
(2008) 08 P&H CK 0043
In the Punjab And Haryana At Chandigarh

State of Haryana and Others	Vs	APPELLANT
Nitya Nand and Another		RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 18, 23, 28, 4

Citation : (2009) 153 PLR 389 : (2009) 2 RCR(Civil) 245

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—This judgment shall dispose of R.F.A. Nos. 1527, 1531 of 2003, 281, 293 of 2003, 3840, 3848 of 2003, 404 of 2004. 1274,4284 of 2008 and 522, 542 of 2003 filed by the claimants/land owners and R.F.A. Nos. 4009, 4028 of 2003, 941-985 of 2003 filed by the State of Haryana as common questions of law and facts are involved in all the aforesaid appeals. However, the facts are being taken from R.F.A. No. 1527 of 2003 titled Rajpal and Ors. v. State of Haryana and Ors.

2. Vide notification dated 10.5.1999, issued u/s 4010 of Land Acquisition Act, 1894 (for short the "Act"), land measuring 14.35 acres and 14.03 acres situated at village Quatopuri Buzurg and Rohdai, District Rewari respectively, was acquired at public expenses for the public purpose namely for the construction of H.N. Rattanthal Link Channel from Km/RDO.000 to Km/RD 27.500, for the department of irrigation. The Collector vide his Award No. 31 dated 16.6.2000 pertaining to the land of village Quatopuri Buzurg assessed the market value @ Rs. 1.5 lac per acre for Chahi land, one lac per acre for Barani, Magda, Namoth and Bhud land and Rs. 1.5 lac per acre for Gair Mumkin whereas vide Award No. 28 dated 5.5.2000 pertaining to the land of Village Rohdai, market value was assessed (@ Rs. 2 lacs per acre for Chahi land, Rs. 1,30,000/- per acre for Gair Mumkin land and Rs. 1,50,000/- per acre for Magda Land.

3. In this bunch of cases there are some cases arising out of notification No. 1908/1-1. dated 7.5.1999 u/s 4(1) read with Section 17 and as published on 10.5.99 of the Act for acquisition of land measuring 10.46 acres situated in village Gazi Gopalpur Tehsil and District Rewari for the public purpose namely for construction of H.N. Rattanthal Link Channel by the Irrigation Department. The Collector assessed the market value (@ Rs. 1,70,000/- per acre for Chahi, Rs. 1,85,000/- per acre for Gair Mumkin vide his award No. 36 dated 14.11.2000.

4. Dissatisfied with the award of the Collector, objections u/s 18 of the Act were filed in respect of land of village Quatopuri Buzurg, Rohdai and Gazi Gopalpur. In the case of the acquisition of land of Village Quatopuri Buzurg, it was pleaded by the claimants that market value was not less than Rs. 6 lacs per acre. In the case of acquisition of land of village Rohdai, the appellants clamoured for fixation of market price not less than Rs. 20 lacs per acre. Similarly in the case of Village Gazi Gopalpur, it was claimed that less compensation has been awarded by the Collector without appreciating potential value of the acquired land.

5. In the matters pertaining to village Quatopuri Buzurg and Rohdai, the claimants/laid owners examined three witnesses namely PW1 Jaswant Singh Registration Clerk, office of Sub Registrar, Rewari, PW2 Jai Singh son of Chander Singh and PW3 Rajpal son of Hari Ram, one of the claimants. The following documents were also tendered into evidence:

1. Ex.P1 Copy of AK-sajra Kilabandi Moja Quatopuri Buzurg District Rewari.

2. Ex.P2 Copy of the Jamabandi for the year 1998-99 in respect of land falling in revenue estate of Village Quatopuri.

3. Ex.PW2/A Certified copy of the sale deed dated 15.10.97 vide which Jai Singh s/o Sri Chand and Chander so Phossa had sold land measuring 1 Kanal 10 Maria situated in V. Quatopuri in favour of Om Parkash s/o Keshu Ram and Surat Singh s/o Chunni Lal for a sum of Rs. 80,000/-.

4. Ex.PW2/B Certified copy of sale deed dated 29.12.97 vide which Jai Singh s/o Chander and Chande son of Phoosa had sold land measuring 1 kanal situated in revenue estate of V. Quatopuri Buzurg in favour of Ram Niwas and Ashok sons of Balbir Singh for a sale consideration of Rs. 80,000/-.

6. On the other band, the respondent State examined only one witness namely Tek Ram, SDO (Construction), Jhajjar as DW1 and also tendered into evidence Ex.D1. Copy of the sale deed dated 21.6.99 vide which land measuring 1 Kanal 2 Maria situated in the revenue estate of village Sumakhera was sold by Dharampal and others in favour of Smt. Lalbai for a sale consideration of Rs. 16,000/-.

7. The Reference Court took into account both oral as well as documentary evidence much less the sale deeds Ex.PW2/A and Ex.PW2/B which relate to same village Qua-topuri, executed about one and half year prior to the date of notification issued on 10.5.1999 and were found to be relevant and comparable

instance on the principle of assessment of the market value where willing purchaser would pay to willing seller for the property having due regard to existing condition with all its existing advantages and its potential possibilities. The Reference Court had ignored the sale deed Ex.DI dated 21.6.1999 on two grounds namely, the land does not belong to the same village of which the acquisition is in question and there is no site plan placed on record from which location of that land could be ascertained and secondly it was sold for Rs. 1,20,000/- per acre which was less than the amount awarded by the Collector. The Court thus relied upon the two sale deeds Ex.PW2/A and Ex.PW2/B and on the basis of average awarded a sum of Rs. 5,50,000/- per acre as the price of the land as on 10.5.1999 when the notification u/s 4010 of the Act was published.

8. In the case of land pertaining to village Gazi Gopalpur, the Court had found that the land in Village Quatopuri Buzurg and Rohdai was acquired on 10.5.99 whereas land of village Gazi Gopalpur was acquired on 7.5.1999 i.e. almost at the same time and according to the statement of PW3 Suresh Kumar, who is Area Patwari, boundary of village Gazi Gopalpur and that of Quatopuri Buzurg are abutting to each other, therefore, both carry same potentiality and value, therefore, the Court relied upon the award in the case of lands of Village Quatopuri Buzurg and Rohdai which was produced as Ex.PW1 and sale deed Ex.PW2/1 and Ex.PW2/2 which were produced in the case of village Quatopuri Buzurg and Rohdai and assessed the market value @ Rs. 5,50,000/- per acre of the acquired land.

9. Counsel for the appellant has vehemently argued that the Court below has committed a palpable error in appreciation of the evidence as well as in the assessment of the compensation because value of Rs. 5,50,000/- per acre has been assessed as on 10.5.1999 whereas both the sale deeds were of October and December, 1997, therefore, the value of the land which is assessed on the basis of sale deeds Ex.PW2/A and Ex.PW2/B is of the year 1997 more particularly of October and December 1997 and not of May 1999, therefore, the appellants are entitled to an increase of almost 1-1/2 year over and above the amount of compensation assessed @ Rs. 5.50,000/- per acre by the Reference Court. In this regard, counsel for the appellant has placed reliance upon a decision of the Hon"ble Supreme Court in the case of The Special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa Sahib, . in which 10% increase per acre has been given for every subsequent year from the date of acquisition.

10. On the other hand, Sh. H.S. Hooda, Advocate General, Haryana has vehemently argued while opposing the appeals filed by the claimants for enhancement and supporting the appeals filed by State of Haryana for reduction of the amount of compensation, that the Court below has erred in law in ignoring the sale deed Ex.DI dated 21.6.1999 while calculating the average price and has further erred while not applying development cut as the sale instances are of the small pieces of land. However, no judgment has been cited in support of the contention raised by the counsel for the respondent.

11. I have heard counsel for the parties and have perused the record.

12. In the present case, the Court below has taken into account two sale instances Ex.PW2/A and Ex.PW2/B which are about one and half year prior in time pertaining to village Quatopuri Buzurg itself and after drawing average has assessed the market value that has been awarded. In my view, there is no force in the argument of the counsel for the respondent that sale deed Ex.DI dated 21.6.1999 should have also been taken into account while drawing the average because instances that has been cited by the respondent pertain to a different village of which no site plan has been produced on record to show its location and the amount of Rs. 1,20,000/- per acre arising out of sale deed was found to be even lesser than the amount awarded by the Collector and is also a post notification sale instance which cannot be taken into consideration in view of the Division Bench of this Court in Zile Singh and Others Vs. State of Haryana and Others, , therefore, the same has rightly been ignored by the Court below.

13. So far as the argument of the counsel for the appellant is concerned. I am in full agreement with it that a judicial notice of the fact has to be taken by the Courts keeping in view the continuous inflation and rise in the price of the real estate. Therefore, I hold that the appellants are entitled to an increase of 10% for one and half year over and above the amount that has been awarded by the civil court @ Rs. 5,50,000/- per acre.

14. So far as the argument of the counsel for the respondent is concerned that a cut should have been applied by the court below on the ground that sale instances pertain to small plots as the same cannot be taken into consideration to assess the market value of the large tract of land. This contention of the counsel for the respondent is without any force because largeness of area cannot be determined by clubbing together the area of each land owner. Each landowners holding are of small area and it becomes large only when land holding of each landowner is clubbed. In this regard, decision of the Hon"ble Apex Court is applicable in the case of Thakarsibhai Devjibhai and Others Vs. Executive Engineer, Gujarat and Another, , of the aforesaid is reproduced as under:

As we have said above the High Court fell into error by reducing the quantum of compensation on this basis. The reduction has been made for two reasons, one that the present acquisition is of larger area and the second the distance between the land under acquisition and Ex.P-16 is about 5 Kms. With reference to question of acquisition being of a larger area, the error is, when we scan we find for the acquisition of each land owner, it could not be said that the acquisition is of a large area. Largeness is merely when each land holders land is clubbed together then the area becomes large. Each landowners holdings are of small area. Even otherwise visioning in the line with submission for the State we find Ex.P-16 is about two hectares of land which cannot be said to be of small piece of land. So far the other question of distance between the two classes of lands, that by itself cannot derogate the claim of the claimants unless there are

some such other materials to show that quality and potentiality of such land is inferior. However, distance between the land under Ex.16 and the present land even if they are 5 Kms. apart would not be relevant, the relevancy could be, their distances from the Viramgam town. We find, as per map produced by the State the present acquired land is about 3 Kms. away from it, while the land under Ex.P-16 is about two kilometers away from it. This difference is not such to lead to reduce the rate of compensation, specially, on the facts of this case. In the present case, as we have recorded above, it has been found that the quality including potentiality of land between Ex.P-16 and the present one are similar. No evidence has been led on behalf of the State to find difference between the two. In view of this, the inference drawn by the High Court for reducing the compensation by Rs. 10/- per sq. mtr. cannot be sustained.

15. There is another aspect because of which the cut is not required to be applied as the purpose of acquisition is for the link channel and not residential or commercial for which the acquired land shall be used after providing civic amenities of road, electricity, sewerage, drinking water and storm drainage etc.

16. In view of the above discussion, the appeals filed by the claimants/land owners are allowed. They are accordingly held entitled to a compensation @ Rs. 6,32,500/- per acre for the acquired land as on 10.5.1999 i.e. from date of publication of the notification u/s 4(1) of the Act. They would also be entitled to all statutory benefits available under Sections 23(1-A), 23(2) and 28 of the Act with costs. However, the appeals filed by the State which I have found devoid of any merit are hereby dismissed.