
(1999) 08 P&H CK 0146

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 575 of 1992

Santa (Died) and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 12-08-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2000) 125 PLR 501

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : P.M. Anand and Rakesh Nagpal, for the Appellant; Mohan Jain, General and Rakesh Aggarwal, for the Respondent

Judgement

Swatanter Kumar, J.—Vide judgment and award dated 23.8.1991 the learned Additional District Judge, Ambala answered 105 references u/s 18 of the Land Acquisition Act, hereinafter referred to as the Act, arising from the same award and notification u/s 4 of the Act. Vide this judgment the learned Additional District Judge enhanced the compensation to the tune of Rs. 17/- per square yard i.e. Rs. 65,280/- per acre. According to the State the amount awarded by the learned Additional District Judge was highly excessive and not based on any cogent evidence, as such it filed 105 appeals challenging the same award and judgment and prayed for restoration of the award given by the Collector. On the other hand, claimants preferred 100 appeals against the same judgment praying for enhancement of the amount of compensation awarded to them by the learned Additional District Judge as the same was inadequate keeping in view the market price of the land at the time of acquisition. Thus, there are 205 appeals which would stand disposed of by this judgment.

2. The fact giving rise to the appeals are that State Government of Haryana issued a notification u/s 4 of the Act on 28.5.1985 intending to acquire nearly 682 Bighas 17 Biswas in three different villages, the details of which are as under:-

Village Area Islam Nagar 23 Bighas 4 Biswas Damdama 186 Bighas 6 Biswas Bhogpur 473 Bighas 7 Biswas

3. In furtherance there to notification u/s 6 of the Act was published on 6.6.1985. The Land Acquisition Collector, Ambala vide his award dated 27.1.1986 after following the due process of law determined the market value and compensation payable to the claimants for acquisition of their respective lands as under:-

Rs. 32,500/- per acre for Barani land.

Rs. 7,500/- per acre for Gair Mumkin land.

Since the trees were also standing on the acquired land, therefore, the Collector has assessed the compensation for those trees at Rs. 33,856/-.

Rs. 1,84,320/- cost of building assessed and awarded.

Rs. 12,616.10 compensation for crops was awarded.

In addition to the above amounts, the Collector had allowed solatium at the rate of 30% and additional compensation at the rate of 12% besides other benefits to which the claimants were entitled to under the provisions of the Act.

4. As already noticed, the claimants were totally dis-satisfied with the amount of compensation awarded for acquisition of their respective lands and they preferred references u/s 18 of the Act before the learned Additional District Judge, Ambala. The learned Additional District Judge, Ambala, vide his judgment and award dated 23.8.1991 awarded the amount at the rate of Rs. 17/- per square yard i.e. approximately Rs. 65,280/- per acre, as mentioned above. The payment of compensation based on the nature of the land was done away with by the learned Additional District Judge and he preferred to award uniform rate of compensation taking it to be acquisition of huge land.

5. At the out-set it will be appropriate to refer to the evidence produced by the parties. The claimants had examined 13 witnesses in addition to proving and producing on record Ed.PW5/11/1 and Ex.PW5/11/A to Ex.PW5/11/J, the sale instances and Ex.PW 10/A, the brochure issued by the respondents themselves, to substantiate their claim for compensation Ex.P.1 and Ex.P.2 were the site plans produced by the claimants, which were proved by PW5. This was the entire evidence led by the claimants to justify their claim for enhancement.

6. On the other hand, the respondents produced Ex.R.2 to Ex.R.23 the sale instances of the same village which related to the year 1988 to 1989. Ex.R.1 and Ex.R.2 were the letters written by the Collector for requisitioning the land in question for locating Group Centre of Central Reserve Police Force (CRPF).

7. Based on the above evidence, the Court must consider first what are the sale instances which are admissible in accordance with law enunciated by the Supreme Court of India in A.P. State Road Transport Corporation, Hyderabad Vs.

P. Venkaiah and others, and Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., . Admittedly, all the sale instances produced by the respondents are not admissible and cannot be taken into consideration for the determination of the question in controversy. Ex.R.3 to Ex.R.23 are the certified copies of the alleged sale deeds which were simplicitor tendered in evidence by making a statement. No vendor, vendee or appropriate officer from the revenue/registrar's office was examined to prove the genuineness, authenticity and consideration passed under these sale deeds. Thus, I have no hesitation in affirming the view taken by the learned trial Court that these sale instances are inadmissible in evidence and the respondents cannot derive any benefit therefrom.

8. As far as the petitioners are concerned, they produced as many as 12 sale deeds on record. Out of these sale instances only two sale instances can be stated to be admissible in evidence and comparable instances for determination of the compensation payable to the claimants. The learned trial Court has discussed all these sale instances in paragraph No. 20 of the judgment in the following manner:-

	Sr.	Exhibit	Date of Sale	Village	Area	Sale Price	No.	B-B
Price	P.S.Y							
		1.	P-5	18.07.82	Bhogpur	0.18	18,000/-	20/-
		2.	PW 11/A	21.03.84	Bhogpur	1.00	30,000/-	30/-
		3.	PW 11/B	04.07.83	Bhogpur	1.00	23,000/-	23/-
		4.	PW 11/C	04.07.83	Bhogpur	1.00	23,000/-	23/-
		5.	PW 11/D	24.08.84	Bhogpur	0.10	19,000/-	38/-
		6.	PW 11/E	04.07.83	Bhogpur	1.00	23,000/-	23/-
		7.	PW 11/F	04.07.83	Bhogpur	1.00	23,000/-	23/-
		8.	PWU/G	04.07.83	Bhogpur	1.00	23,000/-	23/-
		9.	PW 11/H	09.11.83	Islam Nagar	0.03	24,500/-	30/-
		10.	PW 11/J	02.02.83	Islam Nagar	1.05	30,000/-	24/-

9. The sale instance mentioned at Sr. No.1 which is Ex.P/5 is the sale deed dated 18.7.1982 vide which in village Bhogpur 18 Biswas of land was sold for Rs. 18,000/-, thus, giving an average value of Rs. 20/- per square yard. Ex.PW 11/J is the other sale instance dated 2.2.1983 which can be taken into consideration where the land in village Islam Nagar measuring about 1 Bigha 5 Biswas was sold for Rs. 30,000/-, thus, giving an average of Rs. 24/- per square yard. All other sale-deeds/instances have not been proved by the claimants in accordance with law, neither vendor nor vendee were examined. No effort was made to summon the concerned officer from the office of Registrar/Revenue authorities to prove the genuineness and authenticity of these documents. Consequently, the sale deeds other than the above two are inadmissible on the same principle on which the documents of the claimants can not be looked into.

10. The learned counsel for the claimants mainly stressed on Ex.PW 10/A, a document produced and proved by the claimants. The claimants submit that on

the strength of this document they were entitled to compensation at the rate of Rs. 130/- per square yard. Ex.PW 10/A is the copy of advertisement issued by the respondents for sale of the plots by the Haryana Housing Board. After developing the plots, these were proposed to be given at the rate of Rs. 130/- per square yard. This exhibit is an advertisement inviting applications. What were the terms and conditions of this invitation, whether it materialised, the payment was to be made in instalments or otherwise, nothing has come in evidence. In any case, it is a settled principle of law that the plots which are developed by the Government or its instrumentalities in the larger public interest after incurring huge expenditure cannot form basis for determining the compensation payable to the land being acquired by the Government for achieving that very public purpose. The cost indicated includes various other ingredients and does not indicate the excessive cost factor of the land price. It was for the claimants to bring appropriate evidence on record for bifurcation of such costing before they could derive any benefit from such document.

11. This Court has the occasion to discuss the relevancy of such public auctions or allotment of plots by the public bodies in different cases. In the case of State of Haryana and Anr. v. Ram Chander and Ors., R.F.A. No. 37 of 1996 decided on 13.5.1999 while considering somewhat similar question where auctions were held by HUDA of commercial areas, the Court observed as under:-

"Those instances are to my mind not relevant considerations for determining the fair market value of the acquired land at the time of notification. Varied reasons can be given for rejecting these instances. Firstly these plots are developed plots on which the Government or HUDA has already spent considerable amount. Secondly, these are commercial sites and can never be equated to the value of huge agricultural land like the land acquired in the present case. Thirdly, these auction prices are not true index of a fair market value of the land at the relevant time because of the element of speculation and unfair competition in such auctions. Fourthly the auctions have an element of uncertainty and they cannot be equated to a sale deed. It will depend on the terms and conditions of the auction because normally very meager amount is payable at the time of auction and balance is to be paid in instalments. Whether balance amount was paid or not, whether final documents of lease-deed or sale deed were executed in favour of the bidder? Ex.P.31 and Ex.P.32 are based on such terms only and lastly but not the least these are such small pieces of land that they cannot form a reasonable and fair basis for determination of compensation payable to the claimants. Once this evidence is held to be irrelevant, the compensation cannot be granted on the mere asking of the claimants which they stated in their examination in chief as PW3, PW4 and PW9 respectively."

12. Again in the case of State of Haryana v. Rajinder Kumar, R.F.A No. 2351 of 1998, decided on 3.6.1999, the Court held as under:

"Serious expenditure and efforts are put in by the State or authorities like PUDA before the developed, residential or commercial plots are put to public auction.

Cost of land is one of the components of the minimum auction price fixed by the authorities. Auction price is not the price indicative only of the cost of land. It includes various other factors and components in its composition. It is a matter of public knowledge that it includes maintenance, construction and maintenance of roads in times to come, element of interest payable on different heads and other ancillary factors. An auction/bid is primarily is a speculative feature. The minimum price is already fixed by the authorities and it is only commercial attitude which the bidder bids in such auctions. An offer or bid, at best, could be concluded as an agreement to sell which creates, no evidence and in face of the provisions of Section 51 of the Act and it cannot be treated admissible and more so in the light of the judgment of Hon"ble Supreme Court of India (supra) what are the terms and conditions of an auction and whether they ultimately culminated into the sale deed, there is no such evidence on record. The auction or bid of a developed plot cannot be equated to acquisition of land which either may be agricultural or may have even come up as haphazardly developed colony. Where the land is acquired for a public purpose, due consideration has to be given by the court and it must clearly and comparatively understood its parity with private sale or auction of developed plots. At this stage, it would be relevant to refer to some judgments i.e. in the case of Sudhir Kumar Vs. State of Punjab and Another, and in the case of Sant Ram and Others Vs. Baldev Singh and Others, . In the case of The Sub-Collector and Land Acquisition Officer Vs. N. Mahaboob Saheb and others, , the Court held as under

"13 Ex.A-13 is the sale certificate dated 12.3.1997 for an extent of 30 per cents of Rs. 26,600/-. Normally the court sales that were effected during auction cannot be taken as a comparable sale as there will be some inherent draw backs and it is not a transaction between willing purchaser and willing seller. A court auction generally will not reflect a true value that is prevailing in the area and therefore, Ex.A-13 cannot be treated as a comparable sale at all. Similarly where suits have been filed to create documents for the purpose of producing evidence after the filing of the suits and the decree passed in those suits also cannot be taken as a safe guide to arrive at a reasonable compensation. Therefore, on an analysis of the entire evidence, this court feels that the claimants are entitled to Rs. 375/- per a cent of land as against the amount of Rs. 450/- per a cent awarded by the court below. The claimants are not entitled to any benefits as per the amendent Act. however, on the unpaid amount if any, the claimants are entitled to interest at 6% p.a. from (sic) till the date of realisation.

For the reasons aforestated I would decline to consider the above exhibits as a relevant pieces of evidence for final determination of the costs payable to the claimants for acquisition of their respective land."

In view of the fact that Ex.PW/10/A per se is not a definite indication of the prevalent price of the land, as it is after the date of notification u/s 4 of the Act in the present case. Even otherwise there is no definite evidence brought by the claimants on record which could persuade the Court to rely upon Ex.PW 10/A.

Thus, I would decline to accept this contention. However, this could be looked into to the limited extent for determining the location and potential of the acquired land.

Location and potential of the acquired land:

As far as location of the acquired land is concerned, the statements of PW1, PW5, PW6 and PW 10 seen in the light of Ex.P1 and Ex.P2 the site plans, more particularly, supported by the description given in Ex.PW 10/A shows that the land was being acquired for locating Group Centre of C.R.P.F. The surrounding areas had already been acquired for development of colonies as in indicated Ex.PW/10/A. Thus, it is not difficult for this Court to conclude that the land has some limited potential and is reasonably well located. As per the statements of PW5 and even the RWS, the land is located at some distance from Pinjore and is still under development, RW1 is the only witness who was examined by the respondents and he has stated nothing which could adversely affect this factor of location and potentiality of the land to the limited extent aforesaid.

Compensation payable to the claimants.-

In view of the above evidence, it is clear that the Court could rely upon only on Ex.P/5 and Ex.PW11(J) (Sr. No. 1 and Sr. No. 10) to determine the compensation payable to the claimants The sale deed relate to the part of the acquired land and for the period 1982-83. The rate under Ex.P/5 is Rs. 20/- and while under Ex.PW 11/(J) is Rs. 24/- per square yard. The average of these two sale instances would come to $\text{Rs. } 44/2 = \text{Rs. } 22/-$ per square yard.

13. The learned trial Court had relied upon 9 sale deeds out of the 10 afore-stated. As already noticed, out of them, 7 were inadmissible. Thus, the very basis conclusion and computation arrived at by the learned trial Court in granting compensation payable to the claimants is incorrect and inadmissible as per law. Therefore, I cannot accept the method of computation adopted by the learned trial Court.

14. At this stage it will be appropriate to refer to oral evidence produced by the claimants themselves, there are some contradictions in the statement of PW 6. He claims to have purchased some lands. At one place he states that Rs. 10/- per square (sic) was the rate and then he states that the rate of the land at the time of recording of (sic) statement is Rs. 200/- per square yard. He further made a specific averments that there has been increase in prices because of coming up of Housing Board Colony and the private builders/colonisers in the area. This fact can hardly be disputed. In fact the evidence produced by respective parties mainly indicate this position.

15. It is a settled principle of law that element of deduction has to be applied by the court while computing the compensation payable to the claimants. In this regard reference can be made to the judgments of the supreme court where the principle of deduction was applied from 20% to 53% or even above, on the

market value determined on sale instances or otherwise. K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another, ; Ram Piari and another Vs. Land Acquisition Collector, Solan and others, ; Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, ; Administrator General of West Bengal Vs. Collector, Varanasi, and Hasanali Walimchand (dead) by LRs v. State of Maharashtra 1998(1) All 120.

16. The learned counsel for the claimants has relied upon the judgment of the Supreme Court in the case of Bhagwathula Samana v. Special Tehsildar and Land Acquisition Officer 1992(1)RRR 256, to argue that where-ever the area or surrounding areas are fully developed the element of cut/deduction should not be applied to such cases. I am unable to agree with the contention of the claimants because the area cannot be stated to be fully developed. Even as per the statements of PW3, PW10 and RW1 it is clearly established that surrounding areas had not developed and still the Housing Board Colony was coming up. As already noticed, the acquisition in the present case is for locating group centre for C.R.P.F. The sale instances indicated above are comparatively much smaller pieces of land in proposition to the acquired land. Keeping in view the location, potential and above factors it is necessary that some element of deduction should be made available to the present case. I consider that 30% deduction from the market value of the land determined on the basis of the sale deeds would be just and proper.

17. Rs. 22/- per square yard is the average value on the basis of the aforesaid two sale deeds which relate to the period 1982-83. The claimants would be entitled to increase as the land in question was acquired on 28.5.1985. Reasonable increase being 12% per year, for two years, the increase would come to Rs. 5.28, thus, a total would become Rs. 27.28 per square yard. Applying 30% deduction as afore-stated, the claimants would be entitled to receive compensation at the rate of Rs. 19.10 per square yard for acquisition of their respective lands. Certainly, there is not much evidence on behalf of the claimants, to say the least, to grant them any further increase, much less the enhancement at the rate of Rs. 130/- per square yard.

18. As a sequel to the above reasoning, all the appeals filed by the State are dismissed without any order as to costs. However, the appeals preferred by the claimants are partly allowed. The claimants would now be entitled to receive compensation at the rate of Rs. 19.10 per square yard i.e. Rs. 92,444/- per acre with all the statutory benefits under Sections 23(1-A), 23(2) and 28 of the Act.