(1983) 06 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : L.P.A. No. 706 of 1980

Smt. Savitri Devi — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 03-06-1983

Acts Referred:
Land Acquisition Act, 1894 — Section 9

Citation : (1983) 06 P&H CK 0002

Hon'ble Judges : S.S. Sandhawalia, J;S.S. Kang, J

Bench : Division Bench

Advocate : H.L. Sarin, with Mr. M.L. Sarin, for the Appellant; Harbhagwan Singh, A.G. (Haryana) with Mr. B.L. Bishnoi, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

Sukhdev Singh Kang, J.—This judgment will dispose of Letters Patent Appeals Nos. 706 of 1980, 120, 131, 132, 314, 325, 326, 450 and 451 of 1981, because they raise common questions of law. The Learned Counsel for the parties are agreed that these appeals be heard and disposed of together.

2. Since the controversy between the parties to these appeals is confined to only one point, namely quantum of compensation for loss of earnings of the Appellants due to acquisition of land, it will suffice to recount briefly the facts bearing upon this issue.

3. The Appellants in these appeals had set up poultry farms on the outskirts of Union Territory, Chandigarh, in the areas falling within the States of Punjab and Haryana. Some of the Appellants bad set up their farms on their own lands while others had taken lands on lease to start this business.

4. In 1971, the State of Punjab acquired vast tracts of land adjoining the Union Territory of Chandigarh for setting up the Urban Estate of Sahibzada Ajit Singh Nagar (popularly known as "Mohali"). The lands over which the Appellants other than Smt. Savitri Devi, Appellant, had set up their poultry farms were also

acquired In compliance with the notices, issued u/s 9 of the Land Acquisition Act (for short "the Act") the Appellants-claimants filed claim applications for compensation. The Land Acquisition Collector (for short "the Collector,'') awarded compensation for the acquired land on the 24th of March, 1972. However, he determined the compensation for poultry sheds and godowns, structures et-cetera by an award dated the 29th of March, 1973. The Collector came to the conclusion that the Appellants derived an income of Rs. 1/- per bird per month from the poultry business. Consequently he allowed them compensation for loss of earnings, equivalent to the income of one month at the above mentioned rate.

5. The claimants were not satisfied with the award of the Collector. They died applications u/s 18 of the Act. The District Judge, Rupnagar, vide his judgment dated the 24th of June, 1977, awarded the claimants compensation for the loss of earnings equivalent to their income for 25 months at the rate of Rs. 1/- per bird per month.

6. The State of Haryana also, in the year 1973, acquired land on the periphery of Union Territory of Chandigarh, for setting up the satellite township of Punchkula. The land on which Smt. Savitri Devi, the Appellant in Letters Patent Appeal No. 706 of 1980, had set up her poultry farm was acquired for this purpose. Neither the Collector nor the learned Additional District Judge awarded any compensation to the claimants for loss of earnings. The Appellants from both the States of Punjab and Haryana tiled appeals against the judgments of the learned District Judge, Rupnagar and the learned Additional District Judge, Ambala. Some claimants from Punjab filed cross-objections in the State Appeals. A learned Single Judge of this Court allowed the appeals filed on behalf of the State of Punjab and the claimants from Haryana. He decreased the compensation awarded to the claimants of Punjab from 24 months'' income to six months'' income. Similarly, he allowed compensation to the claimants from Haryana for the loss of their earnings at the same rate and to the same extent. He dismissed the appeals and cross-objections filed by the claimants from Punjab. Feeling aggrieved by the judgment of the learned Single Judge. Smt. Savitri Devi, a claimant from Haryana, filed Letters Patent Appeal No. 706 of 1980, whereas the remaining appeals have been filed by the claimants from Punjab.

7. The loss of income is a factor to be taken into consideration in fixing the market value of land itself which the owner is to get under clause Fourthly of Section 23 of the Act. Loss of earnings is to be calculated on the basis of what the earnings would be if the trade or business were pursued at a particular locality. Damage for loss of business is granted when person pursuing business is compelled to give it up or to carry it on else where. The compensation for the land and sheds, structures and godowns et cetera is not the same thing as compensation for the loss of business or even of the poultry farm with its actual and potential income value. The income, which the claimant derives from his poultry is not simply the product of the poultry birds not to speak of the fixtures alone. It is also the product of labour, skill etcetera. The loss of income is

certainly not compensation by paying for the lands, sheds and structures alone.

8. It is not disputed before us that the Appellant-claimants are entitled to compensation for the loss of earnings The Respondents have also not contested the findings of the learned Single Judge that the Appellants were deriving income of Rs. 1/- per bird per month out of poultry business. As noticed earlier, the controversy is narrowed down to the period for which compensation for loss of earnings should be computed.

9. The learned Single Judge reduced the compensation from 25 months to 6 months in Punjab cases on the ground that the clain ants had not averred in their applications u/s 18 of the Act that they were unable to shift their business elsewhere because no suitable land for that purpose was available. They had not claimed any issue on the ground that since no land was available in the vicinity, therefore, they could not carry on the poultry business. It was not agrued before the learned Distt Judge that the claimants were entitled to compensation for unexpired period of lease or for any specific number of years on the ground that no suitable alternative land was available for carrying on the business and for that reason they had to close down their poultry business. In the absence of specific pleas by the claimants, their evidence on this aspect of the case could not be taken into account. Even otherwise, the statements of the claimants made in their own favour, which were not very definite and specific, could not be relied upon.

10. The Learned Counsel for the Appellants have taken us through the claims filed by the various claimants u/s 9(1) of the Act and the applications moved by them u/s 18 of the Act seeking references. In the claim application of Smt. Randhir Kaur, Appellant, in Letters Patent Appeal No. 326 of 1981, it has been specifically mentioned:

The location of site is above all in the business and when this site is acquired, I am further bound to suffer, because I shall not be having any equally prominent and suitable business site available to me. She has further stated that the loss of business is in addition to the loss of sheds et cetera. She had made a prayer that she should be allotted an alternative site by the Government.

11. In her replication u/s 18 of the Act she has made a claim of compensation on the basis of capitalised value for 20 years. She further claimed that she had not been given compensation for change of business. To the similar effect are the claims in applications filed by other claimants. So, it is not correct to say that the claimants had not stated that no other suitable alternative land was available for setting up poultry business They had specifically claimed compensation for the loss of business. It cannot, therefore, be legitimately argued by the Respondents that the Appellants had not staked claims for loss of business in their claim applications and reference applications. All the Appellants have while appearing as witnesses, stated that they had to close the poultry business because no alternative suitable land for the purpose was available. These statements cannot

be excluded from consideration.

12. Section 18 of the Act provides that any person interested in the acquired lands and who has not accepted the award can make an application to the Collector requesting him that the matter regarding compensation be referred to the Court. He can raise objections regarding four things.

(i) Measurements of the acquired land;

(ii) Amount of compensation awarded by the collector;

(iii) Persons to whom the compensation is payable; and

(iv) The apportionment of compensation among the persons interested.

13. It will be proper to read Section 18 of the Act at this stage.

The relevant portions, thereof are reproduced as under:

S. 18(1). Any person interested who has not accepted the award may, by written application to the Collector, require that the mutter be referred by the Collector for the determination of the Court whether this objection be to the measurement of the land, the amount of Compensation, the persons to whom it is payable or the apportionment of the compensation amount, the persons interested;

(2) The application shall state the grounds on which objection to the award is taken.

It is apparent from the language employed in this section that any person dissatisfied with the award of the Collector can raise objections thereto on the above mentioned four grounds. The objections could not be on any other ground. The claimant has to state whether he raises the objection on all or any one or more of the four grounds mentioned in Sub-section (2) of Section 18 of the Act. The claimant is not required to give any further grounds or particulars thereof in support of the objections. This view finds support from a Division Bench decision of Bombay High Court in Provident Investment Company Ltd. v. Land Acquisition Collector, Bombay A.I. Rule 1935 Bom. 319, wherein it was observed:

An applicant can require a matter to be referred to the Court whether his objection be on any of the four grounds mentioned in Section 18(1). He has to state whether his objection is based on all or any one or more of the four grounds mentioned in Sub-section (1). Where the applicant has stated that he questioned the amount of compensation, it may be safely inferred that the suggestion was that the amount of compensation was too low and that he need not give detailed grounds on which he bases his objection that the compensation is too low." The claimants were not thus required to mention in the application u/s 18 of the Act that they were unable to shift their business else-where as no suitable land for this purpose was available. This is not ground on which objection to the compensation awarded could be taken. Such a statement will be evidence in support of the objection to compensation awarded. So, the statements of the claimants on this aspect of the case cannot be excluded.

14. There is neither any rule of law nor of prudence that the statements of the parties to the litigation are to be ignored. A party to a litigation is as good or bad a witness as anyone else. His statement has to be evaluated in accordance with the well-settled principles for appreciation of evidence devised by the Courts.

We have perused the statements of claimants on this aspect of the matter and do not find any infirmity therein. The Respondents have not led any evidence to rebut the statements made by the claimants.

15. The Learned Counsel for the Respondents tried to make capital out of a stray sentence in the statement of Lt. Col. Jhalman Singh (Letters Patent Appeal No. 314 of 1981). In cross-examination he stated that he had been able to shift his poultry business by taking some land on lease in the Union Trrritory. Firstly, the witness has stated categorically that the land had been taken on lease temporarily. Secondly, it has not been brought out as to when this land was taken and poultry business was shifted to that place. Similarly, their emphasis on the statement of Jagmohan Mahajan, a claimant from Haryana, that he had also been able to shift his business to a new site, is misplaced. The witness had stated that he had shifted only a part of his stock to the new premises. Both these witnesses do not say that they had started earning income immediately on shifting the business to the new sites. The statements of these two witnesses do not in any way detract from the unequivocal deposition of the other claimants.

16. It is a matter of common knowledge that poultry birds are a perishable commodity. When the farmers had to close their business all of a sudden, they were net left with any alternative accommodation to keep these birds. A lot of suitable space is needed to keep thousand and thousand of birds whose habitation had been taken over suddenly. In the very nature of things these could not be available buyers for such huge stocks. The poultry farmers must have been compelled to sell the birds as meat.

17. If the claimants have to start business afresh they had first to acquire suitable land for setting up poultry farms. The eggs are daily transported to the markets in Chandigarh. So, the land had to be by or near the road side. Electricity and water are necessary for the "health and the very existence of the poultry birds. Efficient poultry farms can be run only where these three facilities are available. It is not each and every piece of land that can be utilized for starting poultry business. Even after selecting the suitable sites, it may take a couple of months to construct the poultry sheds, godowns and other facilities for housing the birds. The perennial scarcity of building materials and other raw-materials is a factor to be taken into account. It can, therefore, safely be concluded that a poultry farmer will require at least six months to purchase or take on lease suitable land; arrange for electricity and water; construct the necessary sheds, structures, godowns, et cetera.

18. Shri Ravinder Singh Grewal, Deputy Director, poultry, Punjab Chandigarh,

had stated that depending upon the breed and strain, a one day old chicken would become mature and stary laying eggs after 150 180 days. It is thus clear that it takes about six months for the new chickens to start laying eggs. The poultry farmers would thus start getting income from the poultry business after the period of one year from the date of the possession of their previous poultry sheds et cetera The claimants are entitled to compensation equivalent to income for one year. So, it hardly makes any difference in these cases whether the Appellants were able to restart their business after acquiring suitable lands or they had closed the business for non-availability of land. The compensation has to be granted for loss of earnings for the period, which they will take to restart their poultry business and to receive income from the birds. This compensation is for the interregnum only. The claimants are not entitled to compensation on the basis of capitalised value for 20 years.

19. Since the compensation for loss of income is also part of compensation for the acquired land, the claimants shall be entitled to solatium at the rate of 15 per cent on the enhanced amount and interest on this amount at the rate of 6 percent per annum till the realization of the enhanced compensation.

20. Consequently, we allow these appeals (Letters Patent appeals Nos. 705 of 1980, 120, 131, 132, 314, 325, 326, 450 and 451 of 1981) and hold that the Appellants shall be entitled to compensation for loss of their earnings equal to income for 12 months at the rate of Rs. 1/- per bird per month. This will be subject to the Court Fee affixed by the Appellants.

21. The Respondents shall pay proportionate costs to the Appellants.

