
(1999) 06 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 2351 of 1998

State of Haryana and Others

APPELLANT

Vs

Rajinder Kumar and Others

RESPONDENT

Date of Decision : 03-06-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 23(1)

Citation : (2000) 124 PLR 837 : (2000) 1 RCR(Civil) 304

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : H.S. Hooda, A.G., R.K. Arora, Jaswant Jain, Dinesh Kumar and Arun Jain, for the Appellant; Shailendra Jain, for the Respondent

Judgement

Swatanter Kumar, J.—State of Haryana with the purpose of constructing railway over-bridge connecting Delhi-Hisar-Sirsa roads in the Municipal limits of City Hissar acquired 4635 square yards of land and constructed area vide notification dated 11.7.1991 and thereupon issued a corrigendum to this notification dated 30.7.1991 under the provisions of the Land Acquisition Act, hereinafter referred to as the Act. In furtherance to the notification u/s 4 the Government issued notification u/s 6 of the Act on 28.10.1992. When the work of the over-bridge was in progress it was realised that the Government would need some more area for completion of this project. Resultantly, another notification u/s 4 of the Act was issued on 4.2.1993 published on 16.2.1993 intending to acquire another 942 square yards of land at the same points. Notification u/s 6 of the Act was issued on 5.10.1993. Thus, as on 5.10.1993 the total land acquired by the State Government for completion of the single project was 5577 square yards.

2. The acquired land consisted; of vacant as well as the land on which super-structures, had, been raised. In fact, the area acquired was abutting the main highway on Delhi-Hissar-road i.e. N.H. No. 10. The Land Acquisition Collector passed two different awards in relation to the entire acquired land, While award No. 3-H dated 28.10.1992 dealt with the notification of 11.7.1991 and -awarding

a sum of Rs. 248/- per square yard besides allowing claims in relation to super-structures relating to each individual case, vide award dated 6.7.1994, the land Acquisition Collector awarded the same amount in addition to claim for super-structures in relation to the notification dated 4.2.1993.

3. The claimants totally dissatisfied with the amount of compensation awarded in respect of their lands and super-structures, submitted applications- for references u/s 18 of the Act. The learned land Acquisition Collector made 27 references in relation to the notification dated 11.7.1991 while 5 references were made in relation to the subsequent notification, dated 4.2.1993, The learned District Judge enhanced the amount of compensation vide his judgment dated 4.3.1998 to Rs. 2,140/-, per square yard in relation to the earlier notification of 1991. Further, the learned District judge, awarded a sum of Rs. 2,320/- per square yard vide his award dated 13.9.1997 in relation to the subsequent notification of 1993. Vide these two awards all the 32 references were, answered by the learned District judge. The learned District Judge awarded different amounts to, the respective claimants on account of compensation payable in relation of super-structures etc: However, in relation to the award dated 4.3.1998 to all the 27 claimants, the learned District Judge also awarded 50% of the awarded amount on account of compensation payable for severance u/s 23(1)(4) of the Act.

4. Still being dis-satisfied, the claimants preferred 31 appeals against both the judgments claiming enhancement of the awarded compensation. While the State filed 27 appeals praying that the amount of compensation awarded is liable to be reduced. Consequently, all these regular first appeals arise from the two aforementioned judgments and relate to a common purpose and to a great extent they are inter-dependent as-the learned District Judge has practically followed the compensation awarded in one case as the criteria for awarding compensation in the other with the reduced amount on account of time factor Thus, it will be appropriate to dispose of all these appeals by a common judgment.

5. The learned Additional District Judge, as already noticed, pronounced the award on 13.9.1997 awarding a sum of Rs. 2,320/- per square yard in relation to the acquisition of the land under notification u/s 4 of the Act dated 4.2.1993, while he awarded a sum of Rs. 2,140/- per square yard vide award dated 4.3.1998 in relation to the acquisition of the land notification of which u/s 4 of the Act was issued on 11.4.1991. The learned Additional District judge awarded. These amounts to the claimants on the strength of Ex. P.38 vide which an area of 10 square yards was sold, for a sum of Rs. 10,000/- thus giving a value of the land at the rate of Rs. 1,000/- per square yard. The area, subject-matter of Ex. P.38, was located in the same, vicinity which formed part of the acquired land. Ex. P.38 is dated 18.1.1982, While pronouncing second judgment dated 4.3.1998 the learned Additional District judge relied upon his earlier judgment dated 13.9.1997 which was exhibited as Ex. P.57.

6. The claimants had examined 12 witnesses while the respondents only produced two witnesses before the learned Additional District Judge in relation to the case of Ex. P.57. The claimants had produced Ex. P.1 and Ex. P.2, the sale deeds and Ex. P.6 to P. 15 which are the auctions held by the HUDA in relation to some plots or shops which were abutting the National Highway at some distance from the acquired land. The claimants had produced site plan also in support of their cases.

7. The respondents had produced Ex. R.1 and Ex. R.2 being the-sanction letters and site plan respectively. They produced Ex. R.3 copy of the judgment dated 12.5.1992 and Ex. R.4 to R.10, the sale instances, to prove their case. Somewhat similar evidence was produced by the parties in relation to the 2nd award by the learned Additional District Judge as well. The claimants produced sale deeds Ex. P.38 and Ex. P.39 which were equivalent to Ex. P.1 and Ex. P.2 in the previous award and in addition they produced JEx.P.22 to P.26 the auction bids of the sale of the land near to the land in question. These auctions were held by HUDA from 1987 to 1991. Similarly Ex. P.40, P.41, P.49 and P.50 were produced as auction bids or sale deeds. They produced Ex. P.18. Ex. P.35-A and Ex. P.18 as site plans and Akash-Shijra on record. These documents were proved" by Ex. PW.18. The respondents produced Ex. R.4 to R.10, the sale instances, while they produced Ex. R.3 the judgment dated 15.2.1992.

8. On the basis of the above evidence the contention raised by the learned Advocate General appearing for the State of Haryana is that Ex. P.38 could not have been made the basis for awarding compensation to the claimants by the learned Additional District judge. It is contended that the sale deed related to a small piece of land i.e. 10 square yards. He further contended that the auction of the developed "commercial shops/plot"s cannot be said to be relevant factor for determining the compensation payable to the claimants. Awarding of flat 12% increase on Ex. P.38 has also been made a subject of objection by the State. According to the State the claimants ought to have been awarded compensation at the rate of Rs. 100/- per square yard in terms of Ex. R.3 On the other hand; the learned counsel appearing for the claimants submitted that the learned Additional District Judge ought to have granted the higher compensation to them on the basis of Ex. P.22 to Ex. P.26, which are the auction bids varying from Rs. 4,000/- to Rs. 14,000/- per square yard. According to the counsel for the claimants the area is somewhat similarly located and, therefore, much higher compensation ought to have been awarded to the claimants. On the strength of Ex. P.38 and Ex. P.39" it is contended that the learned Court ought to have taken into consideration the increase in the value of the land from 1982 to 1991. Ex. P.38 had shown the value at the rate of Rs. 1,000/- per square yard as on 18.1.1982 while Ex. P.39 shows the value at the rate of Rs. 6,000/- per square yard as on 4.6.1986. Based on either submission according to the counsel the compensation awarded to the complaints cannot be less than Rs. 6,000/- per square yard.

9. In order to examine the Cumulative effect of the evidence produced by the parties on record and to arrive at a reasonable and fair compensation payable to the complainants for acquisition of their respective lands, I would first proceed to discuss the award dated 4.3.1998, which though is a subsequent award, but relates, to a notification u/s 4, which is prior in point of time.

10. At the outset it needs to be noticed that the learned Additional District Judge has rightly rejected the sale instances Ex. P.41, Ex. P.49, Ex. P.50 and Ex. R.4, to Ex. R.10 from the zone of consideration. These are the sale instances wherein neither the vendor nor the vendee had been examined either by the petitioner or by the respondents. The learned Additional District judge, therefore, considered it appropriate not to rely upon these sale instances for determining the amount of compensation payable to the claimants. In view of the judgment of the Hon'ble Supreme Court of India in the cases of A.P. State Road Transport Corporation, Hyderabad Vs. P. Venkaiah and others, and Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., , I would affirm the conclusion arrived at by the learned Additional District Judge in relation to these sale-deeds. These sale instances, therefore, are held, to be irrelevant and of admissible for determining the amount of compensation payable to the claimants.

11. Exhibits P/16, P/15, P/22 and P/26 are the letters issued by the PUDA in relation, to auction bid of the land around the acquired land. For a variety of reasons I am of the? considered view that these exhibits cannot form appropriate basis for computation of the fair market value of the acquired land at the relevant point of time. Serious expenditure and efforts" are put in by the State or authorities like PUDA before the developed, residential or commercial plots are put to public auction. Cost of land is one of the components of the minimum auction price fixed by the authorities. Auction price is not the price indicative only of the cost of land. It includes various other factors and components in its composition. It is a matter of public knowledge that it includes maintenance, construction and maintenance of roads in times to come, element of interest payable on different heads and other ancillary factors. An auction/bid is primarily a speculative feature. The minimum price is already fixed by the authorities and it is only commercial attitude which the bidder bids in such auctions. An offer or bid, at best, could be concluded as an agreement to sell which creates no evidence and in face of the provisions of Section 51 of the Act and it cannot be treated admissible and more so in the light of the judgments of Hon'ble Supreme Court of India (supra) what are the terms and conditions of an auction and whether they ultimately culminated into a sale deed, there is no such evidence on record. The auction or bid of a developed plot cannot be equated to acquisition of land which either may be agricultural or may have even come up as a haphazardly developed colony. Where the land is acquired for a public purpose, due consideration has to be given by the Court and it must clearly and comparatively understood its parity with private sale or auction of developed plots. At this stage, it would be relevant to refer to some judgments i.e. in the case of Sudhir Kumar Vs. State of Punjab and Another, and in case of Kapoor

Singh Vs. State of Haryana, . In the case of The Sub-Collector and Land Acquisition Officer Vs. N. Mahaboob Saheb and others, , the Court held as under :-

"13. Ex. A-13 is the sale certificate dated 12.3.1977 for an extent of 30 cents of land. This land was purchased in Court auction for Rs. 8,000/- and it works out to Rs. 26,600/-. Normally, the Court sales that were effected during auction cannot be taken as a comparable sale as there will be some inherent drawbacks and it is not a transaction between a willing purchaser and willing seller. A Court auction generally will not reflect the true value that is prevailing in the area and therefore Ex. A-13 cannot be treated a comparable sale at all. Similarly, where suits have been filed to create documents for the purpose of producing evidence after the filing of the suits and the decrees passed in those suits also cannot be taken as a safe guide to arrive at a reasonable compensation. Therefore, on an analysis of the entire evidence, this Court feels that the claimants are entitled to Rs. 375/- per cent of land as against the amount of Rs. 450/- per cent awarded by the Court below. The claimants are not entitled to any benefits as per the amendment Act. However, on the unpaid amount if any, the claimants are entitled to interest at 6% p.a. from the date of realisation."

12. For the reasons aforesaid I would decline to consider the above exhibits as a relevant pieces of evidence for final determination of the costs payable to the claimants for acquisition of their respective land.

13. As far as location of the acquired land is concerned there are evidence in abundance to show that the land has a great potential and its location is fit for any purpose. As per the statement of PW1 and PW2, Ex. P.28 and P.30, it is clear that the land is abutting National Highway-10 and is surrounded by shops, school, hospitals, petrol pump etc. Another factor which the Court has to consider is that the land itself was acquired for construction of a railway over bridge, which itself shows that it is located in a congested developed area and, thus I have no hesitation in holding that it is a valuable area. The basic evidence that require consideration now is the Exhibits P-38 and P-39 on behalf of the petitioner and Ex. R-3, a judgment on behalf of respondent and Ex. P-38 is a sale instance proved in accordance with law by the claimants. It is a sole evidence relating to 10 per square yard of land which was sold for Rs. 10,000/- on 12.1.1982 while Ex. P-39 is a sale instance of another 5 square yard and land subject-matter of Ex. P-38, which was sold on 4.6.1982 for Rs. 6,000/-. R-3 is a copy of the award dated 12.5.1992 in the case of Mandeep Nair Singh v. State of Haryana, relating to acquisition of land u/s 4 of the Act on 23.5.1983.

14. Ex. P.3 is the copy of the award which relates to acquisition of land for residential development in Model Town, Hissar. This award was pronounced by the Additional District Judge, Hissar, on 12.5.1992 land being on Dabra Hissar Road and was acquired vide notification u/s 4 of the Act dated 23.5.1983. This cannot be stated to be reasonably comparable instance. Its location and potentiality would certainly be different than the lands which are located adjacent

to the National Highway No. 10 i.e. Delhi-Hissar Road and are part of fully developed residential or commercial buildings abutting the national highway. Furthermore, the present notification is nearly 8 years after the notification of Annexure R.3.

15. The only evidence which can help the Court in computing reasonably fair market value of the land in question would be Ex. P.38 and Ex. P.39. The details of Ex. P.38 and Ex. P.39 which were sold in the year 1982 and 1986 which shows the increase in the value of the land, certainly also indicates an apparent fact that the land sold is quite small. Property of each claimant which has been acquired vide notification in question is also of small pieces of land, though totaling an area of 4653 square yards was acquired for the construction of the two-lane bridge. Average of P. 38 and P. 39 comes to Rs. 3,500/- per square yard. Keeping in view the fact that the land in small portions were acquired for a much beneficial public purpose, namely construction of over-bridge crossing and the fact that the sale instances were again between the same parties, would normally indicate a higher value of land than the market value. Furthermore, the land sold under these exhibits is of very small pieces nearly 10 square yards or so. For the variety of reasons stated by the Hon''ble Supreme Court in the case of K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another, , it is necessary for the Court to apply some reasonable element of deduction.

16. The above grounds in addition to the fact that the area for the acquired purpose is to be developed by heavy costs to be incurred by the State and the fact that the development itself would be ultimately beneficial to the public at large, detailed reasons have been given by this Court in R.F.A. No. 4294 of 1998 title State of Haryana and Others Vs. Meena Dua and Others, , decided on 27.5.1999 for the necessity to apply the principle of deduction to such cases. The consistent view taken by the Hon''ble Apex Court in its various judgments which have been relied upon in those cases is that deduction in such cases is an essential feature for determination of the amount payable to the claimants.

17. Therefore, I am of the considered view that the present case is a fit case where deduction of at least 53% should be applied. Such extent of deduction was applied by the by the Hon''ble Supreme Court in the case of K.S. Shivadevamma (supra). I fail to understand as to why the learned District Judge had not applied the principle of deduction to the facts of the present case. Computing on the aforesaid basis the compensation payable to the claimants would be at the rate of Rs. 1,645/- per square yard ($\text{Rs. } 3,500 \times 53\% = 1855/-$). $3500 - 1855 = \text{Rs. } 1,645.00$). Consequently, the complainants would be entitled to compensation of Rs. 1,645/- per square yard with all statutory benefits under Sections 23(1-A), 23(2) and 28 of the Act.

18. The other contention raised on behalf of the claimants is that in R.F.A. No. 3045 of 1998 titled Om Parkash Jain v. State of Haryana, the claimants have not been granted the benefit of provisions of Section 23(1) fourthly. It has been

established in the connected cases as well as the cases arising from this regular first appeal and more particularly by the statement of PW1 to PW5 and Ex. P.28 and P.30, that the property of the claimants which have been acquired, thus causes a serious prejudice to the interests of the claimants in relation to the remaining property. The over-bridge has to go adjacent to the properties and deduction of their commercial and residential space is bound to affect their enjoyment of properties. No plausible reason has been given by the learned Additional District Judge for declining this compensation to the claimants in contrast to the reasoning given for granting the; relief to similarly placed claimants in the other judgment.

19. For these reasons and faking the cumulative effect of the evidence produced on record, I would accept the contention of the claimants that all the claimants in R.F.A. No. 3045 of 1998 and all other connected cases would also be entitled to get 50% of the awarded amount as compensation payable u/s 23(1) fourthly. The claim of the State that the claimants were not entitled to 50% of the awarded compensation under these provisions as allowed by the learned District Judge in one of the judgments under appeal, is hereby rejected.

20. As a result of the discussion above, the State appeal filed in relation to deduction in the amount of compensation awarded to the claimants are partly accepted while the State appeals in relation to challenge to the award u/s 23(1) fourthly and on other grounds are dismissed.

21. The appeals preferred by all the claimants for enhancement are dismissed while appeals of the claimants in R.F.A. No. 3045 of 1998 and all connected matters are accepted to the limited" extent in regard to the payment of compensation u/s 23(1) fourthly.

22. However, there shall be no order as to, costs.