
(2000) 04 P&H CK 0074
In the Punjab And Haryana At Chandigarh
Case No : Regular First Appeal No. 4 of 1982

Shamshudin

APPELLANT

Vs

Haryana State and others

RESPONDENT

Date of Decision : 05-04-2000

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2000) 3 RCR(Civil) 429

Hon'ble Judges : S.S. Sudhalkar, J

Bench : Single Bench

Advocate : Palika Monga, for the Appellant; Raghbir Chaudhaiy, D.A.G..
Haryana, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sudhalkar, J.—Both these Regular First Appeals arise out of the common award passed by the learned Additional District Judge and hence they are disposed of by this common judgment. Actually, these are cross appeals by the parties before the learned Additional District Judge. The original claimants viz. Shamshudin and Sardar Khan shall hereinafter be mentioned as claimants and the State of Haryana will hereinafter be referred to as the State.

2. The lands of the claimants were acquired. The notification u/s 4 of the Land Acquisition Act (hereinafter referred to as the "Act") was dated 20.1.1979 and the notification u/s 6 of the Act followed. The total area of the land of the claimants is 42 kanals 11 marlas. The claimants cited some sale instances for enhancement of the compensation awarded by the Collector which was Rs. 7370/- per acre. The learned Additional District Judge enhanced the compensation to Rs. 9000/- per acre. Being aggrieved by the judgment, the claimants have filed R.F.A. No. 4 of 1982 and State has filed R.F.A. No. 30 of 1982.

3. I have heard the learned Counsel for both the sides. The sale instances shown

by the Appellant are given as under:

Ex. A1

1 kanal 14 marlas

Rs. 3.90 per sq. yd.

Ex. A2

11 kanal 19 marlas

Rs. 2.77 per sq. yd.

Ex. A3

6 marlas

Rs. 11.11 per sq. yd

(The land referred to in Ex. A2 is 1/4th share of the total land of 47 kanals 16 marlas).

4. The learned Counsel for the Appellant argued that the learned Additional District Judge has considered that deed Ex. A2 is regarding the sale of 1-1/2 acres and is large enough to furnish the guide-lines for assessing the market value of the acquired land. However, he had considered the fact that the sale deed Ex. A2 indicates that the actual amount paid before the Sub Registrar before the purchase of the land by the vendor was Rs. 13,500/- and there was no proof regarding the payment of balance amount although the sale consideration purports to be Rs. 20,000/-. The translated version of Ex. A2 shows that the executant had mortgaged the property with one Pal Chand for a sum of Rs. 6500/- and the land was sold to the vendee with all his rights and he had left an amount of Rs. 6500/- with the vendee for redemption of the mortgaged land and will receive the balance amount of Rs. 13,500/- before the Sub Registrar. According to the mortgagor, at that time in mortgagee was in possession of the land.

5. Therefore, Rs. 6500/- is stated to have been left with the vendee. The counsel for the claimants argued that the learned Additional District Judge could not have ignored this amount of Rs. 6500/- while considering the sale price of the land. Contrary arguments have been argued by the counsel for the State.

6. It can be seen that this document Ex. A2 is dated 2.3.77. The notification u/s 4 of the Act in this case is dated 20.1.1979. It cannot be said that the clause regarding Rs. 6500/- having been left with the vendee could have been added only with a view to consider the inflated price of the land for benefiting the claimants in this case. Moreover, if the vendee has received less amount, he will not agree to a higher amount being mentioned otherwise also. There is no reason to presume that a lower amount would be accepted and higher amount would have been mentioned in the document of sale. Therefore, I do not agree

with the finding of the court below and the submission of the counsel for the State that the amount of Rs. 6500/- mentioned to have been left with the vendee be ignored. This being so, the sale price of the land comes to Rs. 20,000/- and not Rs. 13,500/-.

7. Counsel for the State argued that Ex. A2 is also cannot be said to be a comparable sale instance in view of the area of the land sold because it is a sale of 11 kanals 19 marlas of land while the land in question here is 47 kanals.

8. In the case of the State of Gujarat Vs. Devji Bechar, , it has been observed as under:

Having regard to all these diverse factors and considerations, it is a well known principle of valuation of lands not to value large areas of land on the basis of sales of small areas without making suitable deduction from sale price of small plots of land on account of the largeness of the size of the land sought to be evaluated with reference to the said small plots.

9. In the case of Administrator General of West Bengal Vs. Collector, Varanasi, , It has been held that the prices fetched for small plots cannot form safe basis for valuation of large tracts of land as the two are not comparable properties. However, it has also been observed therein that the principle that evidence of market value of sales of small developed plots is not a safe guide in valuing large extents of land has to be understood in its proper perspective. It has been further observed therein that:

The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does admit of and is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical lay-out could with justification be adopted, then in valuing such small, laid-outs sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civic amenities; expenses of development of the sites by laying-out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the price; the profits on the venture etc. are to be made.

10. In the case of Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, various factors have been considered and the Supreme Court has mentioned plus factors and minus factors in the said judgment as below:

Plus factors

Minus factors

1. smallness of size.

1. largeness of area.

2. proximity of a road.
2. situation in the interior at a distance from the road.
3. frontage on a road.
3. narrow strip of land with very small frontage compared to depth.
4. nearness to developed area.
4. lower level requiring the depressed portion to be filled up.
5. regular shape.
5. remoteness from developed locality.
6. levelvis-a-vis land under acquisition.
6. some special disadvantageous factor which would deter a purchaser.
7. special value for an owner of an adjoining property to whom it may have some very special advantage.

It has been held in that case that the market value of the land under acquisition has thereafter to be deducted by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

It has been further held in that case as under:

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500/- to 1000/- sq. yds. cannot be compared with a large tract or block of land of say 10000 sq. yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx, between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

11. Though, the trial Court has considered Ex. A2 as a relevant instance, it has not considered the question of facts. Counsel for the State argued that it cannot be said to be a comparable sale instance. So far as Ex. A2 is concerned, the total land was 47 kanals 16 marlas. Out of that 1/4th share of Devinder i.e. 11 kanals 19 marlas has been sold and when this is the position, the question that is

required to be considered is whether a cut should be granted or not. Ordinarily if a land that was sold was 11 kanals 19 marlas without partition, the question of cut could have been considered. However, from the document Ex. A2, it is clear that out of the whole land of 47 kanals 16 marlas, 1/4th share of the vendor has been sold; that means the land has still to be partitioned. It is not shown that the other co-sharers also sold the land at the very time. This being so, the purchaser will have to go for partition and the ancillary proceedings with all its necessities. This being so, I do not find it proper to hold that as a small share in the land, measuring 47 kanals 16 marlas, was sold, a cut should be imposed.

Therefore, taking the sale instance Ex. A2 as relevant for the purpose of assessment of value of the land in question, the sale price is held to be Rs. 20,000/- for 11 kanals 19 marlas. Therefore, the value of the acquired land is assessed at Rs. 71213.39.

12. In addition to the above, it was argued that solatium was awarded @ 15% and the interest was awarded @ 6%.

13. Learned Counsel for the Appellant has relied on the case of Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, . It has been held therein that the amended provisions of Section 23, Sub-section (2) and Section 28 of the Act would apply in determining the amount of compensation where proceedings are either pending on the date of commencement of amending Act or are filed subsequent to the date, whether before the Collector or before the Court or before the High Court or the Supreme Court. In that case, the Supreme Court awarded solatium at the rate of 30% and interest at the rate of 9% on the enhanced amount of compensation. In this case also, solatium is enhanced to 30% and the rate of interest is enhanced to 9% per annum. The compensation is enhanced to the above extent.

R.F.A. No. 4 of 1982 filed by the claimants stands allowed to the above extent.

R.F.A. No. 30 of 1982 is dismissed.