

(2008) 11 P&H CK 0070
In the Punjab And Haryana At Chandigarh

State of Haryana	Vs	APPELLANT
Sher Singh		RESPONDENT

Date of Decision : 27-11-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 25, 4, 6

Citation : (2009) 153 PLR 372 : (2009) 5 RCR(Civil) 663

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—This judgment shall dispose of 7 appeals bearing R.F.A. Nos. 758 of 1991 and X-Obj No. 59-CI of 1991, 760 and X-Obj No. 58-CI of 1991, 763 of 1991 and X-Obj No. 57-CI of 1991, 759, 761, 762 and 764 of 1991 filed by the State of Haryana and the Cross Objections filed by the landowners/claimants as common questions of law and facts are involved therein.

2. Land measuring 26.01 acres situated in villages Satnali Tehsil and District Mahendergarh was acquired by the Department of Irrigation, Government of Haryana at public expense for public purpose, namely for the construction of Satnali Distributory. Notification u/s 4 of the Land Acquisition Act 1894 (for short, "the Act") was published in the Haryana Govt. Gazette on 14.12.1981 followed by a notification of declaration issued u/s 6 of the Act.

3. The Land Acquisition Collector (in short, "the Collector") vide his award No. 6 dated 28.1.1986 assessed the compensation @ Rs. 9,000/- per acre for Chahi; Rs. 8,000/- per acre for Barani; Rs. 6,000/- per acre for Bhodd and Rs. 3,000/- per acre for Gairmumkin land.

4. In the objections filed u/s 18 of the Act, it was, inter-alia, pleaded by the landowners that the market value of the acquired land at the time of its acquisition, was not less than Rs. 50,000/- per acre. It was further alleged that the claimants are also entitled to damages on account of severance of their lands

due to construction of canal.

5. In the written statement, the State denied the averments made in the claim petitions and pleaded that fair and just compensation has already been awarded to the landowners,

6. The learned Reference Court vide its award dated 5.11.1990, re-determined the compensation @ Rs. 20,000/- per acre for Chahi land; @ Rs. 16,000/- per acre for Barani land; and @ Rs. 14,000/- per acre for Bhood land and awarded all statutory benefits in terms of the provisions of the amended Act.

7. Mr. H.S. Hooda, Advocate General, Haryana, assisted by Mr. Rajiv Kawatra, Sr. D.A.G., Haryana, has contended that the learned Court below has erred in relying upon sale deed Ex.P-2 and in not appreciating the sale transactions Exs.R-2 and R-3 produced by the appellant-State. According to the learned Counsel for the appellant-State that the land measuring 24 Kanals 13 marlas was sold vide sale deed dated 1.9.1982 (Ex.R-2) for a consideration of Rs. 9,500/- which comes to Rs. 3,084/- per acre and land measuring 33 kanals 4 marlas was sold vide sale deed dated 21.7.1982 (Ex.R-3) for Rs. 16,000/- which comes to Rs. 4,000/- per acre. Learned Counsel for the appellant/State contended mat value of Gair-Mumkin land arising out of the sale deeds Exs.R-2 and R-3, is more than the award of the Collector, as such there is no justification for the learned Reference Court to award compensation @ Rs. 14,000/- per acre for Bhood land. It is also submitted by the learned Counsel for the State that while relying upon a post notification sale deed Ex.P-2, the learned Reference Court has erred in applying only a cut of 50%, although cut to the extent of 86% deserves to be applied. In this regard, reliance has been placed upon a decision of the Apex Court in the case of K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acqusition Officer and another, .

8. While arguing for the cross objections filed by the landowners/claimants and countering the appeals filed by the State of Haryana, Mr. Parbodh Mittal, learned Counsel for the objectors has vehemently contended that the learned Reference Court has committed an error on two counts, firstly the cut of 50% has been illegally applied to the sale deed Ex.P-2 and secondly, only 5% damages have been awarded on account of severance. He also relied upon a decision of Supreme Court in the case of Atma Singh (died) through LR. and Others Vs. State of Haryana and Another, requesting this Court to reduce the cut of 50% to 10%.

9. I have heard learned Counsel for the parties and have perused the record with their assistance.

10. Insofar as the sale transactions Exs.R-2 and R-3 are concerned, both are post notification sale deeds as the notification u/s 4 of the Act was issued on 14.12.1981 and the sale deed Ex.R-2 is dated 1.9.1982 and sale deed Ex.R-3 is dated 21.7.1982. Secondly, learned State counsel has contended that the value arising out of two sale deeds is Rs. 3,000/- or Rs. 4,000/- which is more than the

award of the Collector, awarded, @ Rs. 3,000/- for gair-Mumkin land, this should have been considered.

11. I have perused the sale deeds Exs.R-2 and R-3 but I could not find the nature of the land mentioned in the sale deeds, therefore, it cannot be equated with Gair-Mumkin land. No compensation has been awarded by the learned Reference Court in respect of gair-mumkin land. Thus, the price of lands involved in sale deeds Exs.R-2 and R-3 is less than the compensation awarded by the Land Acquisition Collector, as such, the same cannot be taken into consideration in view of Section 25 of the Act and have to be ignored.

12. The second argument of the learned Counsel for the State is in respect of the application of cut of 50%. The judgment of the Apex Court in K.S. Shivadevamma's Case (supra) is not applicable on the facts of these cases because in the cited case, it was observed that under the Building Rules 53% of land is required to be left out and another 33-1/3% is required to be deducted for the purpose of providing amenities. In the present case, however, purposes nor any building rule applies, therefore, in my view, the ratio of law laid down in the case of K.S. Shrivadevamma (Supra) does not apply.

13. Now coming to the contention raised by the learned Counsel for the respondents/objectors who has submitted that 50% cut is on the higher side and has relied upon a decision of the Supreme Court in Atma Singh's Case (Supra) and submitted that 10% cut should have been applied. Even this judgment is not applicable because in that case the land was acquired for construction of a co-operative sugar mill. It was observed by the Supreme Court that if an industry is established on the acquired land, if runs efficiently, earns money, or makes profit every year. The return from the lands acquired for the purpose of Housing Colony, or Offices, or Institution cannot even remotely be compared with the land which has been acquired for the purpose of setting up of a factory or industry. After all the factory cannot be set up without land and if such land is giving substantial return, there is no justification for making any deduction from the prices exhibited by the exemplars even if they are of small plots. It is possible that a part of the acquired land might be used for construction of residential colony for the staff working in the factory. Nevertheless: where the remaining part of the acquired land is contributing to production of goods yielding good profit it would not be proper to make a deduction in the price of the land shown by the exemplars of small plots as the reasons for doing so assigned in various decisions of this Court are not applicable in the case under consideration. Under these circumstances, a cut of 10% was applied. Learned Counsel for the appellant was at pains to submit that even colony is also an industry. I am afraid that this argument cannot be accepted. So far as the second argument is concerned that the learned Court below has committed an error in awarding 5% of compensation on the market value on account of severance of the land, I rely upon the decision of this case passed in R.F.A. No. 1337 of 1991 (Surjit Singh etc. LRs of deceased Nasib Singh and Ors.

v. The State of Punjab through Land Acquisition Collector) decided on April 09, 2008 and I hold that the cross-objectors are entitled to 50% compensation/damages on account of severance on the market value of the acquired land.

14. In view of my above discussion, the appeals filed by the State of Haryana are dismissed whereas the Cross Objections filed by the landowners/claimants" are partly allowed to the extent that they shall be entitled to 50% of severance charges on the market value of the acquired land with all statutory benefits in terms of the provisions of the amended Act. No costs.