(2012) 09 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1331 of 1990, R.F.A. No. 1367 of 1990 and R.F.A. No. 2050 of 1990

Raminder Kaur and Others APPELLANT

Vs

State of Punjab and Others
 Gian Singh Vs State of Punjab and Others
 Municipal Corporation and Another Vs Raminder Kaur and Others RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Citation : (2013) 3 RCR(Civil) 80

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Hemant Sarin in R.F.A. No. 1331 of 1990, Mr. Vijay Lath and Mr. Naveen Sharma, in R.F.A. No. 1367 of 1990 and Mr. Sandeep Khunger in R.F.A. No. 2050 of 1990 and for Municipal Corporation in R.F.A. No. 1331 and 1367 of 1990, for the Appellant; Hemant Sarin, Advocate for Respondent Nos. 1 to 3 in R.F.A. No. 2050 of 1990 and Mr. Ram Lal Gupta, Addl. A.G., Punjab, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The two appeals by the land owners and one appeal by the Municipal Corporation are respectively for enhancement and

for reduction of the compensation awarded by the Reference Court for acquisition of property after a notification dated 25.11.1981. The property

acquired was 84 kanals 17 marlas of land for laying link road. The property acquired was in Basti Mithu, Tehsil and District Jalandhar. The

Collector had passed an award on 15.09.1986, which came to be amended subsequently on 13.10.1986 providing for Rs. 1,28,840/- per acre

for Chahi and Rs. 1,06,830/- per acre for gair mumkin. The Reference Court awarded a compensation of Rs. 1400/- per marla with solatium and interest on additional amount. The learned counsel appearing on behalf of the land owners would argue that the respondent-Municipal Corporation

placed no evidence either documentary or oral, and the case came to be decided only on the basis of documents filed by the land owners. The

tabulation of sale transactions would require to be reproduced to get an immediate hang of the prices relating to the transactions:- It can be noticed

that Ex.P5 is for transaction dated 06.12.1981 for 10 marlas 30 sq. ft. which is a post notification sale. The learned counsel would point out that

transactions covered though Ex.P3 to P6 are in relation to property in Basti Shekh which is about kms from the property acquired while Ex.P7 and

P8 are situate in Basti Mithu, the very same basti from where the acquired property is situate. If we eschew the transaction brought through post-

notification sale namely Ex.P5, the average value of the property comes to Rs. 3230/- per marla. The contention of the appellants is, therefore, that

since the sale transactions verily reflect the proper valuation of properties in the immediate vicinity of the acquired lands and also pertain to the very

same period when the property was acquired, that the average price must be taken and the compensation awarded.

2. Learned counsel appearing on behalf of the Municipal Corporation would argue with reference to the rough plan that the period acquired was

only an agricultural land and it was a small piece of land at the far end of the link road and it is the purpose of acquisition that lent value to the

property as such and even the assessment made by the Reference Court is high.

3. I find that it is not denied that the property, which is acquired falls within the Municipal Corporation limits. The extent of properties, which are

owned by the various owners, are themselves small. All the transactions of properties relating to Basti Mithu and the property adjoining are in

respect of small parcels of land. The learned counsel appearing for the land owners would argue that where the acquired property falls within the

municipal limits, it must be assumed that there had been already a development for residential and nonagricultural purposes and consequently the

valuation itself must factor the imminent potentiality of the land for such use. I have no difficulty in accepting the contention that the property must

be valued not merely as agricultural land and there is no better means of assessing the value than averaging the value of the properties during the relevant time. In Anjani Molu Dessai Vs. State of Goa and Another, Recent Apex Judgments (R.A.J.) 492 : (2010) 13 SCC 710, the Supreme

Court held that in cases of several exemplars, usually highest exemplars should be considered and where the several sales of similar lands whose

prices range in a narrow bandwidth, it shall be safe to take average of such valuation. The Supreme Court, however, cautioned that the principle of

averaging will not be resorted to where the sale prices are markedly different. 1 notice from the transactions of sales which are brought through

Ex.P3 to P8 with the exception of Ex.P5 are in about the same range of 100 to 150 sq. yd. in the year 1980 and 105 to 160 per sq. yd in the year

1981. I would, therefore, apply the average of prices and take the appropriate valuation to be Rs. 3230/- per marla. The Reference Court relied

on a price which the auction sale fetched in relation to property nearby and took the valuation at Rs. 1570/- per marla. There is no consistent line

of authority for the position of whether an auction sale could be an appropriate exemplar. Several factors may come into play for the prices

brought through competitive bids. When there are transactions of sales which have come about by private negotiation, they ought to be taken as

the best bargain between the parties at arms length and even if an auction sale price could form the basis, I would invoke the rule in Anjani Molu

Desai''s case (supra) referring to the exigency of taking the highest price or take the average price to be more appropriate in this case.

4. Learned counsel for the respondents says that some cut must be imposed on the valuation. I do not find any justification for the same, for the

properties which are acquired from the owners are in respect of small parcels of land within the municipal area and in a developed colony that

exists already. I do not think, therefore, there is any scope for applying a cut. The valuation determined by the Reference Court would, therefore,

stand enhanced to Rs. 3230/- per marla with all the statutory benefits. The appeals filed by the land owners are allowed with costs and the appeal

filed by the Municipal Corporation seeking for reduction of the compensation already determined shall stand dismissed. The appellants will have

two months time to pay the deficiency in Court fee and the decree shall be drafted on such payment only.

