

(1970) 10 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Civil Writs No"s. 2940, 3260 to 3270 of 1969 and 154, 138, 763, 645, 1281, 1282, 2574 and 2813 of 1970

Raja Ram Partap Singh and Another

APPELLANT

Vs

The President, Land Acquisition Tribunal, Ludhiana
Improvement Trust, Ludhiana and Others

RESPONDENT

Date of Decision : 13-10-1970

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Land Acquisition Act, 1894 — Section 23
Punjab Town Improvement Act, 1922 — Section 59

Citation : AIR 1971 P&H 335 : (1971) RCR(Rent) 79

Hon'ble Judges : H.R. Sodha, J

Bench : Single Bench

Advocate : J.N. Seth and Gurbachan Singh, for the Appellant; R.K. Aggarwal and H.L. Sibal, General, for the Respondent

Judgement

1. This judgment in Civil Writ No. 2940 of 1969 will dispose of not only the said Civil Writ petition but also a bunch of other connected petitions Nos. 3260, 3261, 3262, 3263, 3264, 3265, 3266, 3267, 3268, 3269, 3270 of 1969, 2812, 2574, 763, 645, 154, 138, 1281 and 1283 of 1970, which raise common questions of law.

2. The petitioners in C. W. 2940/69 are owners of an estate known as "Bhadaur House" comprising an area measuring about 3.66 acres equivalent to 16. 095 square yards situate within the municipal limits of Ludhiana. A plan of the sit has been filed with the writ petition as Annexure "B" . There is in force in the State of Punjab the Punjab Town Improvement Act, 1922 (Punjab Act IV), hereinafter called the Act. it provides for the preparation of various types of development schemes for the improvement and expansion of towns in the State. The duty of carrying out the provisions of the Act in any local area is vested in a Board called the Improvement. Trust and hereinafter referred to as the Trust. When a scheme has been finalised in accordance with the procedure prescribed in the Act, the

acquisition of land for the execution of the schemes may become necessary. Land can be acquired under the Land Acquisition Act, 1894, hereinafter described as the Acquisition Act, but by virtue of Section 59 of the Act, the Acquisition Act stands modified in several particulars as are indicated in the Schedule attached to the Act. Any person interested, who does not accept the Award of the Collector under the Acquisition Act whether with regard to the amount of compensation or apportionment thereof, has a right within a prescribed time to make an application to the Collector that a reference be made to the principal civil court of original jurisdiction but in case of an acquisition for the purpose of the Trust a Tribunal has to be constituted and the same is deemed to be a Court. The President of the Tribunal is to be a person who is qualified for appointment as a Judge of the High Court and no right of appeal is available against the decision of such a Tribunal. A development scheme styled as "Bhadaur House" framed by Ludiana Improvement Trust was duly framed and necessary sanction of the State Government u/s 42 of the Act obtained therefor/. In order to execute the scheme, the State Government acquired the aforesaid estate of the petitioners and the Collector, Ludhiana, awarded compensation in a total sum of Rs. 3,20,770.99 P by his Award dated 19th of August, 1967. Earlier land of some other proprietors had been acquired in the same town in connection with another scheme in the vicinity known as "Jawahar and Lajpat markets". Jawahar market is located at distance of about 80 yards from the acquired land of the petitioners whereas Lajpat market is at a distance of about 200 feet from the same. In order to assess the amount of compensation, the Collector adopted the system of belting by dividing the whole land into four belts on a consideration of its situation in relation to Grand Trunk Road and other important commercial centres on which different parcels of the land abutted and that abutting on Cinema road was included in Belt "B". Some part of the land abutted on any important road was placed in Belt "D". Keeping in view compensation determined by the award given in the year 1962 for lands acquired for Jawahar and Lajpat markets, the Collector fixed the market value of the land now acquired at Rs. 45/- per square yard for the area falling in Belt "A" Rs. 35/- per square yard for land situate in Belt "B", Rs. 30/- per square yard relating to the yard for that in Belt "D" and thus, as already stated, it came to a total of Rs. 3,20,770.99 P. On a reference u/s 18 of the Acquisition Act being made to the Tribunal presided over by the District Judge, Ludhiana, evidence was recorded about the market value of the acquired land. The objections of the petitioners were heard and evidence recorded to determine the market value of the land. The petitioners claimed compensation at the rate of Rs. 400/- per square yard in addition to compensation for some standing trees on the land. Solatium at the rate of Rs. 15/- per cent not the market value of the acquired land was also claimed. The State resisted the claim of the petitioners and after necessary issues had been framed, the Tribunal came to the conclusion that it was more correct to divide the estate into Belts instead of four. Belts "A", "B" and "C", as classified by the Collector, were put together as one area measuring 2055 square yards and market value thereof assessed at Rs. 50/- per square yard. The remaining area

which was not abut either on the G. T. Road, Cinema Road or Post-office Road, the rate was fixed at Rs. 25/- per square yard. Higher rate was given in respect of Belt "A" as it abutted on the Grand Trunk Road. By the adoption of this criteria, the total market value came to Rs. 4, 53,750.00 as against Rs. 3,20,770.99 P, as fixed by the Collector. A solatium at the rate of Rs. 15/- per cent on the market value was also allowed and it amounted to Rs. 68,062.50 P. The total compensation payable to the petitioners for the acquired land thus came to Rs. 5, 21, 812.50 P. Being dissatisfied with the Award of the Tribunal the petitioners moved this Court with a petition under Arts. 226 and 227 of the Constitution of India for issuance of an appropriate writ, direction or order quashing the Award of the Tribunal and directing it to assess compensation at a higher rate as claimed by them. Since there is no right of appeal against the award of the Tribunal, the vires of Section 59 of the Act were challenged on the ground that it was unconstitutional denying to a citizen the fundamental guarantee of equal protection of law when such a right would be available if the land were acquired under the Acquisition Act for some other public purpose and not for the execution of a scheme under the Act. the denial of the right of an appeal was stated to be arbitrary since such a right was available in case of other acquisitions of land under the acquisition Act. it may be mentioned that in other cases , an appeal lies from an Award of the District Judge on a reference u/s 18 of the Acquisition Act as an appeal from a decree.

3. The vires of Section 59 of the Act were considered in Civil Writ No. 1590 of 1960 (Punj), Gowardhan Dass v. The Tribunal under the Town Improvement Act, decided on 18-3-1963 by a Bench of this Court consisting of D. K. Mahajan and P. C. Pandit, JJ, It has been held that the Act provides for the improvement of towns which form a class by themselves and the acquisition of land has a reasonable basis so far as such acquisition for the improvement of towns is concerned. It is observed by the learned Judges that the act applies only to the land included in the area of the town where a scheme has been finalised and when such is the case, the acquisition has to be made of every land under the Acquisition Act as amended by the Act and no question of discrimination arises. Non-conferment of the right of appeal which is the creation of statute was also held not to make the Act discriminatory. These provisions of the Act discriminatory. These provisions of the Act were the subject-matter of challenge in Civil Writ No. 2030 of 1967 (Punj), Smt Prem Kaur v. State of Punjab, decided by Mehar Singh, C. J. and B. R. Tuli, J. on 6-11-1969. The decision in gowardhan Dass's case, Civil Writ No. 1590 of 1960, D/- 18-3-1963 (Punj) (supra) was followed but in view of the judgment of their Lordships of the Supreme court in Balammal and Others Vs. State of Madras and Others, , the writ-petitioner Smt. Prem Kaur was held entitled to an increase of 15 percent. On the market value by way of solatium. I am bound by the two Division Bench judgments of this Court and Section 59 of the Act must, therefore, be held to be intra vires. Solatium of 15 per cent. on the market value has been allowed to the petitioners in the present writ petition by the Tribunal and no grievance can be made on this

score.

4. The only question that survives for consideration now is as to whether the Tribunal has committed any error of law apparent on the record in determining the amount of compensation. No doubt it adopted the belting system different from that devised by the Collector but it was done for the benefit of the petitioners. The argument of the learned counsel for the petitioners that such a system involves arbitrariness is misconceived. A large tract of land cannot possibly fetch a good price and the value of different bits of land comprised in one area goes on diminishing according to their distance from the main road or a commercial centre. Advisability or usefulness of a belting system depends on a variety of circumstances peculiar to each case. The argument of MR. Seth that arbitrariness creeps in whenever such a system is adopted, loses sight of the fact that a Tribunal is expected to act bona fide on objective data and it is not a subjective determination on its part when it divides the acquired land into different bits for the purpose of assessing compensation. Reliance is placed by the learned counsel on a Division Bench judgment of the Travancore-Cochin High Court reported as K. G. Kunukrishna Pillai v. State AIR 1953 TC 177, where an observation is made that valuation by belts is to be generally discouraged as it involves a considerable extent of arbitrariness. With utmost respect to the learned Judges of the Travancore-Cochin High Court, I do not find any justification for such widely worded observation. There may be cases where market value can be properly fixed only by dividing the acquired land into separate parcels and that is what the belting system is. It is a matter of common knowledge that same price cannot be had in the market same price cannot be had in the market for bigger areas of land and situation of the same is of great significance. If the land abuts on some road or nearby commercial place, it will fetch more value than if it is located in the rear from where the road and the market are distantly situate. The desirability of introducing the system of valuation by belts in order to determine market value depends on the facts of each case and no hard and fast rules can be laid down. The Tribunal in the instant case instead of having four belts created only two, which increased the amount of compensation payable to the petitioners from Rs. 3,20,770.99 paises to Rs. 4,53,750.00. this was a fair and judicial approach and some of those areas which the Collector considered to fall in the rear were also given a higher value. I do not thus find any error of law committed by the Tribunal in arriving at the amount of compensation, nor can it be said that the award is not based on any evidence.

5. In the result, the writ petition must be dismissed.

6. It is conceded before me by the learned counsel for the parties in all other writ petitions, that solatium at the rate of 15 per cent was not awarded by the Tribunal, These writ petitions must, therefore, be accepted to the extent that the Tribunal is directed to increase the compensation of the claimant or claimants in each case by 15 per cent. of the market value of the property as assessed by it.

The Tribunal will amend its awards to the extent indicated above and proceed to determine the total amount of compensation accordingly. No other point was urged before me.

7. Mr. D. S. Chahal, learned counsel for the petitioners, in Civil Writ 1282 of 1970 submits that compensation has been awarded for a lesser area than actually acquired. No such point was raised before the Tribunal and this cannot be allowed to be done for the first time in the present proceedings in this Constitution. If he had any real and genuine grievance he could apply to the Tribunal for review if the law so permits, more so when according to the learned counsel, it is only a clerical omission.

8. In the peculiar circumstances of these cases, the parties are left to bear their own costs.

9. Order accordingly.