
(1999) 05 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 593 of 1989

Khiraj and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 27-05-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : (1999) 122 PLR 655 : (1999) 4 RCR(Civil) 381

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Jaswant Jain, for the Appellant; H.S. Hooda, General and Ramesh Hooda, for the Respondent

Judgement

Swatanter Kumar, J.—Government of Haryana issued a notification u/s 4 of the Land Acquisition Act, 1894, hereinafter referred to as the Act, on 1-8.6.1984 for acquiring land measuring about 7757 kanals 6 marlas in village Bhojraj, District Hissar. In furtherance thereto notification u/s 6 of the Act was issued on 12.4.1985. The land measuring 7744 kanals 15 marlas was the actual land which was acquired and in relation to which the learned Land Acquisition Collector passed award No. 8/85-86 dated 17.9.1986. The Land Acquisition Collector after considering the report of the department classified the land into three different kinds and awarded the following compensation to the claimants:-

Nehri/Chahi : Rs. 20,000/- per acre Tal/Barani : Rs. 12,000/- per acre Tibba/Gair Mumkin : Rs. 8,000/- per acre

2. The objectors felt discontented by the amount awarded to them for acquisition of their respective lands and preferred references u/s 18 of the Act. The Land Acquisition Collector in all made 79 references and all these 79 references were disposed of and answered by the learned Additional District Judge, Hisar vide his judgment and award dated 24.12.1988. 4 references were answered by the same learned Judge by following the judgment dated 24.12.1988 while pronouncing the judgment dated 4.4.1990. In other words, all these references

were answered by the above mentioned two different judgments. Vide both the judgments the learned Additional District Judge reduced the categories of the land from three to two and awarded the following amounts to the claimants and enhanced the amount as under:-

Chahi/Nehri : Rs. 25,000/- per acre Barani/Tal/Tibba/Gair Mumkin : Rs. 16,000/- per acre.

3. The claimants still felt that the amount of compensation awarded to them was not adequate and, therefore, they preferred regular first appeals before this Court against both the awards. On the other hand, the State was dis-satisfied as according to it the amount awarded was much in excess than the amount which the claimants were entitled to receive. Consequently, 153 regular first appeals have been preferred before this Court, 78 by the State and 75 by the claimants. In other words the present two regular first appeals and 152 other connected appeals arise from the two common judgments from the same award of the Collector and from the same notification and in relation to the same land acquired in village Bhojraj. As the above appeals and the connected appeals raise common question of fact and law based on common premises, it will be appropriate to dispose of all these 153 regular first appeals by a common judgment.

4. The claimants had examined as many as 13 witnesses being PW1 to PW13 to claim enhancement of the amount awarded by the Collector and no documentary evidence or sale instances were produced or proved by the claimants except Ex.P.1 to Ex.P.7 copies of Chakbandi. To rebut this evidence, the respondents had examined four witnesses RW1 to RW4 and also produced Ex.R.1 to Ex.R.3, the sale deeds in relation to the same land and Ex.R.4 site plan.

5. All the sale instances produced by the respondents as Ex.R.1 to Rule 3 are the sale deeds certainly prior to the date of notification but the respondents did not examine the vendor or vendees to prove the genuineness and reliability of these sale instances. In accordance with the principles settled by the Hon"ble Supreme court of India in the case of A.P. State Road Transport Corporation, Hyderabad Vs. P. Venkaiah and others, and Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., , these documents are, therefore, inadmissible. Further more, the value reflected in all these exhibits is less than the amount of compensation awarded by the Collector to the present claimants. In other words, they could be looked into but cannot form reasonable basis for determining the market value of the land at the relevant point of time. Following these sale instances by the Court would be hit by the provisions of Section 25 of the Act, Thus, I would not rely upon these sale instances to determine the fair market value payable to the claimants.

6. The learned counsel appearing for the claimants relied upon the judgment of this Court in the case of State of Haryana v. Ruldu and Ors., R.F.A. No. 998 of 1989, decided on 1.4.1999 and another judgment of this Court in the case of

Chander Parkash Vs. The State of Haryana and Others, and contended that the claimants are entitled to the same compensation as awarded to the claimants in that case as village Bhojraj is near to village Alipur and is nearer to city of Hissar. On the other hand, learned Advocate General, Haryana contended that the judgment in the case of Chander Parkash (supra) has been upset by the Hon"ble Supreme Court of India in the case of Union of India and others etc. Vs. Mangatu Ram, etc., . Secondly, he contended that the classification given by the learned Additional District Judge in relation to the two categories is not justifiable and sustainable. He contended that keeping in view the location of the land the compensation should be reduced and the award of the Collector should be restored.

7. The first factor which requires to be considered by this court is the location and potential of the land. Ex. Rule 4 is the only document which shows the land acquired under this notification. The entire land has been acquired vide notification dated 18.6,1984 for its utilisation for the development and extension of the cantonment area. It is conceded at the bar that land of number of other villages vide notification of the same date had also been acquired for the same purpose including the land in village Alipur and village Satrod. Ex.R.4 is of no consequence in showing the location of the acquired land. It merely shows the area that has been acquired in village Bhojraj.

PW1 Basi Dhar is Wasal Wakinawis, District Revenue Account Branch, D.C. Office, Hissar, who was produced by the claimants. He stated as under: -

"The L.A.O. called for the rates of land of village Bhoj Raj proposed to be acquired by the government from the Collector, Hissar. Our office sent the rates to the L.A.O. Ours rates were for land Nehri and Chahi Rs. 25,000/- per killa. Barani and Tal Rs. 20,000/- per killa, Tibba, Banjar Qadim Rs. 12,000/- per killa. Cross examination.

These rates were recommended by the Collector to the .L.A.O."

PW3 and other claimants stated that the acquired land is at a distance of 11 kilometres from the city of Hisar. In their cross-examination they were not confronted with any suggestion that the distance is not 11 kilometres. On the other hand, RWt in his statement stated that the acquired land is 20 kilometres away from the city of Hisar and 3 kilometres away from Hisar-Tosham road. Even this witness was not confronted in his cross-examination with any document to the contrary and not even a suggestion was made to him that the distance given by him is not correct. The fact of the matter remains that the location of the present land is not as convenient and useful as in the case of villages Alipur and Satrod. Village Satrod is admittedly abutting the national highway i.e. Delhi-Hisar Road, while behind village Satrod is village Alipur. These can be relevant factors to be looked into by the court but they cannot be made the absolute basis for final determination of compensation to be awarded to the claimants.

8. With regard to potential of the land there Is hardly any evidence on record

and in any case in the face of the fact that the site was inspected by the learned Judge himself, it may not be relevant for this Court to even refer to other evidence which as already noticed, hardly exists. The learned Judge inspected the site on 22.11.1998 and recorded the following report:-

"I inspected the spot today at about 3.00 p.m. in the presence of Sh. K.C. Chaudhary and Sh. M.S. Nairi, advocates for the claimants and Sarvshri R.K. Garg, Govt. Pleader and R.S. Sohag, S.D.O., Defence Estate Office, Ambala Circle, Ambala Cantt. for the respondents. I inspected the acquired land, which was a mass of uneven sandy dunes. It was difficult to distinguish which land is Tal and which land is Tibba. The military authorities hardly seems to have made any change in the topography terrain of the acquired land which is being used as a tiring range. A tube-well Kotha without roof stood in the land of Lok Ram petitioner, made of Pucca bricks without plaster. The width of the Kotha may be 10 feet x 12 feet. Location of the land of Lok Ram was made by the Patwari Halqa who was present and not denied by Sh. Sohag, S.D.O."

9. There was definite onus on the claimants to prove the potentiality of the land, its value and location, The claimants have not been able to discharge their burden by leading cogent, proper and reliable evidence. On the other hand, the respondents have also failed in placing the available evidence on record. The sale instances produced by the respondents being inadmissible, the court is hardly left with any much evidence to determine the amount of compensation to be awarded to the claimants.

10. It is settled principle of law that judgments and awards of the Court are the best piece of evidence, which the Court can take into consideration for determining the market value of the land at the relevant time. In this regard reference can be made to Harcharan Vs. State of Haryana, and Punni Devi alias Basant Kaur Vs. Collector, Land Acquisition, Industries Department and Others, . It will be more so when no independent evidence is available on record to adjudicate upon the controversy in issue in relation to the compensation payable to the claimants.

11. Village Satord is partly within the municipal limits of city of Hissar and is abutting the national highway i.e. Delhi-Hissar Road. Its location and potential is certainly very high in comparison to the acquired land. I have no hesitation in coming to the conclusion that the judgment in the case of Chander Parkash (supra) is in no way of any avail to the claimants. The other judgment which has been relied upon by the learned counsel for the claimants is that of Ruldu and Anr. (supra) relating to village Alipur. Though variable evidence has come in regard to the location and potential of the acquired land, but still it cannot be disputed that the nearest village for which an adjudication is available and has been placed on record is of village Alipur. According to the respondents village Bhojraj is located 20 kilometres away from Hissar town and is not abutting any national highway or state highway. While according to the claimants, the acquired land is nearly 11 kilometres away from Hissar. The location of village

Alipur as emerges from the judgment of Ruldu (supra) is much better than the acquired land. Village Alipur is just at the back of village Satrod. The present acquired land in village Bhojraj is certainly at a much distance from Hissar City and cannot be given similar benefits as have been granted to village Alipur.

12. Taking the cumulative effect of the above evidence and judgment in the case of Ruldu (supra), I am of the considered view that the claimants would be entitled to compensation but much less than the compensation payable to the land in village Alipur. According to RW 1 the acquired land is at a distance of three kilometres even from Tosham-Hissar Road. According to PW 3 the acquired land is at a distance of 11 kilometres from village Hissar and is adjacent to village Badan Rangaran and at a distance of nearly 2 kilometres some industries or brick-kilns are stated to be located. Firstly, no site plan was placed on record and secondly between oral evidence of the official and non-official witnesses there is contradiction in relation to distance. At this stage, it may be relevant to mention that the land acquired in village Alipur was also 2 kilometres away from national highway and nearly 10 kilometres away from municipal limits of Hissar town. Some element of guess work has to be introduced to determine the amount of compensation payable to the claimants in view of the facts and circumstances of the case. There cannot be completely a rigid or a straight jacket formula for computing the compensation payable to the claimants. It would be the evidence led by the parties in each case which would help the Court in determining the question of compensation.

13. Taking the Alipur land as the basis, the claimants would certainly be entitled to enhancement of compensation. The learned Advocate General argued that the learned Additional District Judge had erred in making two categories because Nehri land or land which is Tal Barni cannot be equated to Gair Mumkin or Tibba. I find substance in this submission. Certainly the land which is Barani or Tal cannot fetch same value as that of Tibba or Gair Mumkin land. They cannot be equated to each other especially when no part of the acquired land has the distinct or a significant location than the other. The lands are not abutting national or state highway and are not closer to any important or developed place. The entire land was agricultural land with variation in the very kind of the land not attributable to any factor other than nature. In these circumstances I am of the considered view that the learned trial Court has erred in categorising the land into two heads and would prefer to restore the view taken by the Collector that the land should be divided into three categories i.e. Nehri and Chahi, Tal and Barani and Tibba and Gair Mumkin.

14. As I have already held that the claimants would be entitled to some enhancement keeping in view the judgment of this Court in Ruldu's case (supra) in relation to the land of village Alipur. At the same time the claimants cannot be granted the same compensation keeping in view the location and potential of the lands of village Alipur and Bhojraj.

1. Nature of land : Nehri and Chahi. Amount awarded by this Court in : Rs.

46,500/- per acre. Ruldu's case (Alipur land) Amount awarded by the A.D.J. in : Rs. 25,000/- per acre, the present case (Bhojraj land) Now the claimants would be entitled to. : Rs. 27,900/- per acre, (nearly 45% less than the land of village Alipur). 2. Nature of Land : Barani and Tal. Amount awarded by this Court in : Rs. 23,250/- per acre. Ruldu's case (Alipur land) Amount awarded by the A.D.J. in : Rs. 16,000/- per acre. the present case (Bhojraj land). Now the claimants would be entitled to. : Rs. 19,000/- per acre. (Note : The claimants are entitled to this enhanced compensation primarily for the reason that in the report of the revenue department to the Collector, while determining the compensation, it was reported that the Tal and Barani land should get Rs. 20,000/- per acre. The statement of PW1 as reproduced above remains unrebutted on record. Thus, after certain amount of deduction the claimants should get Rs. 19,000/- per acre.). 3. Nature of land : Tibba and Gain Mumkin. Amount awarded by this Court : Rs. 23,250/- per acre, in Ruldu's case (Alipur land) Amount awarded by the A.D.J. in : Rs. 16,000/- per acre, the present case (Bhojraj land) Now the claimants would be entitled to. : Rs. 16,000/- per acre.

15. For the reasons aforesaid and in view of the above detailed discussion, the appeals preferred by the claimants are partly allowed, while the appeals preferred by the State are dismissed. The claimants would be entitled to get the above stated amounts keeping in view the extent and kind of land of the respective claimants that has been acquired, with all statutory benefits under Sections 23(1-A), 23(2) and 28 of the Act. There shall be no order as to costs.