(2004) 01 P&H CK 0072

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 647 of 1982

Prem Chand APPELLANT

Vs

Land Acquisition Officer, Patiala and others RESPONDENT

Date of Decision : 14-01-2004

Acts Referred:

Citation : (2004) 1 LJR 821 : (2004) 2 RCR(Civil) 607

Hon'ble Judges : Hemant Gupta, J

Advocate : Mr. M.L. Sharma, Advocate. Mr. Ashok Bhardwaj, Assistant Advocate General, Punjab., Advocates for appearing Parties

Judgement

Hemant Gupta, J.

1. Appellant is aggrieved against the award rendered by the Additional District Judge, Kapurthala, dated 27.2.1982 whereby the compensation of Rs. 140/ per marla was assessed for 41 kanals 19 marlas of the land acquired.

2. Vide notification dated 9.8.1976 under Section 4 of the Land Acquisition Act, (hereinafter referred to as the Act), the State Government intended to acquire land measuring 41 kanals 19 marlas situated in village Phagwara Sharki District Kapurthala for the Punjab State Electricity Board for public purpose. The Land Acquisition Collector announced its award on 21.2.1978 and assessed the market value of the land at Rs. 140/ per marla.

3. Dissatisfied with the amount of compensation, the land ownerpresent appellant has sought reference under Section 18 of the Act for determination of the market value. Before the Reference Court, appellant had produced sale instances Exs. A3 and A4 dated 4.4.1975 in respect of 10 marlas of land sold at a price of Rs. 10,000/ each. Appellant also produced another sale instance, Ex.A5 dated 25.6.1975 wherein one kanal of land was sold in the sum of Rs. 20,000/. The appellant had also produced Exs. A1 and A2, Aksh shajra.

4. To controvert the evidence led by the claimant, the respondents have produced mutations Exs. R2 to R8.

5. Learned Reference Court while considering the sale deeds, Exs. A3 and A4, held that the sale is of the land of the claimantPrem Chand himself which is a smaller area. Still further, it was found that the plots of land are towards Phagwara City and, therefore, cannot constitute the correct guide for determining the market value of the acquired land on the material date. Thus, the Reference Court maintained the amount of compensation awarded by the Land Acquisition Collector.

6. Learned counsel for the appellant has argued that the land sold vide sale deeds. Exs. A3, A4 and A5 is, in fact, the subject matter of the land acquired and, therefore, the said sale instances are the best possible evidence for determination of the market value of the land. In addition thereto, the learned counsel for the appellant has referred to orders passed by this Court in R.F.A. No. 521 of 1985 decided on 31.8.1988 and R.F.A. No. 2090 of 1989 decided on 13.5.1999, arising out of the subsequent notification of the year 1979. Learned counsel for the appellant further contends that in such judgments, the appellant had been awarded compensation at the rate of Rs. 1000/ per marla, relying upon the sale instances Exs. A3 and A4.

7. The said judgments have been sought to be produced by the appellant by way of additional evidence. Since the judgments sought to be produced by way of additional evidence are of this Court, the same are admitted into evidence and are marked as Exs.A6 and A7.

8. In Judgment Ex.A6, the argument was raised on behalf of the respondents that since the land sold vide sale instance dated 4.4.1975 is of small area and, therefore, a cut of 33% at least should be applied on the rate disclosed by these transactions. However, the Court has not accepted such argument of the respondents on the ground that the acquisition is after four years of the said sale. The relevant discussion reads as under :

"As a matter of fact, Mr. Gopi Chand, learned counsel appearing for the respondents has hardly anything to justify the above noted approach of the lower Court, in ignoring these transactions. His submission, however, is that a cut of 33% at least should be applied on the rate disclosed by these transactions in view of the fact that these relate to the sale of small plots of 10 marlas each. According to the learned counsel, had the appellant to sell his entire acquired land in the form of plots of this size, he would have at least last 1/3rd of his land in providing for roads and other community amenities etc. This submission of the learned counsel would have carried weight had there not been an interRegulation m of four years between the date of these transactions and the present notification under Section 4 of the Act."

9. However, in the present case, there is not much difference between the date of sale and the date of notification. Therefore, the rate disclosed by prosecution Exs. A3 and A4 is required to be reduced by at least 33%.

10. Consequently, the appeal is allowed. The award of the learned Additional

District Judge is modified and the market value of the land acquired by the appellant is assessed at Rs. 666/ per marla. The appellant shall be entitled to statutory benefits of interest at the rate of 6% and solatium at the rate of 15% as well. No order as to costs.

