(2012) 07 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1777 of 1989 (O and M)

Smt. Krishna and Another — APPELLANT

Vs

The Land Acquisition Collector, Dasuya and Others — RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (2012) 4 RCR(Civil) 253

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Nitin Sarin for Mr. M.L. Sarin, in R.F.A. Nos. 2002 and 2003 of 1989 and Mr. O.P. Hoshiarpuria in R.F.A. No. 1777 of 1989, for the Appellant; K.S. Cheema, Advocate in R.F.A. No. 2002 of 1989, for the Respondent

Final Decision : Allowed

Judgement

K. Kantian, J.—All the cases relate to a claim for enhancement of compensation for acquisition of land under the Land Acquisition Act. The acquisition had been for the purpose of laying down a railway industrial siding. The total extent of land that was acquired through a notification issued u/s 4(1) issued on 26.10.1983 was an extent of 79 kanals 17 marlas of land in Village Dalla, Tehsil Dasuya, District Hoshiarpur. The Land Acquisition Collector assessed the compensation at Rs. 705/- per marla by award dated 29.10.1985. An area measuring 39 kanals of land was claimed by Dr. Sohan Lal and Parshotam Lai. Both Sohan Lal and Parshotam Lal died and the respective legal representatives had been prosecuting the case. RFA No. 1777 of 1989 is a claim for enhancement by the legal representatives of Parshotam Lal. RFA No. 2002 of 1989 is the appeal filed by the legal representatives of Sohan Lal. Another extent of land measuring 32 kanals 17 marlas was owned by Jagjit Lal and the legal representatives of Jagjit Lal are the appellants in RFA No. 2003 of 1989. It is not in dispute that the entire extent of land fell within the (sic) limit. They formed part of one single block.

The claimants relied upon three instances of sales whose value of the property dealt with averaged at Rs. 2,514/- per marla. The Collector, however, found that these instances were in respect of small pieces of land relating to abadi and, therefore, could not be taken into consideration. The Collector, however, recognized the immense potentiality of the lands to be used for residential and commercial purposes, having particular regard to the fact that all the lands were situate within the municipal limits. The sale deeds which had the subject of consideration were tabulated by the Reference Court as under:-

3. They could be immediately noticed to be properties situate in small parcels of land. The landowners'' property were in excess of 4 acres, whereas the instances of sales were for small plots of land. The State, on the other hand, relied on two transactions exhibited as R-1 and R-2 measuring 7 kanals 2 marlas on 11.10.1983 for Rs. 20,000/- and another sale under R-2 in respect of 1 = marlas on 20.10.1983 for Rs. 500/-. It rejected R-1 as ''ridiculously low'' and R-2 as a sham transaction by a father to his son. Amongst the instances provided by the claimants, P-3 was rejected on the ground that it was more than 1 = years after 4(1) notification and took only the transactions under P-4, P-5 and P-6 as providing any basis for consideration. Finding that P-6 sale deed dealt with the property at Rs. 1,500/- per marla, the Reference Court took the same as the value for the property. Since the properties acquired from the claimants were agricultural lands not in any approved locality, the Reference Court provided for a l/3rd cut and took the value of the property at Rs. 1,000/- per marla.

4. As regards the consideration of sales for small extents themselves as exemplars for determination of valuation of the property for larger extent is concerned, there cannot be virtually any serious objection to, if no sales are available in respect of large extents of lands. The only caution that has to be applied in such cases is suitable discount has to be provided. This has been so held in Rishi Pal Singh and Others Vs. Meerut Development Authority and Another, While considering the issue of deduction, the Supreme Court has held in Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others, that the percentage of deduction will invariably depend also on the purpose for which the land is acquired. The Court said that where the land is acquired for laying railway line, the question of development of land would not arise. It is not as if any portion of the property is going to be set apart for roads or as open land. The entire track of land that was acquired would be used for railway line and, therefore, the deduction may not be necessary. The only modification which must obtain in this case is that the deduction which the Reference Court made as l/3rd would require to be modified and the value of the property as established from taking P-6 as an exemplar would have to be maintained and the value of the property has to be taken as Rs. 1,500/- per marla instead of Rs. 1,000/- as taken by the court below.

5. The learned counsel for the appellant would argue that the property of the landowners have been literally vivisected in exact half with a railway line cutting across there respective extent of holdings. The learned counsel would argue that

where there is a severance of the property that makes it impossible or difficult for them to irrigate and cultivate the left out portion of the land, the Court could award damages on account of such severance at 10% for the un-acquired land. The learned counsel would refer me to the decision of this Court in Dalip Singh (deceased) through LRs and others v. State of Punjab and another, 2010(2) PLR 664, where the Court had provided for 30% of the value of the acquired land as damages for severance. A similar approach had been made even earlier in State of Punjab through Collector Mukerian Hydel Channel Project, Talwara v. Amar Nath and others, 1988 LACC 310, where the Court had provided for 50% of the market value as severance charges. The provision for severance charges will have to be always understood in the context of how the acquisition impacts the rest of the holdings. It has to immediately grapple with facts as to where exactly are the remaining extent of properties and how the inconvenience is perceived and experienced by the respective landowners.

6. I have gone through the claims made by the parties as well as the grounds urged in appeal. I find, there is absolutely no reference to any severance of land in the claims made by the landowners which are the subject of appeals in RFA Nos. 1777 and 2002 of 1989. However, this has been specifically adverted to in the grounds urged by the landowner in the property which is the subject of appeal in RFA No. 2003 of 1989. It is specifically averred that the acquisition has left the remaining extent of 38 acres unreachable except through a circuitous route that would require the appellants to cover a distance for about 8 kilometers to reach their land from their house. There is no uniform application of principle as to what should be the extent of damages that could be awarded towards severance. Where the property acquired is a large chunk of land that makes it impossible for an easy access to the land on either side of the property acquired, there could be a justification for a provision for a higher value for severance, but where the property acquired is for laying a railway line or a road, the existence of road or the railway line itself could be a cause for improving the value of the property which is retained. The Supreme Court in Adusumilli Gopalakrishna Vs. Special Deputy Collector (Land Acquisition), awarded Rs. 1,000/- as damages while affording a compensation of Rs. 20,000/- per acre for a land. In Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, , the acquisition had been made for laying a road. The Supreme Court was not prepared to accept a claim for damages for severance because the laying of road itself was not found to cause any prejudice to the party. The provision of severance was specially dealt with in The Manipur Tea Co. Pvt. Ltd. Vs. Collector of Hailakandi, . The Supreme Court was dealing with the case of contiguity of a tea estate on one side and l/3rd on the other. The High Court in that case had provided for a lumpsum compensation of Rs. 2,3 6,000/- for the large tea estate for meeting the expenditure of bridging the land from one side to another and the same was found to be adequate and the Supreme Court did not find a reason to interfere with. I make a provision for Rs. 250/-per marla as likely damages for the severance of the property. This will apply only to the owner of the land which is the subject of

appeal in RFA No. 2003 of 1989.

7. All the respective awards of the courts below are modified providing for enhancement of compensation @ Rs. 1,500/-per marla for the cases which are the subject matter of RFA Nos. 1777 and 2002 of 1989 and for Rs. 1,750/-per marla in the case which is the subject of appeal in RFA No. 2003 of 1989. The enhanced compensation that this judgment provides for will enure to the benefit to the 1/4th extent representing the share of the tenant also. All the appeals are allowed to the above extent.