

(1991) 08 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1551 of 1987

Punni Devi alias Basant Kaur

APPELLANT

Vs

Collector, Land Acquisition, Industries Department and Others

RESPONDENT

Date of Decision : 26-08-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (1992) 101 PLR 516

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : M.L. Sarin, Jai Shree Thakur, Hemant Sarin and Alka Sarin, for the Appellant; H.S. Mattewal, General and Sukhbir Singh, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—This judgment will dispose of Regular First Appeals 1199 of 1987, 1246 of 1987, 1378 of 1987 1548 of 1987, 1549 of 1987, 1550 of 1987, 1551 of 1987, 1623 of 1987 and 1722 of 1987, as common questions of law and facts are involved.

2. The Punjab Government vide notification dated 26th/27th April 1982, published in an extraordinary gazette on the dates mentioned above, issued u/s 4 of the Land Acquisition Act,"-(hereinafter to be referred to as Act), acquired 265 Bighas and 11 Biswas of land situate in Bhatinda Town, District Bhatinda. The land Acquisition Collector, vide his award dated 4th February 1983, assessed the value of the land at the time of notification u/s 4 as per nature of the land as follows :-

Barani : Rs. 40,000/- per acre Nehri : Rs. 54,320/- per acre Chahi : Rs. 24,800/- per acre Gair Mumkin : Rs. 72,000/- per acre

3. The claimants, on account of in-adequacy of market value determined by the Collector in the manner fully indicated above preferred references to the Court u/s 18 of the Act.

4. The claim as put up by the Appellants was- to assess the market value of the land at Rs. 100/- per square yard and the appellants-claimants clamoured for fixation of market value at the rate of Rs. 100/- per square yard primarily on the ground that the land subject matter of acquisition had potential of being converted into commercial, industrial and residential complex for the reason that the same was located within the Municipal limits of Bhatinda city and was in close vicinity of Industrial Focal Point, Punjab Ceramix and Punjab Spinning and Weaving Mills etc. and was at the intersection of two roads i. e. Bhatinda-Badal Road and Bhatinda-Dabwali Road.

5. The claim aforesaid was, however, hotly contested by the respondent-State and it was pleaded that the price assessed by the Land Acquisition Collector was fair, reasonable and in accordance with the prevalent price at the time of notification. The case of claimants that there were residential houses or factories near the acquired land as also that the same was within Municipal limits and had potential for urbanisation was also refused.

6. After trial, on the solitary but all important issue with regard to the market value of the land at the time of notification u/s 4 of the Act, the learned Additional District Judge, Bhatinda dismissed the claim by holding that the market value assessed by the Land Acquisition Collector was fair and reasonable and called for no enhancement. The claimants being aggrieved of the judgment rendered by the Additional District Judge, Bhatinda have preferred the present appeals.

7. During the pendency of appeals in this Court, an application for additional evidence under Order 41 Rule 2? read with Section 151 Cr. P C. was filed by the claimants and before the matter is dealt any further, it would be necessary to dispose of the same. Notice of this application was given to the respondent-State, vide order dated 19th July, 1991 and the case was adjourned to 20th of August, 1991 for reply and arguments on the application for additional evidence as also of the main case. Till date, no reply has been filed nor any request has been made for adjournment enabling the respondent-State to file reply nor any one has appeared to oppose either the application or even otherwise to defend the case. It is, however, true that the matter was heard even prior to the filing of the application for additional evidence on which date appearance was put in on behalf of the respondent-State and the matter was contested. The claimants pleaded and also made every effort to prove before the trial Court that their land was within Municipal limits. They produced on record Exhibit A. 133 certificate issued by the Municipal Engineer showing that if not all, at least part of the land was within Municipal limits. They also examined Kuldip Kumar Clerk from Municipal Committee, Bhatinda and made their own statements in support of their case but the trial Court did not find favour with their assertion primarily on the ground that the fact as to whether the land was within Municipal limits or not could well be proved by documentary evidence like notification and the sanctioned plan showing boundaries of the Municipal limits and that failure to

produce the said documents would result into drawing adverse inference against the claimants. It is this precise objection of the trial court which is sought to be silenced by producing on record notification issued by the Punjab Government dated 13.8.1981 depicting that the adjoining areas lying between the existing boundaries as defined in the notification dated 8.3.1977 were included within the limits of Municipal Committee, Bhatinda in Bhatinda district. The present Municipal limits as per notification, referred to above, are demarcated by letters A, B, C, D, E, F, G, H, I, J, K, L, M. Further the claimants have also brought on the records of the case the plan prepared by Municipal Committee, Bhatinda showing that the acquired land, as a matter of fact, falls within the Municipal limits demarcated by letters A, B, C, D, E, F, G, H, I, J, K, L, M as per notification, reference of which has" been given above. The aforesaid two documents i. e, notification and the certified copy of the plan prepared by the Municipal Committee strengthen their contention that the land subject matter of acquisition falls within the Municipal limits. As referred to above, the plea of appellants to the effect aforesaid was rejected on the sole ground that these documents had not been placed before it. Inasmuch as the two documents, reference of which has been given above, have bearing upon the controversy involved in the case and are required to be placed on the records for proper adjudication of the controversy involved in the case as also for the added reason that no reply has been filed nor the application for additional evidence was opposed, the same are allowed to be brought on the record by way of additional evidence and shall now be exhibited Clause 1 and Clause 2 respectively. Civil Miscellaneous No. 161 3/C-I of 1991 for additional evidence is, thus allowed.

8. Coming now to the core of the controversy, it will be seen that the acquired land touches Bhatinda-Badal Road as also Bhatinda-Dabwali Road as also the Industrial Focal Point is in close vicinity of the acquired land. Besides, some factories are also located near, the acquired land. A Division Bench of this Court in *Lakhmi Dass and Ors. v. The State of Punjab and Ors.* 1977 P. L. L 464, held that inclusion of land within Municipal limits earlier to the acquisition notification raises the presumption that the land acquired was primarily of urban character. The mere fact that in the revenue record, the land is described as agricultural classification would not be a true indicia of its market value and compensation with regard to such a land should be assessed primarily on the ground of potentialities of land for Urban Development. Notification Exhibit Clause I came into being on 18.8.1981 whereas notification u/s 4 of the Act acquiring the land of the claimants was issued on 26/27.4.1982. It is, thus, made out that the acquired land came within Municipal limits about eight months prior to the notification issued u/s 4 of the Act. Besides that, as has been mentioned above, the land is located on the intersection of two roads and Industrial Focal Point is in very close vicinity as also if not many but some factories had come, into being near or around the acquired land. Admittedly Bhatinda is a developing town and the fact that the land is within Municipal limits it would justifiably be held to have potential for Urban Development.

9. For the reasons aforesaid, the finding of the trial court that the land had no potential is set aside.

10. Perusal of plan Exhibit C-2 would show that Military Cantonment is towards north side of the acquired land is at a considerable distance and outside the boundary of Municipal limits. Learned counsel appearing for the appellants contents that the Government had been acquiring from time to time land for the establishment of Military Cantonment or extension thereof. For the land acquired for establishing Military Cantonment or extension thereof, the Court fixed market value and the claimants are entitled to a far better compensation than that was allowed by the Courts with regard to the land acquired for Military Cantonment or extension thereof. A comparative location of land of the appellants-claimants and the one acquired for Military Cantonment or extension thereof would certainly show that the land of the claimants is better located. It is far near to Bhatinda town and is also within Municipal limits. For establishing Military Cantonment, the Government vide notification dated 9.10.1974 issued u/s 4 acquired 10768 Bighas and Biswas of land, the market value of which was assessed at Rs. 15/- per square yard upto a depth of 500 metres from the Municipal limits and Rs. 80/- per square yard for the remaining land. The judgment was rendered in L.P.A. No. 279 of 1982 decided on 9.12.1982. The learned counsel also placed reliance upon the decision rendered by this Court in L. P. A. No. 1251 decided on 30.1.1989 which pertained to acquisition of land vide notification issued u/s 4 of the Act on 10.5.1979 and the purpose was extension of Bhatinda, Cantonment situate in the revenue estates of Mehna, Bhagu, Bhucho Khurd and Bhucho Kalan, Tehsil and District Bhatinda. Again perusal of Exhibit C-2 would show that the said land is situated towards north of the acquired land is obviously far away from the town and is also not within the Municipal limits. The Division Bench of this Court fixed market rate of the land of acquisition of 1979 at the rate of Rs. 90,000/- per acre for the land within "Abadi" and abutting on the National Highway on either side upto the depth of 500 meters. In so far as L P A No. 279 of 1982 is concerned, the same of course was decided prior to the decision rendered in this case by the learned Additional District Judge whereas the decision in L. P. A. No. 1251 was rendered on 30.1.1989 i.e. after the decision of the present case. Both these judgments were not "relied upon before the trial Court.

11. Once on comparison, the land subject matter of acquisition is found to be better located than the one subject of acquisition for establishment of Military Cantonment or extension thereof no other evidence, is required to be seen. It is settled law that judicial precedence provide best guidance for-determining the market value. The learned counsel for the appellants-relied upon the decision rendered in two L. P. A. reference of which has been given above when the case was argued prior to the filing of application for additional evidence and the only reply of the State was that the said judgments could not be made basis of the decision for the reason that the same were not part of the record nor the same were cited before the trial Court. As referred to above, it is only the first

judgment that came prior to the decision given by the trial Court whereas the decision in the second case came into being after this case was decided. However, the two decisions reference of which has been given above, have great bearing on the question of determining the market value. After perusing the record and in particular plan Exhibit A-I and Exhibit C-2, I am of the considered view that the land of the claimants of this case is far better located than that of the one which was acquired for establishing Military Cantonment or extension thereof. Besides, whereas the land of the claimants of the present case is within the Municipal limits, the one acquired for Military Cantonment was outside the said limits. The evaluation of the land acquired for Military Cantonment was on the basis of its agricultural character but I have held that the present land had potential for Urban Development. There is also a gap of nearly three years, between the acquisition for extension of Military Cantonment and the one involved in the present case. It is true that a correct estimate of the market value considering the gap of acquisition of the land for Military Cantonment and the present land cannot be made and some guess work is necessarily involved but considering all the circumstances that have been enumerated above, it would be fair and just to assess the market value of the acquired land subject matter of present acquisition at Rs. 1,20,000/- per acre. There cannot be any question of making belts for the reason that whereas the land acquired for Military Cantonment was beyond the Municipal limits, it has been proved in the present case that the entire land is within the limits of Bhatinda town.

12. For the reasons recorded above, the appeals filed by the claimants succeed. The market value of the acquired land is fixed at Rs. 1,20,000/- per acre at which rate the claimants shall be paid the compensation. Besides that, they shall also be entitled to the benefits of Sections 23(1A), 23(2) and 28 of the Land Acquisition Act. They shall also be entitled to the costs incurred by them.

13. Mr. Sarin, on the conclusion of arguments prayed that some of the claimants who had not affixed the court fee commensurate to the market value, be permitted to complete the deficiency within two months. The prayer has merit and has sanction of judicial precedence. The same is allowed and the claimants who might have affixed less court fee are allowed to complete the deficiency within two months from today.