(1999) 05 P&H CK 0108

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No''s. 4294 and 1160 of 1998

State of Haryana and Others APPELLANT

Vs

Meena Dua and Others RESPONDENT

Date of Decision : 27-05-1999

Acts Referred:
Land Acquisition Act, 1894 — Section 23

Citation : (2000) 124 PLR 99 : (2000) 1 RCR(Civil) 178

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : H.S. Hooda, A.G., O.P. Sharma and Ramesh Hooda, for the Appellant; M.S. Jain Vikas Jain, Adarsh Jain, Shailender Jain and L.K. Sinhal, for the Respondent

Judgement

Swatanter Kumar, J.—These two Regular First Appeals along with 235 Regular First Appeal Appeals arise from a common judgment of the learned Additional District Judge, Faridabad dated 15.12.1997. The learned Additional District Judge vide the impugned judgment answered 174 references which were referred to that Court by the Land Acquisition Collector u/s 18 of the Land Acquisition Act, hereinafter referred to as the Act. The Court had enhanced the compensation payable to the claimants for acquisition of their respective lands to Rs. 360/- per square yard in addition to 30% solatium and other statutory benefits. The State of Haryana preferred 173 appeal assailing the impugned judgment on the ground that excessive compensation had been awarded to the claimants and they pray for restoration of the award of the Collector. On the other hand, claimants are assailing the same judgment and pray for enhancement of compensation.

2. In order to examine the merits of the respective contentions raised on behalf of the parties it will be useful to refer to the necessary facts. State of Haryana issued a notification No. LAC(F)NTLA/90/13 dated 11.5.1990, u/s 4 of the Act, intending to acquire 185-74 acres of land falling in the revenue estate of village Ankhir and 13.19 acres falling in the revenue estate of village Fatehpur

Chandela. Because of a stay order passed by the High Court in Civil Writ Petitions No. 10152 of 1990, 4093 of 1992 and 2320 of 1994, certain lands were excluded from the acquisition and did not form part of the proceedings for acquisition before the learned Collector. The proceedings and the award related to acquisition of only 141.08 acres as that was the actual area. This land was acquired for a public purpose, namely development and utilisation of the land for residential and commercial purpose of Section 21-D, Faridabad.

3. The learned Land Acquisition Collector vide Award No. 2 dated 5.5.1993, upon following due process of law, awarded compensation at the rate of Rs. 3.50 lacs per acre for the land in addition to 30% solatium and other statutory benefits admissible under the Act. The compensation was separately awarded for structures or construction found on the acquired land in addition to awarding such compensation for trees, fruit trees and plants etc. on the acquired land. As the claimants were not satisfied with the amount of compensation awarded to them by the learned Land Acquisition Collector, they requested for referring of their applications to the learned District Judge, Faridabad, in pursuance to the provisions of Section 18 of the Act. 174 references were made by the Land Acquisition Collector.

4. The learned Additional District Judge, as already noticed, vide his judgment dated 15.12.1997, granted the following compensation for acquisition of the land while giving the reasoning as stated hereunden-

"As such the average of Ex P.5, P.22, P.24 and P.38 comes to Rs. 366/- per square yard. From the statements of petitioners, namely Radhey Shyam PW-14 and Raju Dadwani PW.13 read with lay out plans Ex.P.15 to P.21, it is evident that the acquired land is surrounded by various residential sectors, N.I.T. Faridabad commercial establishments and Badkhal Tourism Complex.

Keeping in view the location of the above land and the location and potential of the acquired land, I think it just to assess the market value of the acquired land at the rate of Rs. 360/- per square yard.

5. Various claimants had raised claims in relation to structures, trees, fruit trees, plants etc. which were dealt with by the learned Additional District Judge separately and they had been awarded compensation in that regard.

6. No grievance was made by any of the learned counsel appearing for the claimants or for the State in relation to compensation awarded on account of super-structures, trees, fruit trees, plants etc. Thus, this Court is primarily concerned whether a compensation of Rs. 360/- per square yard awarded to the claimants for acquisition of their respective lands is liable to be interfered with and if so, whether such compensation is liable to be enhanced or reduced as contended by the learned counsel appearing for the respective parties.

7. A bird eye view of the evidence on record shows that some of the claimants examined themselves as witnesses and also examined the Patwari. They proved

on record various documents including site plan Ex.P.20, brochures Ex.P.2, and Ex.P.4. No sale instances were either proved by the claimants nor they tendered them on record. They produced on record certain letters of allotment issued by HUDA as Ex.P.1, Ex.P.8 to Ex.P.10, Ex.P.23, Ex.P.24 and Ex.P.38 Based on this evidence documentary and oral, the claimants claim that the location and potential of the land justified grant of higher compensation to the claimants. The respondents produced on record Ex.R.1 to Ex.R.18, the sale instances and tendered two judgments in evidence Ex.R.19 and Ex.R.20. One witness was examined on behalf of the respondents.

8. The sale instances tendered in evidence by the respondents being Ex.R.1 to Ex. R.18 were rejected by the learned trial Court and were not taken into consideration. These sale instances cannot be taken into evidence as they are neither admissible nor could form reasonable basis for determining the fair market value of the land in question. Firstly, the vendor and vendee of either of these sale instances were not examined in Court. Even the officer from the revenue authorities was not called to prove the genuineness, sale consideration and authenticity of these sale instances. Secondly, the value indicated in all these sale instances happens to be lower to the compensation awarded by the learned Land Acquisition Collector in the present cases. The said value, therefore, could hardly be of any consequence as it would be hit by the provisions of Section 25 of the Act. In other words these sale instances cannot indicate a just and fair market value of the land in question at the time of notification and are liable to be rejected as irrelevant. Consequently, I have no hesitation in concurring with the view expressed by the learned Trial Court in this regard.

9. The claimants have not produced any sale instances on record and the sale instances proved by the respondents are not admissible. Therefore, the Court is left only with other documentary and oral evidence produced by the parties on record. As is clear from the judgment of the learned Trial Court that it has relied upon mainly on the price declared by Haryana Urban Development Authority in relation to the land around to the same place or in the sector just opposite to the acquired land. It is contended by the learned counsel for the claimants that keeping in view Ex.P.5 where HUDA had transferred in the year 1990 huge land to one of the State Corporations being Haryana State Industrial and Development Corporation, at the rate of Rs. 8.33 lacs per acre and Ex.P.8 where 9.9 acres of land falling in Section 21-C Part-II, HUDA had transferred to Housing Board at the rate of Rs. 198/- per square yard in the year 1986 and Ex.P.10 where the land was allotted by HUDA out of the acquired land to the allottees at the rate of Rs. 1131.27 per square meter (approximately Rs. 944/-per square yard). Even if the principle of deduction is applied as they were developed plots, the claimants would be entitled to get at least Rs. 600/700.00 per square yard for the acquired land.

10. It is also contended that as per Ex.P.22 a judgment of this Court in the case of State of Haryana v. Experts Dealers Development Association Limited, Regular

First Appeal No. 253 of 1992, they are entitled to enhancement. Vide this judgment the learned Single Judge of this Court had granted Rs. 337.20 per square yard to the claimants for the land measuring about 3.59 acres vide notification dated 30.7.1987, u/s 4 of the Act in village Mewla Maharajpur. As this compensation was granted in the year 1987, by adding an increase of at least 30% per year, they would be entitled to much higher amount of compensation as these instances are easily comparable instances for awarding of Compensation for the acquisition of the present land.

11. The learned counsel appearing for the State of Haryana vehemently opposed these arguments and contended that all the brochures and letters of allotment produced by the claimants cannot be taken into consideration. It is contended that they reflect the rate of developed plots where State has incurred heavy expenditure in mass development of the entire town. Further that the instances relate to different villages which have different location and potential. The value reflected in these letters and brochures is inclusive of other money spent by the State. In other words the price of the acquired land is very low and that component alone if at all can be looked into for this purpose.

12. The learned counsel for the State contended that no sale instances have been produced by the claimants. The other exhibited documents cannot be looked into for determining the amount of compensation payable to the claimants and as such the present case is case of ''no evidence'' as far as claimants are concerned. Therefore, the award of the Collector should be restored. In the alternative the learned counsel contended that at best Ex.R.19 and Ex. R.20 which are judgments of the Court could be taken into consideration where in relation to Sectors 45 and 21 of the same complex, compensation was awarded at the rate of Rs. 45/- per square yard. The learned counsel for the State also proved before this Court a statement showing the bifurcation of the amount per acre as indicated in the brochure and the element of land value even added with the element of interest is Rs. 5,99,480/-. This statement for the purposes of convenience has been marked and without prejudice to the rights of the claimants as mark ''X''.

13. The cumulative effect of the discussion aforestated is that from the side of the petitioners relevant evidence is Ex.P.2, Ex.P.4, Ex.P.5, Ex.P.8, Ex.P.10 and Ex.P.22 while from the side of the respondents the only evidence is Ex.R.19 and Ex.R.20.

14. Certainly there is no doubt that Ex.P.2 and Ex.P.4 are the brochures which give value of the lands situated around the acquired land in different sectors. They depict a high price even to the extent of more than Rs. 1,100/- per square yard. Both these documents demonstrate a very colourful picture of the lands located around the acquired land. Ex.P.10 is a document which relates to the same land and has been proved by PW.6 and the value of the land has been shown in the year 1990 as nearly Rs. 944/- per square yard. Sector 46 is stated to be adjacent to Sector 21-D and even there similar prices of the land for

allotment have been indicated. Heavy reliance was placed on Ex.P.5 and Ex.P.8 where the lands were allotted by HUDA to HSIDC and Housing Board in the year 1990 and 1986 at the rate of Rs. 8.33 lacs per acre and Rs. 198/- per square yard.

15. At this stage it will be appropriate to refer to the location and potential of the acquired land. Amongst others Ex.P.20 would be relevant to be referred. Ex.P.20 is the development plan for Faridabad controlled area and it shows the acquired land of both the villages Ankhir and Fatehpur Chandela. This land had been acquired for the development of Sector 21-D. The boundaries of these both villages are adjacent to each other and Ankhir has been shown near to Badkhal lake. The land acquired and shown by Ex.P.22 of village Mewla Maharajpur was acquired for Sector 46 which is adjacent to Sector 21-C which in turn is abutting Sector 21-D. The land was acquired in Sector 46 vide Ex.P.22 for the purposes of constructing a link road. Ex.P.19 is the lay out-cum-de-marcation plan of Sector 21-D. It does not show that it abuts any of the national highways or State highway. There is one road existing and is expected to be widened. Ex.P.10, further gives an indication as to what the township and this Sector would look into which is located in the north of Sector 21-A and 21-C.

16. PW.2 has stated that the acquired land is close to Badkhal lake which is also supported by Ex.P.20. PW.9 and PW.10 have further made statements which could throw some light in this regard. PW.9 has tendered Ex.P.22 on record and has stated that the acquired land is situated on Badkhal road connected to Delhi-Mathura road and Badkhal transit spot. According to him Suraj Kund road also abuts the acquired land. However, in his statement himself he stated that he is not able to show as to how far in Delhi-Mathura road from Sector 21-D. While PW.10 has made similar statement. He has stated that there is hardly any difference between the acquired land and the land forming subject matter of Ex.P.22. He contended that in Sector 21-A and Sector 21-B there are houses of V.I.Ps. According to him the land in question was better located than the lands covered in Sector 21-B of the same township and centre of Delhi was nearly 13 kilometres away. Hardly anything came out in the cross examination of these witnesses. In fact, the cross examination of these witnesses is negligible.

17. From the above evidence it is clear that the land in question forms part of a large township and certainly has potential. This location as such may not be adjacent to a national highway or a State highway but is surrounded by other sectors which if not already developed are under development and Ex. P.20 indicates that the land acquired is comparatively well located.

18. Ex.P.10 reflects value of developed plots on the basis of the rosy picture and to be developed by the State. This gives the value of Rs. 944/- to Rs. 1,131.27 per square yard. This value includes various components besides cost of land. Mark ''X'' shows that various components including resurfacing of the roads in coming five years, normal maintenance of roads, maintenance of public health services, element of interest value of the commercial and other common areas,

administrative charges, unforeseen expenses and expenses on common facilities. Ultimately the value that comes in relation to land cost factor is stated to be not more than Rs. 140/- per square yard. The learned counsel for the claimants contended that the Court could not look into mark ''X'' as no additional evidence can be produced at this stage nor there is any application for the same. The objection raised on behalf of the claimants to some extent is correct but these are the factors of common knowledge and even the brochure Ex.P.10 itself indicates the various expenditures which the State has to incur in giving facilities. The Court could even take judicial notice of this fact. The learned counsel for the State even could argue verbally that the brochure does indicate other elements than land cost element. In any case no prejudice is caused to the claimants because the Court has to determine a fair market value and these are the documents which are maintained in normal course of business and are the foundation of Ex.P.10 which itself was filed by the claimants. Even then I would only take note of one fact which is clear from Ex.P.10 itself that the value reflected in Ex.P.10 contains cost of other components besides land also.

19. Ex.P.5, P.8 and P.9 are the documents relied upon by the claimants to pray for enhancement of compensation. These are the documents which also show that the land was transferred to various public sectors on a given rate varying from Rs. 166/- to Rs. 205/- per square yard. These exhibits also show the value of the land when basic amenities was the responsibility of the HUDA itself and according to the learned counsel appearing for the State they would also not indicate fair market value of the land in question.

20. The basic emphasis has been placed by the claimants on Ex.P.22. The respondents can also hardly raise much dispute to this document inasmuch as Ex.P.22 is the judgment of the High Court passed in R.F.A. No. 253 of 1992 decided on 26.11.1993. Vide notification dated 30.7.1987 for the land acquired from the village Mewla Mahara-jpur for the construction of link road from Delhi-Mathura Road to Sector 46 of the Faridabad-Ballabgarh controlled area. Vide this judgment and in relation to this land the High Court had awarded a sum of Rs. 337.20 per square yard to the claimants. The learned Trial Court has also based its judgment on Ex.P.22, and as the present notification related to the year 11.5.1990, awarded the compensation at the rate of Rs. 360/- per square yard. The learned Judge computed the compensation on the basis of Ex.P.5, Ex.P.8, Ex.P.9, Ex.P.21, Ex.P.23 and Ex.P.38. I have already held that Ex.P.1 to Ex.P.38 do not reflect the relevant and fair market value of the acquired land (agricultural land) at the time of notification and as such cannot form the basis for such determination. The Court could at best look into Ex.P.5, Ex.P.8 and Ex.P.9.

21. Ex.P.5 is a document which relates to the year 1992 i.e. much subsequent to the date of acquisition and as such could not be looked into for determination of the land value in the year 1990. Ex.P.8 and Ex.P.9 are certainly prior to the date of notification and can indicate the market value of the acquired land. The average value of Ex.P.8 and P.9 comes to Rs. 202.06 and giving reasonable

increase to the claimants, as apparently the location and potential of the land as well as its value had gone up, as is clear from the evidence placed on record, it would be appropriate to grant compensation at the rate of Rs. 250/- per square yard to the claimants by applying some element of conjectures based on reasonable appreciation.

22. Ex.R.19 and Ex.R.20 are of no consequence and advantage to the respondents inasmuch as they are the awards of the Courts but for the notifications of 1988 and 1989 respectively i.e. prior to the date of acquisition in the present case. On the other hand, the value awarded therein to the claimants is even less than the value awarded by the Collector in the present case.

23. Ex.P.22 is the safest document which can be relied upon by this Court for determining the market value of the land in question. Though Ex.P.22 relates to the acquisition of the land in village Mewla Maharajpur, but the boundaries of the said village are abutting the acquired land in the present case. From the documentary evidence including the site plans Ex.P.16 to P. 18 read with oral statements of the witnesses, which remain unrebutted, it is clear that the land has, if not identical somewhat similar location and potential, as regards the land in village Mewla Maharajpur. The learned trial Court has also come to the same conclusion that the lands of these two villages are contiguous to each other.

24. Following the value of Ex.P.22 i.e. Rs. 337.20 for a notification dated 30.7.1987 and giving an increase for the period of three years and taking the same value which have been made the basis by the learned trial Court i.e. Rs. 353.20 per square yard, deduction will have to be made in accordance with the judgment of the Hon''ble Supreme Court of India in the case of K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acqusition Officer and another, , which it has been held as under:-

"It is then contended that 53% is not automatic but depends upon the nature of the development and the stage of development. We are inclined to agree with the learned counsel that the extent of deduction depends upon development need in each case. Under the Building Rules 53% of land is required to be left out. This Court has laid as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted. Where the development has already taken place, appropriate deduction needs to be made. In this case, we do not find any development had taken place as on that date. When we are determining compensation u/s 23(1), as on the date of notification u/s 4(1), we have to consider the situation of the land development, if already made, and other relevant facts as on the date."

Similarly, in the case of Ram Piari and another Vs. Land Acquisition Collecttor, Solan and others, , it was held as under:-

"However, the High Court has committed error in determining development charge @ 50%. It is seen that the lands are abutting the hill slopes and the national highway, though used as agricultural lands. This Court has considered the entire case law in a latest judgment in K. Vasundara Devi Vs. Revenue Divisional Officer (LAO), and held that the Court will be justified in deducting market value between 33-1/3% and 60% of the compensation based upon the facts in each case. On the facts of this case, we are of the opinion that deduction of 33-1/3% would meet the ends of justice."

Also, in the case of Hasanali Walimchand (Dead) by LRs. v. State of Maharashtra (I)1998 .A.C.C. 120, the Hon''ble Supreme Court held as under:-

"It, therefore, appears appropriate to us to set aside the impugned judgment and order of the High Court and restore and award made by the reference Court with the modification that out of the amount fixed by the reference Court @ Rs. 1/- per square foot, deduction to the extent of 50 paise per square foot, towards development charges, shall be made and compensation calculated on that basis and shall be paid to the claimants in accordance with their holdings, along with the statutory benefits of solatium and interest."

Such deduction has to be made keeping in view the huge acquisition, the nature of the land at the time of acquisition, State expenditure, other relevant factors and more particular/the proposed development of the area. Thus applying the deduction of 20%, net value payable to the claimants comes to Rs. 281.76 per square yard. (352.20 x 20% 1000 = 77.44. 352.20 - 77.40 = 281.76).

25. It will be appropriate and in consonance with the settled principles of law to award to the claimants compensation of a higher amount out of the two amounts arrived at by the Court on different basis.

26. From the above discussion, it is clear that fair and reasonable market value of the acquired land at the time of notification would be Rs. 281.76 per square yard from whichever angle the same is computed.

27. For the reasons afore-stated all the appeals preferred by the State are partly allowed while those filed by the claimants for enhancement are dismissed. The claimants would be entitled to compensation at the rate of Rs. 281.76 per square yard with all statutory benefits under Sections 23(1-A), 23(2) and 28 of the Act. There shall be no order as to costs.