
(1997) 05 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 670 of 1985

Raj Kumar and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 30-05-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : (1998) 119 PLR 292 : (1998) 1 RCR(Civil) 278

Hon'ble Judges : N.C. Jain, J;Iqbal Singh, J

Bench : Division Bench

Advocate : K.S. Doad, Arun Jain, J.S. Thind and Gurinder Pal Singh, for the Appellant; A.P. Manchanda, Addl. A.G., for the Respondent

Final Decision : Dismissed

Judgement

N.C. Jain, J.—This judgment of ours would dispose of Letters Patent Appeal Nos. 670, 693, 708 to 716 of 1985, 455, 456, 238 of 1986 and 829, 1394 to 1397 of 1991 as they arise out of common award of the Land Acquisition Court and common judgment given by the learned Single Judge.

2. In order to appreciate the question involved herein, it is necessary to have a look at the facts of the case. A big chunk of land measuring 205 Acres, 5 Kanals and 15 Marlassituated within the revenue estate of Kherpur on the outskirts of Sirsa town was acquired by the Haryana Government in pursuance of the notification u/s 4 of the Land Acquisition Act (hereinafter referred as the "Act") on April 14, 1976 for the construction of Mini Secretariat, Police Lines and Housing Colony. It appears to us and as was not disputed during the course of arguments that the necessity for acquiring the disputed land arose on account of Sirsa town having been made a district headquarter with effect from 1.9.1975. The Land Acquisition Collector assessed the market value of Gair Mumkin and Barani land at Rs. 6,300/- per acre whereas Canal Irrigated and Chahi land was valued at Rs. 73,450/- per acre vide his award dated 15.9.1978. The land-owners feeling aggrieved against the aforesaid award sought reference u/s 16 of

the Act and the learned Additional District Judge after discussing the entire evidence divided the area into "most preferential area and second rate area". The area upto the depth of 60 yards from Barnala Road on either side and the area situated within the depth of 60 yards from Sirsa major distributary was considered to be part of "most preferential area" whereas the rest of the land was declared as "second rate area".

3. The learned Addl. District Judge assessed the land falling in "most preferential area" at Rs. 144/- per marla whereas the rest of the land falling in "second rate area" was evaluated at Rs. 80/- per marla. Different valuations regarding standing crops, trees and super structures were also fixed with which we are not concerned in Letters Patent Appeals.

4. The landowners as well as the State filed appeals and cross-objections. The learned Single Judge while allowing the appeals of the land owners vide judgment under challenge before this Court has determined the market value of the acquired land for the "most preferential area" at the rate of Rs. 450/- per marla whereas the market value for the rest of the land has been fixed at Rs. 155/- per marla. In other respects the award of the Additional District Judge was kept intact. The claimants have filed as many as 19 appeals before this Court which are being disposed of vide this judgment. It appears to us that many claimants have not filed the appeals.

5. The learned counsel for the appellant-claimants has argue that Sirsa being a district, this Court should grant compensation at a flat rate of Rs. 450/- per marla. It has further been argued that even if this Court is not to grant the compensation at a flat rate for the entire acquired land, this Court should increase the depth of 60 yards to 500 square yards and for this proposition he has placed his reliance on the following rulings :

(i) LPA No. 279 of 1992 "Kartar Singh v. Union of India, decided on 8.12.1982;

(ii) LPA No. 698 of 1982 "Madan Lal v. Punjab State,2 decided on 22.7.1983;

(iii) FAO No. 423 of 1984 "Mukhtiar Singh v. State of Punjab? decided on 16.10.1984; and

(iv) RFA No. 2366 of 1980 "Kapur Kaur v. U.O.I.4. decided on 27.7.1983 as affirmed by the Hon"ble Supreme Court in Civil Appeal Nos. 3142-65 of 1986.

In has further been argued that the evaluation of "second rate area" at Rs.155/- per marla is on the lower side particularly when the "most preferential area" comes to three times for which there is no justification. It has further been argued that the appellants are entitled to all the statutory benefits of solatium and interest as contemplated under the amended provisions of the Act except the benefits u/s 23(1-A) of the amended Act.

6. There is absolutely no force in the first argument of the learned counsel for the appellant that the entire land should be evaluated at a flat rate of Rs. 450/-

per marla. It has been found as a fact both by the Additional District Judge and the learned Single Judge that the land along the road was being sold after 1974 at the rate of Rs.400/- to Rs. 500/- per marlas whereas the other area was being sold upto the year 1974 at the rate varying from Rs. 131.57 to Rs. 181.00 per marla and it did not show any upward trend. The argument of the counsel for the applicants-claimants for awarding compensation at a flat rate in our considered view has been rightly negated. Since voluminous evidence in the shape of sale deeds has been brought on the record of the case indicating marked difference between the land falling in "most preferential area" and the land falling in "second rate area", this Court on the first principle can surely not evaluate the entire acquired land at a flat rate. The finding recorded on this point by the learned Single Judge and the finding recorded on the arguments advanced before us which we propose to reproduce right at this place do not in our considered view call for any interference in letters Patent Appeals." The findings of the Ld. Single Judge which can be reproduced with advantage are :

"So far as the potentiality of the suit land or its being treated as a Suburban area is concerned, there is hardly any dispute or variance between the learned counsel for the parties. It is only the extent or degree of this potentiality which is the subject matter of contest between the two sides. According to the claimants, there was no justification for dividing the acquired land into two blocks after recording the finding about its potentiality and they should have been awarded compensation at a flat rate. The stand of the State authorities is that the extent or depth of the first block determined by the Lower Court is not justified by the evidence on record.

It is not in dispute that the parties have produced and proved a number of sale instances which form part of the acquired land. Once such earliest transaction, (Ex. P.87) is of the year 1971 (to be precise, of November 9,1971) when 5 Kanals and 14 Marlas of land abutting this road was sold at the rate of Rs. 131.57 pe marla. The details of the later similar transactions are as follows :-

s. Exhibit Date Area Consider- Rate per No sold K.M. ation marla 1. P.7 11.11.71 5-10 20000/- 181.81. 2. P-8 5.6.1972 8-0 23000/- 143.75 3. P-67 18.3.74 1-2 4000/- 181.81 4. P-119 18.3.74 0-7 2000/- 285.71 5. P-64 18.3.74 0.4 1000/- 250.00 6. P-85 30.4.75 18.11 40000/- 107.81 7. P-65 13.8.75 0-3 2500/- 500.00 8. P-65 13.8.75 0.6 2500/- 416.66 9. P-117 13.8.75 0.6 2500/- 416.66 Similarly the details or some of the transactions which fall within the first block along the Minor are as follows :

S.. Exhibit Date Area Consider- Rate per No. sold K.M. ation 1. P.108 24.2.70 2-19 3000/- 50.64 2. P.89 16.6.70 4.19 12000/ 50.60 3. P. 187 6.3.72 1.0 1700/- 85.00 4. P.109 12.11.74 0.17 3000/- 176.00 5. P.92 5.1.76 2.0 6000/- 150.00 6. P.74 5.1.76 1.19 6000/- 153.85 7. P.39 12.1.76 1.13 6000/- 181.81

The only transaction which falls within the second block as demarcated by the Lower Court is exhibit P.85 vide which 18 kanals and 11 marlas of land was sold

on April 30, 1974 for Rs. 40,000/- i.e. at the rate of Rs. 107.81 per marla or Rs. 4.31 per square yard. No doubt a tip of this area abuts the Barnala-Sirsa road also but the major part of it is away from the road.

There are other sale instances also which surrounded the acquired land but I do not feel the necessity of making any reference to those transactions as I am of the firm view that the sale instances which form part and parcel of the acquired land form the best possible basis for the determination of its market value and unless any infirmity or reasons for ignoring those transactions are brought out, the other sale instances outside the acquired land cannot and should not be taken into consideration for this purpose.

One thing which is well indicated by the above noted transactions is that the land along the road had a better potential for being utilised as residential or commercial area than the rest of the land. Further it is apparent from the details of these transactions that in the year 1975 and 1976, that is, some time prior to the date of notification u/s 4 the price of the land along the road escalated to a great extent probably on account of the fact that the town had become the District Headquarter with effect from September 1, 1975. As is evident, upto the year 1974, the land along this road was being sold at rates varying from Rs.131.57 to Rs. 181.80 per marla. After 1974, the rate rose to Rs.400/- to Rs. 500/- per marla as depicted by Exhibits P.65, P.66 and P.117. This of course is not true of the area along the Rajbaha (minor) which has been.....

7. The finding of the learned Single Judge clearly shows that the claimants were held not entitled to the grant of compensation at a flat rates as the value of the acquired land falling in "most preferential area" and "second rate area" was altogether different as depicted in sale transactions which have been discussed in their minute , details. We are in respectful agreement with the reasons advanced by the learned Single Judge. Having rejected the argument for evaluating the entire land at a flat rate, the question then arises whether this Bench in Letters Patent Appeal should increase the depth of 60 yards upto depth of 500 mts. in the first block or should the LPA Bench maintain the depth as has been so held by the learned Single Judge. Having given our thoughtful consideration, we are of the view that the case law cited by the counsel does not apply to the facts of the instant case.

8. Adverting to last ruling first, it will be seen that the Hon'ble Supreme Court in Kapur Kaur's case (supra) has not laid down any principle of law that in the matter of acquisition of land near the town, the Court should grant a higher compensation for the land upto the depth of 500 mts. On the other hand, the Apex Court after discussing the two judgments in the case of Kartar Singh and Madan Lal granted higher compensation in view of the acquisition in Kartar Singh and Madan Lal's case in the years 1974 and 1975 and the fact that the acquisition in Kapur Kaur's case took place in the year 1976 and after granting higher compensation upto the depth of 500 mts. Above all, it was specifically observed that the compensation fixed would not be treated as precedent for

determination of compensation in other cases the following observations of the Supreme Court can be reproduced with advantage :-

"Special leave granted. We are of the view that having regard to the judgment in Kapur Singh's case and Madan Lal's case and in the light of the fact that the land forming the subject matter of acquisition in the present case is nearer Bhatinda town as also close to the road as compared to the lands of Kartar Singh and Madan Lal as also the fact that the acquisition in Kartar Singh's case in 1975, where as the acquisition in the present case took place in October, 1976, the compensation payable for the acquisition in the present case must be determined at a figure which is little higher than that paid in Kartar Singh's case and Madan Lal's case. We think that the ends of justice require that compensation shall be awarded to the appellants at the rate of Rs. 17/- per sq. yard upto the depth of 500 metres of the acquired land and at the rate of Rs. 10/- per sq. yard beyond the depth of 500 metres. We may point out that the compensation fixed in this case shall not be treated as a precedent for determination of compensation in other cases. The consequential payments will also be made on the basis of this rate of compensation. The appeal is disposed of in these terms with no order as to costs."

9. Even the detailed judgment in Kapur Kaur's case (supra) by the Single Bench of this Court to which reference was made during the course of arguments by the counsel for the claimants does not help the landowners. Since the Apex Court has disposed of the case of Kapur Kaur on its own facts and it was made clear that it would not be quoted as precedent, no observation made therein can help the claimants in these appeals for the creation of a preferential belt upto the depth of 500 mts.

10. Kartar Singh's case (supra) upon which the counsel for the claimants has placed vehemence reliance does not help him. In order to determine whether Kartar Singh's case (supra) helps the claimants or not, it is necessary to have a look at the facts of that case. In Kartar Singh's case (supra) land measuring 2243.52 acres situated in the revenue estate of Bhatinda i.e. the same place where the land was acquired in the case of Kapur Kaur was acquired for the establishment of military cantonment by the Union of India. The Land Acquisition Collector created a special belt of 40 Karmas along the fencing irrespective of the quality of the land and granted compensation at the rate of Rs.16,000/- per acre for the land falling in the special belt and rest of the land was divided into two blocks for which compensation was awarded on the basis of the agricultural quality of land. The Land Acquisition Collector after rating special belt and after dividing the rest of the land into two blocks, assessed compensation as follows .

" 1st Blocks between Railway Line and metalled road to Patiala (i) Nehri Chahi, Chahi Nehri, Rs. 14,000/- per acre (ii) Barani, Rs. 9,000/- per acre, (iii) Banjar (Gair Mumkin), Rs. 4,500/- per acre . Area under house and wells, Rs. 14,000/- per acre. Remaining land, Rs. 4,500/- per acre, (iv) Chahi Master, Rs. 12,800/- per acre. IIst Blocks between ; which lay beyond railway line.

" (i) Nehri Chahi, Rs. 11,200/- per acre. Chahi Nehri (ii) Barani, Rs. 7,200/- per acre. (iii) House and wells (Gair Mumkin), Rs. 11,200/- per acre. Remaining land, Rs. 3,000/- per acre.

The Additional District Judge on reference u/s 18 of the Act enhanced the compensation for the special belt to Rs. 20,000/- per acre and for the rest of the land the compensation was enhanced on the basis of the agricultural quality of land at the following rates but two blocks carved out by the Land Acquisition Collector were set aside :-

" (i) Nehri Chahi/Chahi Nehri, Rs. 17,500/- per acre, (ii) Chahi Master, Rs. 13,500/- per acre, (iii) Barani, Rs. 11,250/- per acre, (iv) Land under house and walls, Rs. 17,500/- per acre, (v) Banjar, Rs. 5,625/- per acre, (vi) Land of other categories treated as Banjar, Rs. 5,625/- per acre.

In First appeals, the learned Single Judge of this Court not only enhanced the compensation to Rs. 72,600/- but increased the depth upto 500 mts. along the municipal limits and for the rest of the land the compensation was determined at Rs.25,000/- per acre. In L.P.A., the compensation upto the depth of 500 mts. was maintained whereas for the rest of the land, the judgment of the learned Single Judge was modified and Rs.8/- per square yard was granted to those landowners whose land was beyond 500 mts. along the municipal limits. The Division Bench upheld the belting system. The following observations of the Division Bench make it clear that depth upto 500 mts. was maintained on the basis of the peculiar facts i.e. seven acquisitions having been made etc. and not on the basis of any such general principle that whenever the acquisition is made in suburban or urban are the depth of 500 mts. has to be carved out by a Court of law :

Coming to the fixation of the market value, while the claimants urged that no belting was justified and a uniform rate should have been allowed for the entire acquired land, the counsel for the Union of India urged that the belting of 40 kararns made by the Land Acquisition Collector and upheld by the Additional District Judge should not have been interfered with and increased by the learned Single Judge. After considering the entire matter, we are of the view that the belting made by the learned Single Judge deserves to be upheld. It cannot be disputed that the town of Bhatinda seems to be developing towards the said the Urban Estates in three phases were sought to be set up on the basis of acquisitions made by the State. Right from October, 1970 till January, 1975, acquisitions of large areas were made for setting up Urban Estates. The acquisition for 2nd and 3rd phases were made in March, 1974 and January, 1975 respective, which go to indicate that during that period there was possibility of development in that area. When the area covered by the three Urban Estates was to get fully developed, thereafter, the scope for further extension would have been for the next belt lying beyond the three phases and so on. If the claimants had brought instances of sale transactions of any part of the acquired land or in the near vicinity, that could have given us reasonably good guidance for fixing

the market value of the acquired land and would have also shown as upto what depth the extension was taking place. In the absence of the same, a reasonable guess has to be made and a depth of 500 metres, as suggested by the learned Single Judge, to our mind, appears to be reasonable for further extension of the Urban Estates for which higher value deserves to be allowed as compared to the rest of the acquired land.

For the belt of 500 metres along the municipal limits, we are of the considered opinion that the learned Single Judge was perfectly justified in awarding Rs.15/- per sq. yards and there is no scope for further enhancement. The first and second instance relied upon by the claimants would show that in October, 1970, as also in October, 1972, Rs. 10/- per sq. yard were allowed by this court for land lying in the close vicinity of the established town of Bhatinda. It is true that for acquisition of March, 1974, Rs.16/- per sq. yard were allowed and for acquisition of January, 1975, Rs. 20/- per sq. yard were allowed but the lands covered by these instances are again situate very close to the established town of Bhatinda and, therefore, had the immediate potential for being used for urban purposes; whereas 500 metres belt out of the acquired land would have gained potential in some more time to come. Therefore, keeping these factors in view, Rs.15/- per sq. yard awarded by the learned Single Judge for 500 metres belt appears to be reasonable and upheld.

11. The case of Madan Lal (supra) does not apply to the facts of the instant case either. The facts in the case of Madan Lal are like this. Vide notification issued on December 12, 1974 published in the official gazette on January 8, 1975 u/s 4 of the Act 400 acres of land in the revenue estate of Bhatinda was acquired for establishing three phase residential urban Estate, Bhatinda town. The Collector assessed the compensation at the rate of Rs. 12,250/- per acre for the Chahi Nahri land Rs.11,000/- per acre for Batani Banjar/Ghair Mumkin land, Rs. 6,000/- per acre for Ghair Mumkin passage and Rs. 5,000/- per acre for Ghair Mumkin Chappar. The Additional District Judge on reference assessed the market value of the entire acquired land at the rate of Rs. 17/- per square yard irrespective of the quality of the land. The learned Single Judge in first appeals increased the compensation from Rs. 17/- per square yard to Rs.20/- per square yard. Letters Patent Appeals were filed by the State of Punjab and the landowners. The Division Bench after discussing the entire evidence reversed the judgment of the learned Single Judge and restored the award of the Additional District Judge awarding Rs. 17/- per square yard only. The case was decided on its own facts. After perusing the entire judgment of the Letters Patent Bench, we have not been able to understand as to what is the relevancy of the decision of the Letters Patent Bench in Madan Lal's case (supra).

12. In Mukhtiar Singh's case (supra), 1230.80 acres of agricultural land situated in the municipal limits of Bhatinda town and adjoining thereto was requisitioned for defence purposes. Vide notification published u/s 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952, the aforesaid land was acquired

The Land Acquisition Collector awarded the compensation as follows :

1, Area assessed on flat, Rs. 16,000/- 2. Nehri/Chahi, Rs. 14,000/- 3. Chahi Mustar, Rs. 10,800/- 4. Barani, Rs. 9,000/- 5. Gair Mumkin/Banjar, Rs. 4,500/-

The Additional District Judge as Arbitrator came to the conclusion that the acquired land has potential for urbanisation and awarded compensation as follows :-

1. For the land situated on either side of the road upto a depth of 500 meters from the Municipal limits/fencing of the Cantonment bordering the land acquired and abutting on the III Phase of Urban Estate of Bhatinda Town., Rs. 16.80 per square yard.

2. For the other land upto a depth of 500 meters from the Municipal limits/fencing of the Cantonment bordering the land acquired and abutting on the III Phase of Urban Estate of Bhatinda town, Rs. 16/- per square yard.

3. For the rest of the acquired land, Rs. 8.50 per square yard.

The Arbitrator while awarding the aforementioned compensation kept in view the decision of this Court which was rendered in LPA No. 279 of 1982, Kartar Singh's case. It may be noted at this stage that it has been so observed by this Court in Mukhtiar Singh's case. This Court, therefore, while deciding the case of Mukhtiar Singh followed the decision given in Kartar Singh's case (supra) and determined the compensation at the rate of Rs. 16.80 per square yard for the land situated on either side of the National Highway leading from Bhatinda to Barnala upto a depth of 500 mts. whereas for the land upto a depth of 500 mts. from the municipal limits/fencing of the Cantonment or from the boundary III Phase of Urban Estate, Bhatinda town, the compensation was determined at Rs. 16/- per square yard. The rest of the land was evaluated at Rs. 8.60 per square yard.

13. In view of the detailed discussion of Mukhtiar Singh's case (supra) it inevitably follows that higher compensation was granted upto a depth of 500 mts. in view of the facts of the case and not on the basis of any principle of law that the Court must in cases of acquisition of suburban land grant compensation at higher rate upto a depth of 500 meters.

14. Moreover, this Court is of the firm view that Bhatinda town being a cantonment and that too for such a long time cannot be equated with Sirsa town. This Court takes judicial notice of the fact that Bhatinda is a district for a pretty long time i.e. since 1948 whereas Sirsa was declared as a district on 1.9.1975. The importance of Bhatinda being a district for such a long time as compared to Sirsa district which has come into being only 22 years back is an added factor for us to ignore the case law pertaining to the acquisition of Bhatinda Suburban Area even if it can be remotely spelt out that the some principle of law does emerge from the decisions taken in acquisition of lands of Bhatinda.

15. The next question which falls for our determination is whether the grant of

compensation for the land falling under "second rate area" is correct or the compensation in view of the evidence brought on the record of the case by the claimants deserves to be enhanced. The argument of the counsel for the claimants that the difference between Rs. 450/- and Rs. 155/- per marla being large, this Court should "abridge the same in Letters Patent Appeals has not impressed us at all. As has been seen by us while reproducing the finding recorded by the learned Single Judge more qualitative evidence has been brought on the record of the case for the grant of compensation for the land falling under "most preferential area" whereas poor evidence is forthcoming as regards the price indicated in sale transactions for the land falling under "second rate area" and therefore there is no justification for narrowing down the valuation between "most preferential area" and "second rate area. The learned Single Judge has rightly relied upon the sale transactions of 18 kanals 11 marlas of land and other sale deeds for coming to the conclusion that the valuation for the lands falling in "second rate area" should be Rs. 155/- per marla. This finding in our considered view is correct particularly when oral evidence has come on the record of the case to the effect that the land falling under "second rate area" was agricultural in nature and had less potentialities.

16. The belting system has been upheld in several judicial pronouncements. The learned Single Judge while recording a finding on this point has discussed the entire evidence and there is absolutely no justification for the Letters Patent Bench to reverse the finding of fact in the instant case.

17. The last argument of the counsel for the claimants regarding grant of statutory benefits has no force. In view of the well settled principles of law as have laid down by the Hon'ble Supreme Court, the claimants are entitled to the statutory benefits Under Sections 23(2) and 28 of the amended provisions of the Land Acquisition Act. However, the award of the Land Acquisition Collector having been given on 15.9.1978, the landowners are not entitled to the benefits as envisaged u/s 23(A) of the Act.

18. For the reasons recorded above, all the appeals excepting the modifications as have been ordered above, are found to be devoid of any merit and are ordered to be dismissed. The award of the learned Single Judge is modified to the extent indicated above. However, in view of the peculiar facts and circumstances of the case, there will be no order as to costs.