained. The whole of the land deserves to be evaluated at a flat rate after finding out its market value."

8. D. V. Sehgal, J. in Zora Singh's case (supra) on the basis of urban potentials, the existence of acquired land in one compact block and the acquisition of land by one and the same notification granted the same compensation for the land acquired on National Highway and village abadi land at the same rate by making the following observations:

"When the land acquired forms one compact block though falling in the revenue estate of different villages and has been acquired through one and the same notification u/s 4 of the Act, it is reasonable to fix the market value of the land at the same rate. For this view, I place reliance on Bakhshish Singh v. The Collector Land Acquisition etc. 1982 Current Law Journal (Civil and Criminal) 249. I, therefore, find it appropriate that in the case of village Bhucho Khurd also in respect of the land upto a depth 500 meters on either side of the Bhatinda-Barnala National Highway as also the abadi land of village Kharaj Chak the market value should be determined at Rs. 70,000/- per acre and in respect of Chahi, Nehri and Chahi/ Nehri land it should be Rs. 37,000/- per acre."

9. In 1987 a Single Bench of this Court in Mukesh Kumar's case (supra) observed that when on all sides of the acquired land various industrial and commercial establishments had already been established, it was improper to divide the land into superior or inferior land for determining the market value.

10. Another Single Bench of this Court, in a recently decided case Amar Lal and others" (supra) while determining the compensation in the case of acquisition of 149 acres 3 kanals 16 marlas of land at Kurukshetra found no justification for adopting belting system in spite of the fact that a part of the land was outside the municipal area. The existence of residential colony, shops and the potentialities were the factors which weighed with this Court in Amar Lal's case (supra) for assessing the compensation at a uniform rate for the entire land. The following observations deserve to be noticed :-

"From the evidence of the claimants, as briefly noticed above, it is quite dear that before the notification u/s 4 of the Act was issued, there were genuine sale transactions of part of the acquired land on which intending purchasers raised construction in the shape of shops. Furthermore, as noticed above, the acquired land was within the municipal limits, though some portion is outside. A residential colony had already developed which is situated across the Pipli-

Kurukshetra Road and even around the acquired land apart from the two roads, referred to above, there was a Sadhu Mandi, houses and shops. No manner of doubt is left from the aforesaid evidence that the acquired land had great potential for being used for residential and commercial purposes. That being the position, the fixing of market value of the acquired land treating it as agricultural land block-wise (belting system) was not justified in the present case. The contention of counsel for the claimants has force that market value should be fixed for the acquired land which has great potential for being used for residential and commercial purposes at a higher rate."

11. In yet another decided case, that is, Buta Singh (supra) pertaining to the acquisition of land in Bhatinda itself, belting system was done away with by a Division Bench of this Court. It was held that suburban properties around a municipal town prima facie have the same potentiality unless otherwise shown. A single Bench of this Court held that the land situated at Bhatinda-Barnala road had different market value than the land situated on the road leading to village Bibiwala. While disagreeing with the view of the Single Bench, the Division Bench granted the compensation at a flat rate. The existence of the acquired land within municipal area of Bhatinda town itself seems to have weighed with the Division Bench of this Court while modifying the judgment of the Single Bench treating the entire acquired land alike. The relevant discussion on facts and law coupled with the arguments of the counsel for the claimants does need reproduction :-

"The learned counsel for the claimants has sanguinely challenged the observations made by the learned Single Judge to the effect that the land situated at Bhatinda-Barnala Road has a different market value than the one situated on the road leading to village Bibiwala. It is contended that the observations of the learned Single Judge reproduced from the judgment of the Additional District Judge cannot be sustained in view of the fact that the observations are being made with respect to the potentiality and not the market value. The observation that there is no Railway Station, Mandi, College or Factory in that village cannot be sustained. There is no gainsaying that the land in the revenue estates of village Mehna, Bhuchio Kalan and Bhuchio Khurd was acquired by the same notification and for the same purpose of establishing a Cantonment. It was not disputed at the bar that the land is situated adjacent to the town of Bhatinda. Even a site plan was shown to us in Court which the learned counsel for the respondents has not been able to dispute wherein it has been shown that the land situated at the Bhatinda-Bibiwala Road is within the vicinity of the Bhatinda Municipal town and is within two Kilometers from the Municipal limits of Bhatinda. It can very well be said that the importance of the National Highway can be conveniently termed to have been offset because of the closeness of the land to the municipal limits of Bhatinda. We find no ground to treat the land having opening on a metal led road, i.e. Bhatinda-Bibiwala Road differently from the one having opening at Bhatinda-Barnala Road. Blocks in both the cases can be treated as similarly situated with almost similar potentialities. Suburban

properties around a municipal town prima facie have the same potentiality unless otherwise shown. Nothing has been pointed out that town is developing more on the National Highway side than on the vicinity of the Bibiwala Road. We are of the considered view that land falling within a depth of 500 meters of either side on the Bhatinda-Bibiwala Road cannot be treated differently than the one on the Bhatinda-Barnala Road. The importance of being on the important road off sets itself against the importance of being in the vicinity of the Bhatinda town. The lands having been acquired for the same object and purpose and having the same importance cannot be treated differently."

12. On an analytical examination of the afore-mentioned judicial pronouncements of this Court, it can safely be reiterated or held that the Courts of law would generally be disinclined to categories" the land and would be inclined to evaluate the entire land at a flat rate whenever it has got the potentialities for being used for residential, commercial and industrial purposes. The factum of the land being situated in a compact-block is another consideration which must weigh with the court to do away with the belting system. The location of the land in urban area in another factor leaning towards the grant of flat rate when the entire land is acquired by one notification. Even suburban properties near or around the Municipal Town can have the same potentialities until and unless evidence to the contrary is produced.

13. While applying the afore-mentioned principles, this Court holds that there is no justification for categorizing the disputed land. It has come in evidence that the entire land was within the municipal limits at the time when notification u/s 4 of the Act was issued. The existence of Hotel, Market across the road, location of the Union Office and two Cinemas, residential colony on one side of the acquired land and the finding recorded by the Additional District Judge and the learned Single Judge that the land had great potential ties for being put to residential, commercial and industrial purposes is good enough for this court to grant compensation at one and the same rate.

14. For the reasons recorded above, it is held that the claimants are entitled to the grant of compensation at the rate of Rs. 1,50,000/- per acre at a flat rate for the entire land.

15. Consequently, all the appeals filed by the claimants are therefore, allowed to the extent indicated above with proportionate costs. The claimants are further held entitled to the grant of statutory benefits of the amended provisions of Sections 23(2) and 28 of the Act. A period of two months is allowed to the claimants to make up the deficiency in the court fee, if any.