
(1980) 03 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No 187 of 1972

Smt. Narinder Kaur

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 21-03-1980

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (1980) 03 P&H CK 0021

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : H.L. Sarin and Mr. M.L. Sarin, for the Appellant; J.S. Wasu, A.G. Pb. and Mr. S.K. Sayal, A.A.G. Pb., for the Respondent

Judgement

I.S. Tiwana, J.—This judgment of mine would dispose of R.F As Nos. 187 and 188 of 1972 as these both pertain to the acquisition of Appellant's land situated near the railway station of the city of Nabha. The first notification u/s 4 of the Land Acquisition Act (hereinafter referred to as the Act) with regard to the acquisition of 42 Kanals and 7 Marias of land was published on November 2, 1948(sic) The second such notification for the acquisition of the adjoining 35 Kanals and 1 Maria was issued on September 22, 1969. The acquisition was effected for the purposes of Food Corporation of India for the construction of godowns. Award with regard to the first acquisition was announced by the Collector on January 1971 fixing the market price of the acquired land at Rs 6250/- per Kanal or Rs. 50,000/ per Acre. For the second acquisition, the Collector determined the market price of the land at the same rate, that is Rs 6250/- per Kanal, vide his award dated December 5, 1969 As a result of the references sought by the claimant Appellant, the Additional District Judge Patiala, vide his two judgments dated April 29, 1972, while affirming the compensation with regard to the market value of the land acquired, allowed Rs 5000/- as compensation for the severance of the Appellants' stand so far as the first acquisition is concerned and Rs 8000 for the second acquisition on similar account. The Appellant, still not feeling satisfied with this award, has filed these two appeals

2. So far as the question of determination of the fair market price of the acquired land is concerned. I find that the learned Counsel for the Appellant has not much to say in either of these two appeals. Identical type of evidence has been led in both the cases. After weighing the evidence relating to the various sale transactions produced and proved on behalf of the parties, the lower Court found only two mutations Nos. 350 and 2349 of some relevance and discarded the rest of the evidence produced on either side. These two mutations relate to the sale of 10 Marlas and 12 Marlas of land on February 28, 1969 at the rate of Rs. 10,000(sic)/- per Kanal. As these transactions related to tiny or small areas, the Court further did not choose to make these as the sole criteria for the determination of the market value of the acquired land. Finding no other evidence of any weight having been produced by the claimant Appellant the Court affirmed the award of the Collector. The learned Counsel for the Appellant, after taking me through the evidence, has not been able to show me any infirmity in the approach and the conclusion recorded by the lower Court. Undoubtedly the sale of small and insignificant areas could not be made the basis for the determination of the market value of 77 Kanals and 8 Marlas of land as is contended by the learned Counsel for the Appellant.

3. The learned Counsel next contends that the compensation for the second acquisition should have been allowed at an enhanced rate keeping in view the ever rising trend in the price of immovable property. According to the counsel, the area acquired is situated at a vantage point on the main road near the railway station where some other constructions, such as cotton market and cotton ginning mill had come up before the date of acquisition. The learned Counsel, however, failed to point out any convincing evidence to show that as a matter of fact there was any appreciable increase in the price of land in the locality within the time lag of about 10 1/2 months that intervened between the two notifications. In this view of the matter, I do not find any substance so far as the claim of the Appellant relating to the market price of the acquired land is concerned.

4. The learned Counsel also submits that the learned lower Court has hardly awarded any compensation for the severance of the two pieces of land caused by the two acquisitions. As a result of the first acquisition, an area measuring 12 Kanals and 17 Marlas has been rendered completely inaccessible. Similarly an area measuring 40(sic) Kanals and 10 Marlas has been left with no approach as a result of the second acquisition. This factual position is very much clear from the plans Exhibit P. 1 produced in these cases. Complete frontage of the land along the main road has been acquired. 12 Kanals 17 Marlas of land has been left in the form of a triangle bounded by the railway track, Ganda Nala and the acquired land. It is in evidence that this Ganda Nala (sullage water drain) is about six feet deep and beyond that lies the land of other proprietors, similarly the other land of the Appellant which again is left in the form of a triangle and lies across the Ganda Nala behind the area acquired through the second notification is also left without any approach. On two sides it is bounded by the Ganda Nala and on the

third, by the land of the other proprietors. As would be apparent from the plans, the total area of the Appellant lying between the main road and the Ganda Nala has been acquired through these two notifications. The only link between these two pieces, that is, unacquired and acquired land was a bridge constructed by the Appellant over the Ganda Nala. With the second acquisition, the approach to the bridge is gone. This has rendered the unacquired area completely unapproachable. The submission of the learned Counsel for the State that because of the existence of the Ganda Nala between the acquired and the unacquired area there is no question of any severance of the land of the Appellant, does not merit any serious consideration. It is beyond dispute that both the pieces of land, though not adjoining, were owned by the same person, that is, the Appellant and were so near to each other and so situated that the possession and control of each gave value and utility to the other. So both the pieces of land, that is, the one acquired and the other left out, have to be treated as one piece for purposes of determining compensation. The learned Counsel after realising the factual position and finding it impossible to dislodge the findings of the lower Court in this regard, even sought two adjournments to bring round his clients to provide approach to the unacquired land of the Appellant through the acquired land. Ultimately he expressed his inability to bring round his clients to such a solution with the submission that is a matter of fact a passage is available to the Appellant along the railway track for approaching her remainder piece of land measuring 12 Kanals and 17 Marlas. This factual position is neither supported by any evidence on the record nor is accepted by the counsel for the Appellant. Even the counsel for the Respondents is not sure as to whether such a passage is there in the revenue or the municipal records or that the Appellant or anybody can use that passage as a matter of right. His submission only is that pedestrians do pass along the railway line and so can the Appellants.

5. In view of the above factual position, I am convinced that the remaining area with the Appellant is virtually a total loss. So while determining the compensation or the market value of the acquired land, the damage sustained by the Appellant by taking of possession of the acquired land by the Respondents and severing her remainder land, has to be taken into account. The measure of damage by severance would undoubtedly be the diminution in the value of the unacquired land. In a somewhat similar situation, where the authorities sought to acquire 2 bighas and 2 chittaks of land of one Smt. Sarla Sundri Bose out of her total holding of 7 bighas, 2 cottahs and 3 chittaks and on her objection that the authorities must acquire the entire land as the same formed a house or building as described in Section 49, the Calcutta High Court in *Sarat Chandra Bose v. The Secretary of State for India in Council* and Ors. 10 Calcutta Weekly Notes 250, observed that far as the land is concerned it is under the circumstances of very little importance whether the whole 7 bighas, odd cottahs be held to form a house within the meaning of Section 19(sic) of the Act so as to render it obligatory on the Government to acquire the whole of it, for even if it be not held

to form a house with its appurtenances there is no doubt on the evidence that after the part acquired has been cut off from the rest of the land the balance is useless for residential purposes, and therefore that the compensation on account of severance and on account of the property being prejudicially affected by the acquisition of a part of it would with the compensation for the portion acquired not be less than the value of the whole of the land" Thus I feel that it was in the interest of the Respondents themselves to acquire the whole of the land of the Appellant than a part. Anyhow if they have not chosen to do that, the Appellant certainly is entitled to at least 50% of the market price of the unacquired land on account of damages of severance of her land. I have put the damages at 50% for the reason that the title of the unacquired land still remains with the Appellant though it is in evidence that she cannot make use of it and from the date of the taking of the possession of the acquired land, the said remainder land could not even be cultivated.

6. In this view of the matter, the Appellant would be entitled to compensation of the unacquired pieces of land measuring 12 Kanals 17 Marlas and 40 Kanals, 10 Marlas, at the rate of Rs. 3125/- per Kanal, that is Rs. 2000(sic)/- per Acre. In addition to this she would also be entitled to the statutory solatium and interest at the rate of 15% and 6% respectively on the enhanced amount of compensation. This, however, is subject to the claim made by her in these appeals and the Court fee paid thereon. She would also be entitled to the costs of these appeals.