
(1982) 10 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 960 of 1980

Ludhiana Improvement Trust, Ludhiana

APPELLANT

Vs

Nirmal Devi and Others

RESPONDENT

Date of Decision : 29-10-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Punjab Town Improvement Act, 1922 — Section 36, 42

Citation : AIR 1983 P&H 193

Hon'ble Judges : S.S. Sandhawalia, C.J.;J.M. Tandon, J

Bench : Division Bench

Judgement

J.M. Tandon, J.—The Ludhiana Improvement Trust (hereinafter called "the Trust") notified acquisition of land measuring about 200 acres u/s 36 of the Punjab Town Improvement Act, 1922(hereinafter called "the Act") on March 17, 1961, for Gill Road Development Scheme within the municipal limit of Ludhiana town. The scheme was approved by the State Government u/s 42 of the Act vide notification dated Dec. 6, 1967.

2. The Land Acquisition Collector by award dated January 14, 1969 allowed compensation to the landowners at the rate of Rs. 30/- per Biswansi for the land abutting on the road up to a depth of 12 Gathas. The interior land was classified as : (1) Rossly (Barani), (2) Khalis Chahi, (3) Makan Gair Mumkin, (4) Abata Chah Gairmumkin,(5) Gair Mumkin Khatan, (6) Gair Mumkin Rasta and (7) Bhudh. The Chahi and land under the houses was assessed at Rs. 20/- per Biswansi, Rossly (Barani) and Bhudh at the rate of Rs. 15/- per at the rate of Rs. 7.50 per Biswansi and Gair Mumkin land at the rate of Rs. 4/- per Biswansi. The landowners feeling dissatisfied with the award of the Collector sought reference which was disposed by the Tribunal constituted under the Act vide order dated June 26, 1971. The Tribunal held the valuation of the land as fixed by the Land Acquisition Collector but allowed 15 per cent solatium and 6 per annum interest in addition to the amount awarded by the Collector. Smt. Nirmala Devi, respondent, feeling aggrieved by the order of the Tribunal filed C. W. P. No. 3829

of 1971, which was partially accepted by the learned single Judge vide order dated August 21, 1980 : (reported in Bhagat Ram Vs. The State of Punjab and Others, . The learned single Judge directed that the whole of the acquired land would be divided into two blocks, one for the land abutting the road up to a depth of 12 Gathas for which compensation at the rate of Rs. 30/- per Biswansi as allowed by the Land Acquisition Collector and the Tribunal, shall be paid and the 2nd, for whole of the rest of the acquired land for which compensation at the rate of Rs. 20/- per Biswansi shall be paid apart from 15 per cent solatium and interest at the rate of 6 per cent per annum on the enhanced amount from the date of taking possession of the land till its payment. The Trust has assailed the order of the learned single Judge dated Aug. 21, 1980, in the present Letters Patent Appeal.

3. The learned counsel for the petitioner has argued that the value of the acquired land had been correctly assessed by the Land Acquisition Collector and the Tribunal and the learned single Judge erred in disturbing the valuation with respect of interior land, that is, beyond 12 Gathas from the road. The learned counsel has further argued that the learned single Judge has reversed the finding of fact recorded by the Tribunal by reappraising the evidence which could not be done in the writ proceedings under Art. 226 of the Constitution. It has also been argued that the Land Acquisition Collector by another award dated Jan. 14, 1969 but relating to the land of the same Gill Road Development Scheme had made similar classification of interior land for the purposes of valuation which was upheld by the Tribunal vide order dated May 6, 1970 and by a Division Bench of this Court in C.W.P. No. 2523 of 1970 decided on July 13, 1976. In view of the Division Bench decision in C. W. P. No. 2523 of 1970, the impugned order of the learned single Judge cannot be sustained.

4. The learned single Judge did not consider the arguments raised on behalf of the petitioner which had been raised in C. W. P. No. 2523 of 1970 and repelled. The learned single Judge did consider the following additional points raised on behalf of the petitioner :

(1) That the acquired land belonging to the petitioner (now respondent) was situated within the municipal limits of Ludhiana Town and, therefore, even if for the time being it was being used for agricultural purposes it had to be evaluated as urban property; and

(2) That the acquired land had potential for begin used as urban property and, therefore, no categorization on the basis of agricultural uses could be made and that no the aforesaid basis there was apparent error of law on the face of record which could be corrected in the writ jurisdiction as held by the Supreme Court in Syed Yakoob Vs. K.S. Radhakrishnan and Others, , which has been relied upon by the Division Bench of this Court in Arjan Singh v. State of Punjab (C. W. P. No. 2523 of 1970).

5. The learned single Judge relying on the ratio of Lakshmi Dass v. Punjab State

1977 PLJ 464 held that the entire acquired land had to be evaluated as urban property irrespective of the fact that it was being cultivated at the time of acquisition and the Collector and the Tribunal were in error in considering the same to be agricultural land. The learned single Judge than placing reliance on the statement of Gian Chand recorded by the Tribunal held that the acquired property and potential for being used as urban property for commercial, industrial or residential purposes.

6. It is not disputed that the acquired land was within the municipal limits at the time when notification u/s 36 of the Act was issued. The acquired land was, therefore, urban at the time of notification u/s 36 of the Act in the sense that it was situated within the municipal limits. It is not disputed that the compensation payable to the landowners of the acquired land is the fair market value of the land at the time of its acquisition. It was, therefore, obligatory for the Land Acquisition Collector and the Tribunal to determine the fair market value of the acquire land as on 17th of March 1961. The yardstick for determining the fair market value of land having potential for being used for commercial, industrial or residential purposes would be different than the land which has no such potential. In this context the location of the land within the municipal limits is a circumstance to be taken into consideration but not conclusive proof for holding that it has acquired potential or residential purposes. A piece of land even situated outside the municipal limits may have potential for being used as commercial, industrial or residential purposes whereas another piece of land within the municipal limits may not have such potential. The main point to be considered for determining the fair market value of the acquired land as on March 17, 1961 is : whether it had potential for being used for commercial industrial or residential purposes ? The learned single Judge has placed reliance on the statement of Gian Chand recorded by the Tribunal to hold that the acquired area had the potential for being used for commercial, industrial or residential purposes. The Tribunal also considered the statement of Gian Chand and made the following observation in order dated June 26, 1971 :--

"Barring the oral statement of Gian Chand, who is claimant in case No. 67 of 1969 there is no evidence on the record to show the distances between the acquired land and the lands of the aforesaid instances of sales. Gian Chand has, however, stated that the lands of the instances of sales referred to above, are located at a distance of 50 yards from the acquired land but he is admittedly an interested witness being one of the claimants. As such the rule of prudence requires corroboration of his statement before the same can be accepted. The record bears no evidence respecting the distances between the acquired land and the lands of the aforesaid instances of sales. Since the statement of Gian Chand is interested evidence and no corroboration to his statement is available on the record. I do not think that the solitary statement of Gian Chand can form basis, much less safe, for finding the distance between the acquired land and the instances of sales
..... ..

With a view that no prejudice is caused to the claimants and for correct decision of the case, I looked at the copy of the field map present on the record of the case prepared by the Collector. The said copy of the map discloses that the land of Khasra No. 219 is located at a distance of about two furlongs from the acquired land and the land of field No. 563 is located at a distance of one furlong from the acquired land whereas the field Nos. 376 and 377 are located at a distance of about one mile from the acquired land. Further the lands of Khasra Nos. 376 and 377 are located towards the abadi of two of Ludhiana from the acquired land.

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So the lands of all these four sales had acquired the potentiality of being used as a site for the construction of shops-cum-residence or for construction of workshop or some factory and at least lands of three sales were located nearer to the two of Ludhiana than the acquired land. Gian Chand admitted during cross-examination that the acquired lands were under cultivation at the time of acquisition. It, thus, follows that the discussion above that besides that the lands of the aforesaid four instances of sales were much smaller in area than the acquired lands, the lands of three instances of sales were better located for the purposes of construction of the shops, residential houses, workshop or the factory, than the required lands,

That means that the claimants have failed to furnish any cogent evidence on the basis of which market value of the acquired lands can be determined."

7. It is thus, clear that the statement of Gian Chand was considered by the Tribunal and was not relied upon for recording a finding that the acquired land had potential for being used for commercial, industrial or residential purposes.

8. It was held in *Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal Naidu and Others*, that in a petition under Article 226 of the Constitution, "the High Court could not act as an appellate Court and reappraise and re-examine the relevant facts and circumstances which led to the making of the order of supersession as if the matter before it had been brought by way of appeal". It was again held in *AIR 1975 1297 (SC)* , that the power of superintendence of High Court under Article 227 being extraordinary is to be exercised most sparingly and only in appropriate cases. This power could not be invoked to correct an error of fact which only a superior Court could do in exercise of its statutory power as a Court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the Legislature has not conferred a right to appeal and made the decision of the subordinate Court cannot, while exercising jurisdiction under Article 227, interfere with findings of fact recorded by the subordinate Court or Tribunal. Its functions is limited to see that the subordinate Court or Tribunal

functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it. The same view was reiterated in *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, , where it was held that the Supreme Court had spelt out wise and clear restraints on the use of the extraordinary remedy under Article 226 of the Constitution and the High Courts would not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate.

9. It was held in *L. P. A. No. 45 of 1976 (Amritsar Improvement Trust, Amritsar v. Jagdish Rai)* decided on Aug. 10, 1978, that there can be manner of doubt that the High Court while exercising the writ jurisdiction cannot assume the role of an appellate Court. The High Court exercising its supervisory powers can look into the errors of law or the other findings which are patently perverse on the fact of it. It further remains beyond the jurisdiction of the High Court to undertake evaluation of the merits on its own.

10. The Tribunal has given sound reasons for not placing reliance on the solitary statement of Gian Chand. The finding of the Tribunal of the face of it. In view of the ratio of the authorities detailed above, the finding of the learned single Judge based on the solitary statement of Gian Chand that the acquired land had the potential for commercial, industrial or residential purposes which runs counter to the finding of the Tribunal, cannot be sustained.

11. The Land Acquisition Collector gave another award on Jan. 14, 1969 with respect to a part of the land acquired for Gill Road Development Scheme. The land in dispute in the instant case was also acquired by the same notification for the same scheme. The Land Acquisition Collector in that award (dated Jan. 14, 1969) made a classification of the interior land beyond 12 Gathas from the road into Barani, Chahi etc. and evaluated the same on that basis. The valuation made by the Land Acquisition Collector on such classification was upheld by the Tribunal vide order dated May 6, 1970 and by a Divisional Bench of this Court in *C. W. P. No. 2523 of 1970* decided on July 13, 1976. In view of the Division Bench decision in *C. W. P. No. 2523 of 1970*, the impugned order of the learned single Judge quashing the classification of the interior land beyond 12 Gathas from the road cannot be upheld.

12. The learned single Judge has placed reliance on the observation made in *Lakshmi Das v. Punjab State*, 1977 Pun LJ 464, for recording a favourable finding for the landowner respondent that the acquired area had to be evaluated as urban property having potential for being used as such. The decision in *Lakshmi Dass's* case (supra) was given in Regular First Appeal No. 196 of 1965. The land in that case was acquired in 1963 in village Rajpura for providing additional area for the Punjab Agricultural University at Ludhiana. The Collector, Ludhiana categorised the land primarily on the basis of its agricultural quality. The High Court in Regular First Appeal No. 195 of 1965 reappraised the evidence and held :

"As would appear hereinafter this area had come within the municipal limits of the town of Ludhiana more than a year prior to the notification u/s 4 of the Act. The city of Ludhiana is one of the principal industrial cities of the State of Punjab was not disputed before us. Nor is there any manner of doubt that the said town has been a developing and expanding industrial centre even since the late fifties.

The potentialities for the development of the acquired land are further evidenced from the admitted fact that this very area was earlier sought to be acquired by the Ludhiana Improvement Trust itself by a notification dated the 7th of March, 1962. The Trust obviously had sought to acquire this land for the purposes of residential and industrial development of the town as it lay not only on the fringe of the developing city of Ludhiana but had in fact been incorporated within its municipal limits itself. Though this proposed acquisition did not materialise, of this area for development for other than agricultural purposes.

The learned Additional District Judge himself noticed the advantageous situation of the land as regards its market value. This is not the subject matter of challenge on behalf of the respondent-State and it suffices to quote from the judgment under appeal as regards the surrounding areas of the acquired land :---

"So far as the general situation of the acquired land is concerned it had been brought in the evidence of the various P. Ws., that the land is surrounded by residential abadis on all sides. On the east of the acquired land there is a Water-Workers Building and the Government College Hostel for Boys. On the southern side there is Agricultural University campus. On the north is the residential house of Sajjan Singh Lambardar and village abadi of Rajpura and on the western side the Harijan Colony is located. In fact it was admitted by Gurdev Singh Patwari P.W. 10 that at the time of the acquisition there were several residential colonies near the acquired land."

It is evident from the above that the area under acquisition had assumed primarily an urban character and had indeed ceased to be rural or agricultural in nature. Its potentiality for development as residential colonies within the municipal limits of Ludhiana is thus too patent to deserve any great elaboration."

13. It is evident that the findings of facts recorded in Lakshmi Dass's case 1977 PLJ 464(supra) relates to land acquired in 1963 in village Rajpura. This finding cannot be extended to the entire land within the municipals limits of Ludhiana including the acquired land is dispute relating to Gill Road Development Scheme.

14. In view of discussion above the letters patent appeal is accepted, the impugned order of the learned single Judge dated Aug. 21, 1980 set aside the further C. W. P. No. 3829 of 1971 is dismissed with no order as to costs.

S.S. Sandhawalia, C.J.

15. I agree.

16. Appeal allowed.