

(2007) 08 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1196 of 1982

Kulbhushan Jain

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 13-08-2007

Acts Referred:

Citation : (2008) 1 LLR 514 : (2008) 2 RCR(Civil) 145

Hon'ble Judges : Hemant Gupta, J

Advocate : Mr. Shailendra Jain, Advocate. Mr. Sidharth Sarup, AAG, Haryana.,
Advocates for appearing Parties

Judgement

Hemant Gupta. J.—The present appeal under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), is directed against the award of the learned Reference Court dated 6.5.1982 whereby a sum of Rs.10,000/ per acre was determined as market value of the acquired land.

2. The land measuring 4.55 acres, situated in Village Tosham, Tehsil and District Bhiwani, was acquired for public purposes i.e. for the construction of PWD stores, vide notification under Section 4 of the Act, published in the Haryana Government Gazette dated 15.1.1976. The notification under Section 6 of the Act was published on 29.6.1976. The Land Acquisition Collector, vide award dated 9.3 .1979 allowed the compensation for the acquired land @ Rs.3200/ per acre for the Tal i.e. Tibba type of land and @ Rs.2720/ per acre for the Gair Mumkin land.

3. Dissatisfied with the amount of compensation, the land owners sought reference, under Section 18 of the Act and sought the market value of the acquired land @ Rs.50/ per square yard. It is the case of the land owners that Civil Hospital, P.W.D. Rest House, Haryana State Electricity Board Colony and the office of the Panchayat Samitties etc. were situated just near to the acquired land and that it had a great potential to be used for residential and commercial purposes.

4. Before the learned Reference Court, apart from the oral evidence, the appellants have relied upon the mutation, Exhibit P2, sanctioned on 5.6.1976, in respect of the land measuring 5 kanals 15 marias, purchased by the Haryana Government for Rs.13,750/-. The appellants also relied upon the sale deed, Exhibit P3, whereby the land measuring 1 kanal 6 marlas was sold for Rs.13,000/- in the month of March, 1968. PW2 Tara Chand has deposed that the adjoining land to the land comprised in Exhibit P3, was acquired for construction of P.W.D. Rest House in the year 1974 and compensation was allowed @ Rs.11,200/- per acre including solatium. From a perusal of the copy of award, Exhibit R W 6/A, it was found that the land was acquired for construction of P.W.D. (B&R) godown @ Rs.9,000/- per acre. The Court found that Exhibit P3 is the transaction of a small area which cannot be taken into consideration for determining the market value of the large tract of the land. It was further found that there is no evidence that the nature of the land, as sold by means of sale deed, Exhibit P3, was the same as of the acquired land. Similarly, it was found that there is also no evidence that the nature and quality of land, as mentioned in mutation Exhibit P2, is the same that of the acquired land. Thus, the Court found that the best evidence to award the compensation in respect of the acquired land, is the land acquired for PWD Rest House @ Rs.9000/- per acre and by giving the benefit of rising trend in the prices, determined @ Rs.10,000/- per acre as market value of the acquired land.

Before proceeding further on the merits of the contention raised, the learned counsel for the appellants has relied upon Civil Misc.No.6200CI of 2003 for permission to adduce additional evidence i.e. to produce on record the Aks Sajra. In reply, it is pointed out that, no doubt, this document is a revenue document and has been issued by the Halqa Patwari, but the appellants ought to have produced the said document at the time of trial of the case before the Reference Court, therefore, now the appellants cannot be permitted to lead such document in evidence.

5. After hearing respective contention of the parties and keeping in view of the fact that authenticity of the document is not in dispute, the appellants are permitted to produce Aks Sajra by way of additional evidence. The Aks Sajra is marked as ExhibitAX. The application, thus, stands allowed.

6. Learned counsel for the appellants has vehemently argued that the sale instance Exhibit P3 is the relevant piece of evidence which reflects the market value of the acquired land as Rs.80,000/- per acre. It is further contended that according to Aks Sajra admitted in evidence, the land is of comparable nature and location. He relies upon ?Satish Kumar versus State of Haryana, 1994 (3) P.L.R.243? and ?Land Acquisition Collector versus Sukhdev Singh, A.I.R. 1995, Himachal Pradesh 150?, to contend that such sale instance is relevant for determining the market value of the acquired land.

7. The learned counsel for the appellants has further referred to sale instance Exhibit PW6/B, whereby the land measuring 36.3 square yard has been sold for Rs.300/- on 4.3.1965. As per the said sale instance, Rs.40000/- is the price of the

land per acre.

8. The argument raised by learned counsel for the appellants that the acquired land has a potential for use as residential and commercial area, is not tenable. If the land has a potential for use of residential and commercial area, the appellants could have led the evidence in respect of any transaction of the sale of the land acquired or of the land situated in the near vicinity. Only two transactions of sale have been referred to. A perusal of the Aks Sajra shows that the land comprising in sale deed Exhibit PW 6/B is situated on the bye sections of the road situated at a distance of 77 inches i.e. 1650 ft. from the outer portion of the land acquired. As per the Aks Sajra, one inch is equivalent to 40 karams and, therefore, the distance of the land comes out to be 300 karams which is equivalent to 1650 ft. The land comprising in sale deed Exhibit PW 6/C or sale deed Exhibit P3 is still at further distance of 8 inches i.e. 320 karams i.e. 1760 feet from the land sold vide Exhibit PW6/B and 3410 feet from the acquired land. The land comprised in such sale instances is situated at a considerable distance. Therefore, the sale instances Exhibit PW 6/B and PW 6/C cannot be said to be of comparable land by nature or quality, which can be said to be relevant to determine the market value of the acquired land. Such sale instances are of small area as well. Therefore, the only comparable reference is of compensation awarded in respect of the land acquired for PWD Rest House in the year 1974. On the basis of said award, the learned Reference Court has enhanced the amount of compensation from Rs.9,000/ to Rs.10,000/ per acre.

9. A perusal of the statement of PW2 would show that Tosham became, a Notified Area Committee after the year 1974. It is admitted by the said witness that no building existed on the acquired land and the land was not under cultivation before its acquisition. He has stated that there are not under cultivation before its acquisition. He has stated that there are residential houses near the acquired land and the land is not canal irrigated. PW4 Surinder Singh is the another witness produced by the claimants in respect of determining the market value of the acquired land. He has deposed that certain Government buildings existed in the neighbourhood of the acquired land and the Bus Stand is about 400 square yards away from that place. He has further deposed that the market value of the acquired land at the time of the notification was Rs.25/ or Rs.30/ per square yard, though the market value of the land abutting the main road is higher. His land was acquired in respect of which award was given on 22.10.1974 and compensation was awarded @ Rs.3/ per square yard.

10. I do not find that the sale instances Exhibits PW 6/B and PW 6/C can be taken into consideration for determining the market value of the acquired land. Not only that the land in the aforesaid sale deeds is situated at a long distance, but also the land is of a small area. From the Aks Sajra produced on record, it could not be made out that the land acquired is close to Tosham town or away from it. Therefore the said sale instances have been rightly not relied upon by the learned Reference Court while determining the market value of the acquired

land.

10. The judgment in Satish Kumar's case (supra) is in respect of the evidence produced in the aforesaid case to determine the market value of the acquired land. I do not find any principle laid down in the aforesaid judgment is applicable to the fact of the present case. Therefore, the said judgment does not provide any assistance to the appellants. Similarly, the judgment of the Hon''ble Division Bench of Himachal Pradesh High Court in case Land Acquisition Collector (supra) is again not helpful to the appellants as the sale instance in that case is found to be relevant as the land, subject matter of the sale instance and the acquired land, was situated adjacent to the National Highway and the potential value of the plot sold by transaction and the acquisition were the same.

12. But in the present case, the situation is different. Here, the acquired land is at quite distance from the land comprised in sale instances Exhibits PW6/B and PW6/C. The land sold is of much smaller area. Neither the quality nor the nature of the land is comparable with the acquired land. Still further, the land sold is of much smaller area than the land acquired.

13. Consequently, the learned Reference Court was right in law in relying upon the award Exhibit RW6/A to determine the market value of the acquired land as Rs.1 0,000/ per acre. There is no other evidence which can be said to be relevant to determine the market value of the acquired land.

Therefore, there is no illegality or irregularity in the findings recorded which may justify any enhancement of the compensation awarded by the learned Reference Court.

Consequently, the present appeal is dismissed with no order as to costs.