(2005) 05 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 657 of 1995

Smt. Malkiat Kaur	APPELLANT
Vs	
The State of Punjab and Another	RESPONDENT

Date of Decision : 11-05-2005

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 4

Citation : (2005) 141 PLR 177 : (2005) 3 RCR(Civil) 653

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Advocate : Vinod K. Kataria, Anand Kataria and A.S. Jatana, for the Appellant; Ashok Aggarwal, Additional Advocate Genenal, for the Respondent

Final Decision : Allowed

Judgement

Viney Mittal, J.—This order shall dispose of twenty eight appeals R.F.A. Nos. 567 of 1995, 57 of 1995, 64 of 1995, 56 of 1995, 1239 of 1995, 555 of 1995, 554 of 1995, 47 of 1995, 1244 of 1995, 65 of 1995, 61 of 1995, 60 of 1995, 191 of 1995, 45 of 1995, 62 of 1995, 466 of 1995, 48, 1995, 63 of 1995, 66 of 1995, 67 of 1995, 553 of 1995, 940 of 1995, 44 of 1995, 46 of 1995, 58 of 1995, 59 of 1995, 223 of 1995 and 49 of 1995 as all the appeals are directed against the common passed by the learned Additional District Judge.

2. Vide notification dated April 29, 1988 issued u/s 4 of the Land Acquisition Act, 1894 (for short, ''the Act'') (published on July 2, 1988) land measuring 124 acres, 1 kanal and 7 marlas was intended to be acquired for the purposes of establishing a sugar mill at Gurne Khurd. The aforesaid land was situated in two adjoining villages, namely, Budhlada and Gurne Khurd. Land measuring 106 acres, 6 kanals and 10 marlas was situated in village Budhlada, whereas, the remaining land measuring 17 acres, 2 kanals and 17 marlas was situated in village Gurne Khurd. Vide an award dated March 20, 1990, the Land Acquisition Collector classified the land in four categories. The market value was assessed for each category separately. For the land situated in Budhlada, Nehri land was

assessed at the rate of Rs. 22,028/- per acre, barani land at the rate of Rs. 14,545/- per acre, chahi land at the rate of Rs. 22,028/- per acre and gair mumkin land at the rate of Rs. 60,530/- per acre. For the land in village Gurne Khurd, Nehri land was assessed at the rate of Rs. 17,894/- per acre, whereas gair mumkin land was assessed at the rate of Rs. 25,600/- per acre. The claimant-land owners felt dis-satisfied and claimed a reference. The matter was accordingly referred u/s 18 of the Act.

3. Before the Reference Court, the parties led their respective evidence. On the basis of the aforesaid evidence, the reference court allowed 25% increase in per acre over and above the market value assessed by the Land Acquisition Collector. Accordingly, for the land acquired in Budhlada, Nehri and Chahi land was assessed at the rate of Rs. 27,528/-per acre, barani land was assessed at the rate of Rs. 18,180/- per acre and gair mumkin land was assessed at the rate of Rs. 75,640/- per acre. Similarly acquired land in Gurne Khurd was also given similar increase and accordingly Nehri land in the aforesaid village was assessed at the rate of Rs. 22,480/- per acre, whereas, gair mumkin land was assessed at the rate of Rs. 28,000/- per acre. The claimant-land owners have still remained dis-satisfied and have approached this Court through the present appeals.

4. I have heard the learned counsel for the appellants and Shri Ashok Aggarwal, the learned Additional Advocate General, Punjab and with their assistance have also gone through the records of the case.

5. The learned counsel for the appellants have vehemently argued that the assessment of the market value made by the learned Additional District Judge was wholly inadequate and contrary to the record. It has been argued that there are various sale instance produced by the claimant-land owners which had not been taken into consideration. It has further been argued that as a matter of fact the land was situated at Budhlada-Bhikhi-Sunam road where a large number of petrol pumps, shellers, godowns etc. were in existence, therefore, the acquired land had a great potential for urban development and accordingly the compensation awarded by the learned Additional District Judge was not reflective of the market value of the acquired land.

6. On the other hand, Shri Ashok Aggarwal, the learned Additional Advocate General, Punjab has contested the aforesaid arguments raised by the learned counsel for the appellants. Shri Aggarwal has argued that the compensation assessed by the reference court was as per the evidence led by the parties, and, therefore, there was no scope for further enhancement of the compensation.

7. I have duly considered the rival contentions of the learned counsel for the parties and have also gone through the records of the case. A copy of the aks latha Ex.R-5 and the site plan available on the record points out towards the location of the land. It is apparent from the aforesaid site plan that the acquired land is situated at Budhlada-Bhikhi-Sunam road. Further the statement of RW-1 Gurmail Singh, Patwari Halqa who had prepared the map Ex.P-4 has admitted

that the acquired land is situated on the aforesaid main road where petrol pumps, shelters, godowns etc. are in existence. Although the aforesaid witness has also stated that the acquired land was not within the municipal limits but the said fact alone cannot be taken to mean that the acquired land had any lessor potential because of it being outside the municipal limits. When the large number of commercial establishments, as noticed above, had come in the vicinity of the acquired land then the acquired land itself could be taken to be of a very high potential.

8. The learned counsel for the appellants have placed reliance on various sale instances, namely, Ex.A-5 to Ex.A-9. On the basis of the aforesaid sale instances, it has been argued that the acquired land was also liable to be assessed on the basis of the sale consideration reflected in the said sale deeds. Ex.A-5 is the sale deed dated July 12, 1988 whereby 9 kanals and 16 marlas of land was sold at the rate of Rs. 1,37,600/- per acre. Ex.A-6 is the sale deed pertaining to 56 kanals of land whereby on September 8, 1983 Market Committee Budhlada had purchased the aforesaid land at the rate of Rs. 1,40,000/- per acre. Ex.A-7 pertains to the sale of 8 marlas of land on July 5, 1988 for a consideration of Rs. 17,500/-. Through Ex.A-8, 1 kanal of land was sold on February 4, 1988 for Rs. 30,000/- i.e. at the rate of Rs. 2,40,000/- per acre. Similarly, Ex.A-9 is the sale deed dated July 5, 1988 whereby 10 marlas of land was sold for Rs. 21,500/-. From the perusal of the aforesaid sale deeds, it is apparent that Ex.A-7 and A-9 pertain to sale of very small plots of land. Similarly, Ex.A-8 pertains to the sale of only 1 kanal of land. However, Ex.A-5 pertains to the sale of 9 kanals 16 marlas of land at the rate of Rs. 1,37,600/- per acre. Notification u/s 4 of the Act in the present appeals was issued on April 29, 1988. As noticed above, same was published on July 2, 1988. Therefore, the relevant date for determining the market value is July 2, 1988. Ex.A-5 was itself executed almost within a week of the publication of the notification. The same would definitely reflect a proper estimation of the market value of the acquired land. However, the best piece of evidence which should be relied upon for the assessment of the market value is Ex.A-6. Through the aforesaid sale deed, 56 kanals of land situated in Budhlada itself was purchased by Market Committee on September 8, 1983 at the rate of Rs. 1,40,000/- per acre. The said sale instance has been ignored by the learned reference court merely on account of the fact the said sale deed was an old one and a period of 5 years had elapsed since then. However, in my opinion, the aforesaid fact cannot be made to be a ground to reject the sale deed. On the other hand, it would only add authenticity to the transaction. Another fact which shows that the sale was authentic and the said price was the real market price of the said purchased land, is that the land was purchased by the Market Committee.

9. Shri Ashok Aggrawal, the learned Additional Advocate General Punjab has argued that the said land purchased by the Market Committee was having advantageous position vis-a-vis the acquired land, therefore, the said instance could not be relied upon by the appellants to claim a similar value.

10. I have duly considered the aforesaid contention also. From the perusal of site plan and the map available on the record it is clear that although there is some distance between the acquired land and the aforesaid land covered under the sale deed Ex.A-6 but the fact remains that a period of nearly 5 years had elapsed between the date of said sale and the date of the present notification. Accordingly, it can very well be said that whatever advantage the said land had because of its proximity to the city stood balanced by the passage of time upto the date of notification. It is also apparent that there was a rising trend in prices in the area, as is reflected from the various sale deeds available on the record.

11. While making the assessment of the market value for the acquired land it may also be noticed that since it has been held by me that the entire acquired land had the potential of urbanisation, therefore, it was not proper for the Land Acquisition Collector as well as the reference court to have categorised the acquired land in various categories. The entire acquired land was thus liable to be assessed at the same uniform rate. Accordingly, taking into consideration Ex.A-5, Ex.A-6 and Ex.A-7, I find that the acquired land is liable to be assessed at the rate of Rs. 1,25,000/- per acre.

12. Accordingly, the present appeals are partly allowed and it is held that the claimant-land owners would be entitled to the compensation of Rs. 1,25,000/- per acre for their entire acquired land. Besides the aforesaid compensation, the claimant-land owners would also be entitled to the statutory benefits as per the amended provisions of the Act. The claimant-land owners shall also be entitled to proportionate costs.