(2015) 04 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal Nos. 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34 and 35 of 2009

Om Parkash and Others — APPELLANT

Vs

The Land Acquisition Collector (Railways) and Others — RESPONDENT

Date of Decision : 01-04-2015

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

Citation : (2015) 2 ShimLC 663

Hon'ble Judges : Sanjay Karol, J.

Bench : Single Bench

Advocate : H.K. Bhardwaj, for the Appellant; Rahul Mahajan, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Sanjay Karol, J.

CMP No. 944/2013 in RFA No. 18/2013

1. In terms of present application, claimants seek permission of this Court to place on record the awards passed by the Collector, which are the subject matters of the appeals before this Court. These awards cannot be relied upon as having not attained finality. Application stands disposed of.

RFA No. 18/2009 alongwith RFA Nos. 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34 and 35 of 2009.

Undisputedly, all these appeals arise out of the very same impugned award dated 30.9.2008, passed by Additional District Judge, Una, District Una, in different Land Reference Petitions, filed by various claimants.

2. For the public purpose namely "construction of Railway Line between Nangal Dam to Talwara", land belonging to different villages was acquired by the State. Undisputedly, acquisition proceedings, under the provisions of the Land

Acquisition Act, 1894 (hereinafter referred to as the Act), commenced with the issuance of notification under Section 4 of the Act, in the official gazette on 26.3.1998. Acquisition proceedings concluded with passing of award dated 29.6.2000 by the Land Acquisition Collector. For the land in question, which falls in revenue village, Ghandawal (District Una, H.P.) the Collector Land Acquisition determined the market value of the acquired land ranging from Rs. 1859.29p to Rs. 17,997.90p per Kanal. Aggrieved of the inadequate compensation so awarded by the Land Acquisition Collector, claimants filed petitions under Section 18 of the Act, claiming compensation up to Rs. 10,00,000/- per Kanal. Cases pertaining to the present claimants were clubbed and common evidence led in Land Reference Petition No. 24/2005. Appreciating the material so placed on record, District Judge re-determined the market value of the acquired land to be Rs. 1,27,000/- per Kanal for the land abutting the National Highway and Rs. 77,000/- per Kanal for the remaining land. This is irrespective of the category and classification thereof.

3. Having heard learned counsel for the parties, as also perused the material on record, Court is of the considered view that findings returned by the Court below cannot be said to be perverse, erroneous, illegal or not borne out from the record.

4. Undisputedly, the entire acquired land stands fully utilized for a common purpose namely construction of Railway Track and Platforms/Stations.

5. It is settled position of law that if the entire acquired land is put to very same public purpose and is fully utilized as such, claimants are legally entitled to uniform determination of the market value, irrespective of the classification and category of acquired land. No distinction can be made vis-?-vis cultivable and non-cultivable land as utilization of the acquired land would remain same, regardless of its category and classification.

6. The claimants in the instant case, for establishing their claims, have led evidence by examining eight witnesses and placed on record four exemplar sale deeds whereas beneficiary has examined two witnesses and also placed on record four exemplar sale deeds.

7. Sale deeds Ex. RW2/A to Ex. RW2/D and other evidence do not exhibit classification, category, nature, user or potentiality of the exemplar land with that of the acquired land. There is no evidence on record to establish the purpose for which the land was sold or utilized. Also, there is nothing on record to show that the acquired land and the land covered by the exemplar sale deeds are adjacent or adjoining. Thus no reliance can be made on them.

8. No endeavour was made by the beneficiary to prove the actual market value of the acquired land. But then, it is not the requirement of law for the beneficiary to do the same. The onus to do so is always upon the claimants. In this regard, Mr. Rahul Mahajan, learned counsel rightly refers to and relies upon decisions rendered by Hon''ble the Supreme Court of India in Administrator General of West Bengal Vs. Collector, Varanasi, , Periyar and Pareekanni Rubbers Ltd. Vs.

State of Kerala, and Mohammad Raofuddin Vs. The Land Acquisition Officer, .

9. From the testimony of Joginder Singh (RW-1), it is apparent that the Collector adopted the average value, as the basis for determining the market value of the land. Now it is also a settled position of law that annual value, meant for the purposes of determination of land revenue, cannot be made basis for awarding compensation to the claimants.

10. On the other hand, we find that Prem Chand (CW-1) in his uncorroborated testimony has proved that the land, subject matter of present appeals, situated on the Una-Dharamshala Super Highway, has great potential and value for industrial expansion or agricultural growth. Also, in the entire area, there is industrial growth and activity. Even otherwise, agricultural land has the potential of being put to best and optimum use for such agricultural activity. The land is fertile and sunny. There is no water clogging. It is well connected by road. According to this witness, entire acquired land has been put to agricultural use and as such classification as Chahi, Do Fasli Awal, Ek Fasli Awal, Do Fasli Doyam, Ek Fasli Doyam, Banzar Kadim, Jadid and Khretar, Khadkhana, Gair Mumkin Abadi and Any Gair Mumkin, being illegal is also irrelevant. The witness has withstood the test of cross-examination and his testimony, fully inspiring in confidence, can be relied upon for determining the market value of the acquired land.

11. The question which needs to be considered is what would be the correct market value of the acquired land. To establish such fact, claimants have proved on record five exemplar sale deeds.

12. The exemplar sale deeds Ex. CW2/D and Ex. CW2/E pertain to the post notification period. As such, keeping in view the law laid down by the Apex Court in A. Natesam Pillai Vs. Spl. Tahsildar, Land Acquisition, Tiruchy, , P. Rajan and Another Vs. Kerala State Electricity Board and Another, , Karan Singh and others etc. Vs. Union of India, , K. Padmaraju alias Padmanabha Raju and Others Vs. Senior Regional Manager, F.C.I., Hyderabad and Others, , Administrator General of West Bengal Vs. Collector, Varanasi, , State of Uttar Pradesh Vs. Major Jitendra Kumar and Others, , cannot be relied upon.

13. The exemplar sale deed Ex. CW2/A dated 4.7.1987, whereby four Marla of land was sold for a sum of Rs. 25,000/- stands proved by vendor, Shri Tilak Raj (CW-4). From his un-controverted testimony, it is evident that this land is just adjacent to the acquired land, abutting the highway, having same use and potentiality.

14. The second exemplar sale deed Ex. CW2/B Dt. 24.3.1992 exhibits 13 Kanal 18 Marlas of land to have been sold for a consideration of 1.8 lacs. This deed stands proved by vendee, Krishan Chand (CW-5). Evidently, he has sold the land under distress.

15. The 3rd exemplar sale deed Ex. CW2/C dated 11.5.1999 whereby 12 Marlas

of land was sold for a consideration of Rs. 1,00,000/-, stands proved by vendor Rakesh Kumar (CW-6). Even he has clarified that the exemplar sale land is just adjoining to the acquired land. This sale is post acquisition and cannot be considered.

16. Taking the base price of exemplar sale deed (Ex. CW2/A), the highest price in favour of the claimants, the Court below, by giving annual appreciation of 5%, has determined the market value of the acquired land to be Rs. 1,27,000/-. Thereafter by applying deduction of 33%, the market value of the acquired land stands determined. Severance charges had to be allowed.

17. Noticeably, the exemplar sale deed (Ex. CW2/A) pertains to the period-July, 1987 and the land was acquired in the month of March, 1998. The formula adopted by the District Judge, by giving annual appreciation of 5%, cannot be said to be perverse or illegal. Through the testimonies of the witnesses, it has come on record that the land in question had great potential of being put to commercial use. Even otherwise, the entire land was used by the villagers for agricultural purposes.

18. Mr. Rahul Mahajan, learned counsel submits that the deduction should be higher than 33%. The contention only merits rejection for the reason that the entire land was put to use by the beneficiary.

19. Mr. H.K. Bhardwaj, learned counsel has invited attention of this Court to the award dated 25.6.2011, passed in Land Reference Petitions No. 39/2009, 36/2009, 37/2009, by District Judge, Una, H.P. and award passed in L.A.C. Petition No. 1/03 RBT 44/05/03 dated 31.3.2011, by Additional District Judge, Fast Track Court, Una, H.P. These awards cannot be relied upon for two reasons. (i) They are subject matter of appeal before this Court. (ii) There is nothing on record to show contiguity of the acquired land with this land.

20. Mr. Bhardwaj, learned counsel also refers to and relies upon the decision rendered by this Court in L.A.C. Solan and Another Vs. Bhoop Ram, and the decision rendered by High Court of Bombay in The State of Maharashtra, The Special Land Acquisition Officer, Irrigation No. 1 and The Executive Engineer, Karanjwan Project Vs. Yashwant Kahnu Shirsath, Having perused the same, in the instant case, no attention is warranted as the ratio is totally inapplicable.

21. In view of the aforesaid discussion, the award dated 30.9.2008, passed by Additional District Judge, Una, District Una, in different Land Reference Petitions is upheld. The present appeals stand disposed of, so also the pending application(s), if any.

