(1999) 04 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 998 of 1989

State of Haryana APPELLANT

Vs

Ruldu and Others RESPONDENT

Date of Decision : 01-04-1999

Acts Referred:
Land Acquisition Act, 1894 — Section 23

Citation : (1999) 122 PLR 760 : (1999) 4 RCR(Civil) 40

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : H.S. Hooda, A.G. and Partap Singh, for the Appellant; S.C. Kapoor Ashish Kapoor, L.N. Verma, Ashok Kumar Verma, P.N. Makani, D.N. Ganeriwala and Akash Jain, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—Vide award dated 30.1.1989 learned Additional District Judge, Hisar, by a common judgment disposed of 60 references moved u/s 18 of the Land Acquisition Act, hereinafter referred to as the Act. Dis-satisfied from the calculation of compensation awarded the claimants preferred appeals for enhancement of the amount awarded while the State Governments preferred appeals for reduction of the awarded amount. In all 113 appeals arise from this common judgment. As the said appeals raise common question of law and facts and arise from one and the same judgment, it would be appropriate to dispose of all these 113 appeals also by a common judgment.

2. The facts giving rise to the present appeals are that the State of Haryana intending to acquire 3637 kanals 12 marlas of lands from the revenue estate of village Alipur for a public purpose i.e. for extension of Hisar Cantonment to be utilised for the Ministry of Defence Union of India. Thus it issued notification u/s 6 of the Act was issued and, published on 25.6.1984. Possession of the entire land was taken without any variation. The learned Land Acquisition Collector vide his Award No. 2 of 85-86 granted the compensation payable to the claimants on

the basis of the category to which the land belonged. The compensation awarded was as under:-

Nehri Land : Rs. 20,000/- per acre Barani Land : Rs. 15,000/- per acre Tibba Land : Rs. 10,0007- per acre

3. Being dis-satisfied from the amount of compensation awarded by the learned Land Acquisition Collector the claimants moved references u/s 18 of the Act which were disposed of by a common judgment dated 30.1.1989 as already noticed. The Collector had also awarded sum of Rs.42,557.75 on account of damage to the crops, while another sum of Rs.85,693/- was awarded as compensation payable in relation to buildings and super-structures. This reflects the consolidated figure on these two counts awarded to the various claimants before the learned Land Acquisition Collector. The learned Additional District Judge maintained the classifications but enhanced the amount as follows:-

Nehri/Chahi Land : Rs. 35,0007- per acre Barani/Tal Land : Rs. 25,0007- per acre Tibba Land : Rs. 17,0007- per acre

The Additional District Judge in para No. 26 of the judgment clearly noticed as undents:

"As regards claim of the petitioners for enhancement or de novo assessment of compensation in respect of the tube-wells Jhallars, structures, Kothas, trees and standing crops, no enhancement is called for because the same were not pressed during the course of arguments. So, the assessment made by the L.A.C. in respect of these is held to be correct and no enhancement is called for in the same. So, this issue to this extent goes in favour of the claimants."

Being dis-satisfied from the amount awarded the present appeals have been preferred by the claimants as well as by the State.

4. At the very outset, I would like to deal with the compensation payable to the claimants on account of damage to crops, buildings, structures, canals, tubewells etc. I have specifically referred above to paragraph No. 26 of the judgment where the learned Additional District Judge clearly held that the claim for enhancement of compensation on these counts was not pressed and, therefore, the amount granted by the learned Land Acquisition Collector was maintained. In the grounds of appeal/memorandum of appeal no such ground has been taken by the appellants that the above finding or concession has been incorrectly recorded and the claimants never made any such concession. Though in the grounds of appeal vague reference has been made for enhancement of the compensation amount.

5. Once a claim is given up by a party voluntarily before the Court it cannot be permitted to re-agitate the same issue all over again. This principle would have to be applied with greater rigour if no such ground challenging the recording of such a concession is taken in the grounds of appeal. It was also contended on behalf of the State that it is because of recording of the concession by the

learned Additional District Judge that the State has not assailed in grounds of appeal anything in relation to award of compensation. As such it will amount to denial of a fair opportunity to them.

6. In view of these reasons I have no hesitation in holding that the claimants out of their free will had accepted the claim of compensation, awarded to them; for such structures, tubewells, damage to the crops and all such alike other amounts, As such they are estopped from challenging the same in this regular first appeal.

Compensation payable in relation to the acquired land:-

7. The claimants had examined as many as 29 witnesses and proved Ex.P. 14 to P.18, the sale deeds. On the other hand, the respondents produced and proved on record Ex.R.1 to Ex.R.5, the sale instances, and examined 6 witnesses. Ex.R.1 and Ex.RW 3/A are the site plans proved by the respondents. The learned Additional District Judge relied upon Ex.P.16 sale deed dated.10.11.1983. in relation to sale of one killa of land for a sum of Rs. 45,000/- and thus, awarded the aforestated compensation which was further reduced in relation to Tal Barani and Tibba Lands. The other sale instances were not considered as relevant or comparable instances by the learned Additional District Judge.

8. The ancillary question that arises for consideration is what is the location of the acquired land? Most of the witnesses examined by the claimants are claimants themselves and have stated that there has been development around the acquired land. According to these witnesses the acquired land is located 1 kilometer away from the National Highway No. 10 and at some distance there are factories. However, RW2 and RW 3 who are the material witnesses produced by the respondents to identify the location of the acquired land have categorically stated that the acquired land is nearly 10 to 11 kilometers from Municipal Limits of Hisar town. They have further stated that the acquired land is not located near the National Highway. According to RW3 the acquired land is 2 kilometers away from the National Highway No. 10. He has produced and proved on record Ex.RW3/A the site plan. Similar is the statement of RW2 who has categorically stated that at the time of acquisition of land the acquired land was being used for agricultural purposes and the crops were standing there and he had assessed compensation thereof. According to Ex.R.1 the acquired land is adjacent to the revenue estate of village Satrod and that village is adjacent to the boundary of revenue estate of village Meyiar,

9. In view of the fact that the site itself was inspected by the learned Additional District Judge dealing with the matter, I do not find it necessary to discuss any further the evidence produced by the parties in relation to the location. The inspection note of the learned Additional District Judge dated 19.1.1989 reads as under: -

"On 19.1.89 at 2.30 P.M., I inspected the spot in the presence of Sarvshri J.D. Pruthi, J.K. Jain and Kalam Singh advocates, for the claimants and Shri R.K.

Garg, Govt. Pleader alongwith Shri R.S. Sohag, SDO, Defence Estate Office, Ambala Circle, Ambala Cantt. Most of the acquired land has been cleared or levelled for use by the army authorities. At certain places, remnants of the water-courses were present. The land which was not put under use by the military authorities, there was wild growth of grass. It was also stated that Israel, Kikars were planted upon the same. Most of the soil of the land was sandy. It did not seem to be uneven. It was at a distance of about 7 rectangles from the National Highway No. 10."

Based upon the above note read in conjunction with the evidence produced by the parties, the learned Court has held that the acquired land is located at a good distance from the National Highway and no industrial complex or habitation etc. is near the land. There is nothing on record which would justify disturbing of this finding of fact recorded by the learned Courts below. At best it could be said that National Highway is nearly two kilometers away from the acquired land: while some industries like H.P. Cotton, Jindal Public School etc. are again at some distance from the acquired land. They are not immediately adjacent to the acquired land. They are more closure to the National Highway No. 10.

10. There is a considerable gap in the value of the land at the relevant time as stated by different PWs. While according to PW1 and some others, the price of the land is Rs. one lac per acre, whereas PW18 and others have stated that the value of the land is Rs. two lac per acre. No reason whatsoever has been given for this substantial, variance. The; oral evidence further states that the National Highway is very close to the apquired land which has not been established on record. Thus, it would not be safe for the Court to rely upon the oral evidence in absence of any documentary evidence to support the oral evidence led by the claimants to compute the land of compensation payable to the claimants.

11. Sale instances Ex.P.14 to Ex.P.18 and Ex.R.2 to Ex.R.5 cannot be read in evidence as the parties who produced these documents failed to examine the vendor or the vendee. They also did not summon the witnesses from the Registrar''s Office to prove the genuineness and authenticity of the sale instances. As such these exhibits in view of the law laid down by 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., are not admissible and cannot form basis for proper and fair determination of the market value of the acquired land. Once ail this evidence is rejected and the oral evidence is held to be not reliable, there would be no evidence on the basis of which this Court could compute the extent of compensation payable to the claimants. However, I do not find it appropriate to remand the case to the learned trial Court at this juncture when the parties have already litigated for a period of more than 10 years and now their appeals have come up for hearing after a period of 13 years from the date of determination of the amount of compensation payable to them by the learned Additional District Judge,

12. The saving factor in this case is that both the parties had produced same documentary evidence in support of their cases. Ex.P.14 is the sale deed dated 12.8.1983 wherein an area of 8 kanals was sold for a sum of Rs. 30,000/- in village Alipur. This very sale instance has been produced by the respondents as Ex.R.2. Similarly, claimants have produced Ex.P.16 which is a sale instance of the same village and where an area of nearly 1 acre was sold for a sum of Rs.45,000/- on 10.11.1983. This very sale instance/sale deed has been produced on record by the respondents as Ex.R.4. In other words, both the parties rely upon Ex.P.14/Ex.R.2 and Ex.P.16/Ex.R.4to prove their case.

13. Once a common sale deed is produced by both the parties and the sale deed otherwise does not appear to be a fraudulent document, such document would be the best evidence to be relied upon by the Court. I have no reason to doubt the genuineness of these documents because both the parties vehemently rely upon the same in regard to the market value of the land in question, Even otherwise, both these sale instances are relevant from the proximity of time, location and extent of area sold under the sale instances. The notification of acquisition u/s 4 of the Act is dated 18.6.1984, the sale instances are of August and November, 1983 and area of nearly one acre had been sold under each sale deed. Consequently, I have no hesitation in coming to the conclusion that both these documents can safely be relied upon by the Court for necessary computation.

14. Another factor which this Court must consider is that in village Meyiar which is stated to be at a Short distance from the acquired land, the. State had also acquired land vide notification of the same date. After holding that belting system was not proper the High Court in regular first appeal arising out in that case awarded a uniform compensation of Rs. 1,05,000/- which was up-held by the Division Bench in L.P.A. No. 664 of 1991. The Hon''ble Supreme Court disturbed the findings recorded by the High Court and granted compensation by applying classification/belting system with statutory benefits in the said case titled Union of India and others etc. Vs. Mangatu Ram, etc., held as under:-

"The question that arises for consideration is: whether the belting is necessary in the circumstances of these cases? When a large extent of land under acquisition comprises of lands of several persons and some lands are abutting the main road and some lands are in the interior, the same would not have the uniform rate of market value. Necessarily, reasonable demarcation/classification should be made before determination of the compensation. Accordingly, we justified the classification of the lands into category ''A.'' and ''B''. The Land Acquisition Officer has mentioned the total extent of the land in his respective awards. Since the lands are admittedly abutting the Delhi-Hissar National Highway by-pass, the same would necessarily be granted a higher market value than the lands situated in the interior. Accordingly, we are of the view that lands situated around 500 yards from the main road should be classified as ''A'' class land irrespective of the quality of the land i.e. whether it is Nehari, Chahi, Banjar Qadium, Banjar

Jadid or Gair Muinkin, the uniform rate of compensation at Rupees 1,00,000/- per acre would be granted to such lands. For the rest of the ''A'' Class lands, the compensation would be at Rs. 60,000/- per acre. Banjar Qadium, Banjar Jadid and Gair Mumkin lands are classified as ''B'' class lands and for that land, the compensation at the rate of Rs,30,000/- per acre would be reasonable, just and adequate compensation."

15. It needs to be mentioned that this land was acquired for the same purpose for which the lands in village Alipur have been acquired i.e. for the development of Cantonment of Hisar. In other words, notification is of the same date, the purpose is same. However, the land of village Meyiar is located on National Highway No. 10. It has come in the evidence of the present case even according to respondents that National Highway is nearly 2 kilometers away from the acquired land while according to the claimants it is 1 kilometers away. In between National Highway is the entire land of village Meyiar where industries are also located and the land of Satrod falls on one side and these lands touches the revenue estate of village Alipur where the present land has been acquired. Keeping in view the distance, location and potentiality of the land, the claimants in the present appeals cannot get the same compensation what has been awarded by the Supreme Court in the case of Mangatu Ram (supra).

16. Undoubtedly the said judgment of the Hon''ble Apex Court would be a substantive guiding factor for this Court to award compensation to the claimants. To my mind, the best way for awarding the compensation to the claimants would be to proportionately reduce the compensation awarded by the Supreme Court in the case of Mangatu Ram. In the case of Mangatu Ram the lands acquired in village Meyiar which were within 500 yards of the National Highway were granted Rs. one lac as compensation. That certainly is not the case in the present acquisition.

17. it is an admitted case that the land acquired is not abutting any National Highway or the main road. As such this category cannot be made applicable to the present case. Other part of the ''A1 class land which included the Nehri and Chahi land has been awarded compensation at the rate of Rs. 60,000/- per acre by the Apex Court. Keeping in view the location, potentiality, approach and surroundings of the present land, it will be appropriate to apply a cut of 20% to the facts of the present case. In other words Nehri and Chahi land could be given Rs. 60,000.00 - Rs. 12,000.00..= Rs. 48,000.00 per acre. While Banjar Qadim and Gair Mumkin lands classified by the Apex Court as ''B'' class lands, were awarded Rs. 30,000/- per acre. Applying the same principle, the land owners of Banjar Qadium and Tibba lands would be entitled to get Rs,30,000.00 - Rs. 6,000.00 = Rs. 24,000.00 per acre. All other lands would be entitled to the aforestated compensation of Rs. 48,000.00 per acre.

18. To make sub classification of classified land may not be a very proper method to be applied to the present case because the lands have been acquired for one and the same purpose. So far the lands levelled and irrigatable by different

sources should fall in one group while uncultivable and tibba lands should fall in one class themselves.

19. Ex.P.14 and Ex.P.16 are of a period nearly 6 months to 1 year prior to the date of the notification issued u/s 4 of the Act in the present case. It is a well accepted fact that there were increasing trends in the prices of the land as is even shown by other documents on record. The element of increase could wipe out the element of deduction and the claimants should be given the compensation on the basis of a sale instances which is nearest in point of time and is of a larger area. In the facts and circumstances of the case, I would award the compensation of Rs. 45,000/- per acre on the basis of Ex.P.16/R.4 to the claimants for the Nehri, Chahi and Tal Barani lands, while would reduce further amount in the case of Gair Mumkin and Tibba lands to Rs. 22,500.00.

20. Now I would take the average computed on the basis of judgment of the Supreme Court and determined on the basis of the sale instances. Principle of average based upon judicial pronouncements along with sale instances would be a just and fair method of determination of the amount of compensation payable to the claimants. Resultantly, the following compensation can be finally awarded to the claimants for their respective acquired lands:-

1. Nehri, Chahi and Tal Barani lands: a) Based on judicial pronouncements : Rs. 48,000.00 b) Based on sale instances : Rs. 45,000.00 Total : Rs. 93,000.00 % 2 : Rs. 46,500.00 2. Gair Mumkin and Tibba lands:

a) Based on judicial pronouncements : Rs. 24,000.00 b) Based on sale instances : Rs. 22,500.00 Total : Rs. 46,500.00 %2 : Rs. 23,250.00

Thus I finally conclude that claimants would be entitled to receive compensation in relation to Nehri, Chahi and Tar Barani land at the rate of Rs. 46,500.00 per acre while in the case of Banjar Qadium and Tibba lands they would be entitled to Rs. 23,250.00 per acre. They would also be entitled to receive all the statutory benefits provided''under Sections 23(1-A), 23(2) and 28 of the Act.

21. For the reasons afore-stated above, the appeals preferred by the State are dismissed, while the appeals preferred by the claimants are partly accepted. However, the parties are left to bear their own costs.

