(2003) 12 P&H CK 0078

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1649 of 1986

Mangat Ram @ Mangat Singh and Others — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 05-12-2003

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 4

Citation : (2004) 138 PLR 189 : (2004) 3 RCR(Civil) 422

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : V.K. Jain, Pritam Saini and Arun Bansal, for the Appellant; N.K. Joshi, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This order shall dispose of R.F.A. No. 1224 of 1986 titled Ram Saran and .others v. State of Haryana, RFA No. 1649 titled Mangat Ram and Anr. v. State of Haryand, R.F.A. No. 1654 of 1986 titled Rama Rani v. State of Haryana and R.F.A. No. 1777 of 1986 titled, Dropti Devi widow of Jati Ram and Ors. v. State of Haryana. In all these cases, the notification acquiring the land is one and the same. The award as well as the judgment of the reference Court are also common. The claimant-appellants have filed the instant appeals u/s 54 of the Land Acquisition Act, 1894 (for brevity, ''the Act'') challenging the order dated 29.11.1985 passed by the Additional District Judge, Kurukshetra and seeking further enhancement in respect of the acquired land, the structures and other items.

2. Brief facts of the case necessary for disposal of the instant appeals are that notification u/s 4 of the Act was issued expressing the intention of the respondent-State to acquire land measuring 69 Kanals situated at village Ratgal for the construction of a bus stand at Kurukshetra. On 20.12.1980, the possession of the land was taken. The Land Acquisition Collection, Thanesar announced the award on 2.9.1981 and awarded compensation for the acquired

land which ranged between Rs. 15,000/- per acre to Rs. 40,000/- per acre depending upon the quality of the land. For the Chahi land, the compensation awarded was Rs. 30,000/- and for Gair Mumkin Abadi land, Rs. 40,000/-per acre was the rate fixed. The claimant appellants were also awarded variation charges to the extent of 5% as the acquired land was adjacent to the Abadi of the town. Some compensation was awarded in lieu of some trees and building, structures which were existing on the acquired land. The Land Acquisition Collector also awarded solatium at the rate of 15 per cent. Feeling dissatisfied, the claimant-appellants sought references u/s 18 of the Act which were forwarded by the Land Acquisition Collector to the learned Additional District Judge, Kuruskehtra. The learned Additional District Judge after taking into consideration the oral as well as the documentary evidence came to the confusion that the claimant-appellants were entitled to award of Rs. 65,600/- per acre.

3. The learned Additional District Judge placing reliance on the statements of PW4-Ram Swaroop, Patwari, PW3-Kedar Nath Singal, PW6-Mangat Ram, one of the claimant-appellants, PW12-Rameshwar Dass, husband of one of the claimant-appellant (now represented by his legal representatives), recorded the findings that the acquired land had great potentials of being used for residential, commercial and industrial purposes and Hat rate Was required to be given instead of categorising the land as agricultural on the basis of the revenue record. The finding of the Additional District Judge recorded in para 15 reads as under:-

"From the evidence on record it is apparent that the acquired land abutted the Kuruskshetra Pipli Road and the road which goes towards the Judicial Complex. The Housing Board Colony is admittedly on the Western side of the acquired land across the road which goes to the Judicial Complex. Thus the acquired land had the potential for being used for residential, commercial and industrial purposes. In the circumstances the compensation for the acquired land had to be awarded at a flat rate. The Land Acquisition Collector was thus not justified in awarding compensation for the acquired land by categorising the land as Chahi, Gair Mumkin etc. He was bound to award compensation for the acquired land at a flat rate."

4. in order to assess the market value, the learned Additional District Judge took into account sale instances Exhibnit A-14, A-85 and A-86 which were in respecl of sales made before the date of notification issued u/s 4. The claimant-appellants have produced sale instances Exhibit A-16, A-17, A-28 and A-87 in addition to the above-referred sale instances, but those were ignored by the learned Additional District Judge by observing that those sale instances were in fact in respect Of small pieces of land. Even in respect of the sale instances Exhibit A-14, A-85, A-86 and A-100, considered by the learned Additional District Judge, the average of the sale instances was worked out and thereafter a cut of one third was imposed in order to reach the conclusion that the market value of the acquired land would be Rs. 65,600/- per acre. The consideration of the afore-

mentioned sale instance is reflected in para 24 of the judgment of the Additional District Judge and the same reads as under:-

"Instances Ex.A-14, Ex.A-85, Ex.A-86 and Ex.A-100 are of June and July, 1980 and are in respect of Killa No. 17/19 which is situated on the Northern side of the Pipli-Kuruksehtra Road. The average price per acre as per instances Ex.A-14, Ex.A-85, Ex.A-86 and Ex.A-100 come to Rs. 98,400 per acre. All these instances are of small acreas of land ranging between 2 Kanals to 10 Kanals. In these circumstances, reduction to the extent of 1/3rd has to be made for working out the market value of the acquired land if a deduction of 1/3rd is made in the average price of Rs. 98,400/- per acre as disclosed by the instances Ex.A-14, Ex.A-85, Ex.A-86 and Ex.A-100 then the price comes to Rs. 65,600/- per acre."

5. After referring to the other sale instances, the learned Additional District Judge reached the same conclusion and observed as under:-

"Having regard to the location of the land in dispute and the potential which it had and in view of the discussion forgoing, I am of the considered opinion that it would be just and fair to assess the market value of the acquired land on the date of the notification u/s 4 of the Land Acquisition Act at Rs. 65,600/- per acre, Issue No. 1 is decided accordingly in all these cases."

6. Mr. V.K. Jain and Mr. P.S. Saini, learned counsel for the claimant-appellants have argued that no cut could be imposed in the calculation of the market value of the acquired land on the ground that the large tract of the land was acquired because the sale instances produced on record by the claimant-appellants are also in respect of 10 kanals of land or 4 kanals of land which by no stretch of imagination could be considered as small pieces of land. Both the learned counsel have placed reliance on a Division Bench judgment of this Court in Khushi Ram and Anr. v. State of Haryana, 1988 All India Land Acquisition and Compensation Cases 653 where the sale instances in respect of the land situated in village Ratgal have been relied upon and on that basis, the market value assessed was Rs. 87,800/-. The learned counsel further argued that the prices of the land in village Ratgal and Devidaspura were frozen since 1969 on account of the fact that a notification under the Punjab Schedule Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 (for brevity, ''1963 Act'') issued on 4.2.1969 had declared the area in these villages as controlled area. In the afore-mentioned situation, the learned counsel have urged that there cannot be any justification for imposing 1/3rd cut on the assessed market value of the acquired land by the learned Additional District Judge. Both the learned counsel have referred to Exhibit A-32, A-33 and A-34 to show that the residential plots aliened by HUDA in March, 1977 were allotted at the rate of Rs. 61 per square meter (Rs.51 per square yard) to Rs. 61 per square meter (Rs.53 per square yard). Exhibits A-33 and A-34 are the letters of allotment showing that a plot measuring 1209 square meters was sold for Rs. 13,167/-. The price determined by the learned Additional District Judge is far less than the market value, the Government agency itself has assessed and charged. The learned

counsel have then referred to sale deeds Exhibits A-14 and A-16 showing that the land sold in both the sale deeds was over two kanals and the price per acre paid by a willing purchaser to a willing seller is approximately Rs. 1,20,000/- per acre. They have also referred to the sale deeds Exhibit A-28 which is sale deed dated 24.8.1971 in respect of 2 kanals, 10 marlas of land showing that the price of the land in 1971 was Rs. 35,200/- per acre and this piece of land itself has been subject-matter of acquisition which belong to the claimant-appellants. The learned counsel have submitted that from 1971 to 1980, there has been manifold increase in the prices and by no stretch of imagination the land could be assessed at less than Rs. 1,20,000/- per acre. They have-also referred to Exhibit A-17 which is a copy of mutation dated 24.2.1981 in respect of 2 kanals of land to show that the price of the land is Rs. 1,40,000/- per acre and argued that this sale instance which is of February 1981 has been illegally ignored as it was very near to the date of notification i.e. November, 1980.

7. The learned State counsel however contended that the sale instances of small pieces of land which are not proximate to the period prior to the issuance of notification has been rightly ignored by the learned Additional District Judge. According to him, no reliance could be placed on the rates reflected by HUDA in Exs.A-32, A-33 and A-34. Those rates were in respect of fully developed land which included all facilities like water, sewerage and electricity. The learned counsel maintained that these type of instances cannot disclose any reliable criteria for assessing the market value of the land, However, the learned State counsel has conceded the existence of a declaration of controlled area under 1963 Act.

8. After hearing the learned counsel on the afore-mentioned issue, I am of the considered view that these appeals on the issue of market value are liable to partially succeed because a Division Bench of this Court in Khushi Ram''s case (supra) has already opined that because of the declaration dated 4.2.1969 under 1963 Act, one-third cut can not be imposed as has been done by the learned Additional. District Judge. In order to appreciate the prevalent price of the acquired land at the time of issuance of notification u/s 4 of the Act, it would be appropriate to refer to the sale instances on which reliance has been made by the claimant-appellants and the same are reproduced as under:-

Ex. Nature of Date of Area Value for Approximate S.No. documents transaction sold which price per acre A.14 Copy of 11.7.80 2K 4M Rs. 33,000 Rs. 1,20,000 Sale Deed A.16 Copy of 16.1.81 2K Rs. 30,000 Rs. 1,20,000 Mutation A.17 Copy of 24.2.81 2K Rs. 35,000 Rs. 1,40,000 Mutation A.28 Sale Deed 24.8.71 2K Rs. 11,000 Rs. 35,200 10M A.85 Copy of 6.6.80 10K Rs. l,00,000 Rs. 80,000 Sale Deed A.86 Copy of 24.6.80 4K Rs. 49,000 Rs. 98,000 Sale Deed A.87 Sale Deed 6.11.70 13K Rs. 40,000 Rs. 23,000 18M A.100 Copy of 6.11.70 13K Rs. 40,000 Rs. 23,000 mutation 18M A.32 Copy of 1977 51 to 53 per Rs. 2,44,800 hand note sq. meters. issued by HUDA

9. In working out the market value, the highest price in respect of the sale

instance should be taken into account rather than the average of the sale instances as has been held by the learned Additional District Judge. There is no doubt that the finding recorded by the learned Additional District Judge categorically established that the land had potentials of being used for residential, commercial and industrial purposes. In this regard, reference may be made to the statement of PW-7-Arjan Dass who was working as Clerk in the Estate Office, HUDA, Kurukshetra. He had stated that in adjoining area HUDA sold plots in the Urban Estate Kuruskehtra at the rates ranging from Rs. 61/- to Rs. 63/- per square meter and that too in the years 1975 to 1978. In the year 1981, HUDA sold plots at the rate of Rs. 87/- per square meter. He had further stated that Urban Estate, Kurukshetra exists on the western side of the road which goes to the new Judicial Complex and the acquired land is situated on the Eastern side of the road which also goes to the new Judicial Complex. To the same effect are the statements made by PW4-Ram Swaroop, Patwari, PW-3 Kidar Nath Singal, PW-6 Mangat Ram, PW-12-Ra-meshwar Dass and PW-16-Ram Saran Dass. A perusal of Aks sajra. Exhibit R-1 also shows that the acquired land is abutting to the Kurukshetra-Pipli road which goes towards the new Judicial Complex: The Urban Estate is admittedly on the western side. Therefore, the land had potentials of being used for residential, commercial and industrial purposes. Despite the fad that there was a notification of controlled area as referred above, the price of the land mentioned in the sate deed dated 11.7.1980 Exhibit A-14 is Rs. 1,20,000/- per acre and according to Exhibit A-86 dated 24.6.1980, the market value of the land is Rs. 98,000/- per acre. Yet less price has been assessed and awarded.

10. It is well-settled that no perfect formula for assessing the market value of the land could be arrived at although guidelines are available in various judgments of the Supreme Court. Reference in this regard may be made to the cases of Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, , Vijaysingh Liladhar Vs. Special Land Acquisition Officer, and Ranjit Singh and others Vs. Union Territory of Chandigarh, . It is also well-settled that the market value in many cases has to depend upon evaluation of many imponderables and, therefore, some guess work or conjectural findings are bound to creep in. This observation has been made by the Supreme Court in the case of Raja Srivalgoti Sarvagna Kumara Krishna Yachandra Bachadurvaru Vs. Special Land Acquisition Officer, City Improvement Trust Board, Bangalore and Others, .

11. Keeping in view the above discussion and relying upon the sale instances Exhibits A-14, A-16, A-18 and A-32 to A-34,it would be fair to conclude that the market value of the acquired land on 18.11.1980 cannot be less than Rs. 1,20,000/- per acre. The sale instance Exhibit A-14 which is about four months prior to the notification issued u/s 4 of the Act would be the best guide and it is so despite the fact that the acquired land was declared as controlled area. Therefore, the findings of the learned Additional District Judge on issue No. 1 assessing the market value at Rs. 65,600/- per acre arc modified by enhancing

the market value to Rs. 1,20,000/- per acre. The afore-mentioned finding is also supported by a judgment of this Court in the case of Arjan Singh and Ors. v. State of Haryanafi R.F.A. No. 2756 of 1989, decided on 21.2.1981 where the market value assessed by this Court in respect of the land situated in village Ratgal in pursuance to notification u/s 4 dated 11.3.1981 was assessed at Rs. 1,19,033/- per acre. Therefore, the appeals are allowed to that extent except Appeal Mo. 1654 of 1986 because in that case enhancement claimed is to the extent of Rs. 88,000/- per acre and the Court fee has also been paid on that basis. Therefore, RFA No. 1654 of 1986 is allowed to the extent of modifying the award by determining the market value at Rs. 88,000/- per acre.

12. Mr. V.K. Jain, learned counsel made additional submission and has pointed out that there was no reason for the learned Additional District Judge to dilute the estimated costs of Rs. 41,729/- with regard to the construction etc. According to the learned counsel, once expert has given his report, then no issue could be framed and the only course open for the Additional District Judge was to accept objections against the report submitted by Shri Kedar Nath Singal, Assistant Engineer, Civil (Retd.). In support of his submission, the learned counsel has placed reliance on a judgment of this Court in the case of Buta Singh Vs. Bhan Singh, in which a judgment of the Division Bench of this Court namely Balbir Dewan Cold Storage and General Mills v. Naveen Chamfer (1989)95 PLR 677 has been relied upon. The learned counsel has stressed that issue No. 4 framed in LA No. 1074 of 1984 which is subject matter of appeal in RFA No. 1224 of 1986 should not have been framed.

13. It is appropriate to mention that the Land Acquisition Collector has calculated the compensation in lieu of the construction etc. for an amount of Rs. 29,100/- and the learned Additional District Judge discarded Exhibits A-36 to A-84 by observing that those documents must have been fabricated subsequently with the object of claiming exaggerated compensation. It has further been observed that in the objection filed u/s 18, there was absolutely no assertion with regard to the work of earth filling for raising the level of the acquired land nor any claim that the construction work was going on simultaneously. Therefore, no compensation on account of the alleged filling of earth was awarded. After hearing the learned counsel, I find that the judgment in the case of But a Singh''s case (supra) has no application to the facts of the present case because there is no issue framed with regard to the expert report Exhibit A-8 submitted by Shri Kedar Nath Singal, However, the documents produced to contradict the claim made has been taken into consideration by the learned Additional District Judge. A total amount of Rs. 67,000/- was claimed in respect of a boundary wall, two sheds and a tubewell kotha. It was further alleged that there was a big water tank in the land in dispute. Therefore, I do not find any legal infirmity in the assessment of the value awarded for confining that in additional to Rs. 29,100/- awarded by the Land Acquisition Collector, the claimant-appellants in R.F.A. No. 1224 of 1986 were entitled to Rs. 4,000/- in lieu of the construction on the acquired land are affirmed.

14. In RFA No. 1649 of 1986, Mr. P.S. Saini, learned counsel for the claimant-appellants has argued that very meager sum of Rs. 330/- in lieu of eight trees has been awarded and a sum of Rs. 1,000/- has been awarded for Gair Mumkin well in Killa No. 20/27. According to the learned counsel, the value of the well cannot be less than Rs. 5,000/-. As per the statement made by PW6-claimant-appellant-Mangat Ram himself, the value of the well was Rs. 6000/- and it has not been controverted.

15. After hearing the learned counsel and perusing the award of the learned Additional District Judge, I find that the valuation of the trees cannot be increased and the finding of the learned Additional District Judge that Rs. 330/- in respect of 5 trees was the reasonable value because two Safeda trees and one Dak tree were not even mentioned in the report Exhibit A-10, which is a copy of the rapat roznamcha of the Patwari dated 20.12.1980 when the possession of the acquired land was delivered to the acquiring Department. However, I find that Rs. 1000/- awarded for the well is extremely low. The value of the well cannot be less than Rs. 5000/- by any stretch of imagination. Therefore, the award of Rs. 1000/- is increased to Rs. 5000/-.

16. No arguments have been addressed in RFA No. 1654 of 1986 with regard to the loss incurred by Rama Rani claimant-appellant in her earnings. Even otherwise, there is no evidence on record to prove any loss in her earnings or that she was entitled to get compensation for the same. Therefore, the findings in respect of aforementioned issue are affirmed.

17. For the reasons recorded above, these appeals succeed. The market value of the land is assessed at Rs. 1,20,000/- per acre. The claimant-appellants shall also be entitled to all the benefits of amended provisions in respect of solatium and interest as provided by Sections 23(1)A, 23(2) and 28 of the Act. The claimant-appellants, shall also be entitled to interest at the rate of 6 per cent per annum for the date of acquisition i.e. 20.12.1980 till the date of payment. The amount be calculated and the same be paid to the claimant-appellants within a period of three months from the date of receipt of a copy of this order. The claimant-appellant-Mangat Ram in RFA No. 1649 of 1986 would also be entitled to enhanced compensation in respect of his well, which is enhanced from Rs. 1,000/- to Rs. 5000/-. The same be also paid to him within period of three months from the date of receipt of copy of this order. He shall also earn interest at the rate of 6 per cent per annum on the afore-mentioned amount from the date of acquisition till the date of payment. It is further made clear that if the payment is not made within the stipulated period of three months, then the claimant-appellants shall be entitled to interest at the rate of 9 percent per annum. The appeals are allowed in the above terms.

