(2006) 10 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Surjit Singh and Others APPELLANT

Vs

The State of Haryana and Another RESPONDENT

Date of Decision : 18-10-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 6

Citation : (2007) 145 PLR 383 : (2007) 1 RCR(Civil) 352

Hon'ble Judges : Nirmal Yadav, J

Bench : Single Bench

Judgement

Nirmal Yadav, J.—Both the appeals mentioned above filed by claimants together with cross-objections filed therein by the State of Haryana, having arisen out of the same judgment & award dated 17.7.1990 passed by Additional District Judge, Sirsa, are being disposed of by this common judgment.

2. The brief facts of this case are that in pursuance of notification dated 27.4.1988 u/s 6 of the Land Acquisition Act, 1894 (for short, ''the Act''), the State of Haryana acquired the land measuring 11.75 acres situated in Village Rania, Tehsil and District Sirsa, for construction of 132 K.V. Sub-Station. Notification u/s 6 of the Act was published on 13.6.1988. Vide Award No. 8 dated 14.2.1989, the Land Acquisition Collector assessed the per acre market value of the acquired land at the rate of Rs. 88,000/- for Nehri and Rs. 44,000/- for Barani and Gair Mumkin land. Being aggrieved, the appellants filed reference u/s 18 of the Act before the District Judge, Sirsa, claiming market value of the land at the rate of Rs. 4,00,000/- per acre. It was pleaded that the land in question is having great potential for being used as residential as well as commercial purposes. It is situated in the near vicinity of Grain Market of Rania, which is a developing town having been declared as Tehsil. It is further pleaded that Rice Shellers, Petrol Pump and Alpana Theatre are also situated in the close vicinity of the acquired land. Besides, Rania police Station, office of Block Development & Panchayat Officer, Government High School Rania and Primary Health Centre are also closely situated. Residential plots are being carved out in the surrounding

area and the same are being sold at the rate of Rs. 6 lacs per acre.

3. On that other hand, the respondent-State pleaded that claimants have themselves admitted the market value of the land being Rs. 1,50,000/- per acre for Nehri and Rs. 1,20,000/- per acre for Barani. Even the said rates are on higher side.The average price of land available in the near vicinity of acquired land is not more than Rs. 50,000/-per acre for Nehri and Rs. 25,000/- for Barani land.

4. After taking into consideration the facts and evidence on record, the Reference Court enhanced the compensation to Rs. 2,00,000/- per acre for all kinds of land.

5. Still dissatisfied, the claimants have filed the present appeals for enhancement of compensation. That apart, challenge has also been made to the findings of the Reference Court with regard to denial of enhanced compensation to Malkiat Singh, son of Gur-bachan Singh (appellant No. 3 in R.F.A. No. 2213 of 1990), on the ground that he had not filed any petition for enhancement of the compensation.

6. I have heard learned Counsel for the parties and perused the material on record.

7. Learned Counsel for the appellant-claimants argued that from a perusal of sale deeds, Exhibits P-4, P-5, P-6, P-12 and P-17 to P-19, it is evident that market value of the acquired land, at the relevant time, was between Rs. 5,00,000/- to Rs. 10,00,000/- per acre. The Reference Court has not given any sufficient reasons while ignoring the sale instances produced by the appellants. It is further argued that the land surrounding the acquired land has potential for developing into commercial and residential area. It has come in the evidence that the residential plots have been carved out of the land which is contiguous to the acquired land. Commercial establishments, such as, rice sheller, petrol pump and theatre are also situated near the acquired land, therefore, the market value assessed by the Reference Court is on the lower side.

8. On the other hand, learned State counsel argued that the value of the land assessed by the learned Reference Court is excessive and exorbitant. It is argued that as per sale instances produced by the State, the market price of the acquired land is much less than the one awarded by the learned Additional District Judge.

9. On careful consideration of rival submissions and evidence on record, I do not find any ground to interfere with the findings of the Court below with regard to the market value assessed by the Court. The claimants have produced the following sale in-stances:

Sr. Sale Instance Amount of Sale Area Per Acre No. Consideration sold Price 1. Exhibit P-4 Rs. 25,000/- 1 Maria Rs. 40,33,333.33 2. Exhibit P-5 Rs. 30,000/- 4-1/2 Marias Rs. 10,75,555.55 3. Exhibit P-6 Rs. 30,000/- 4-1/2 Marias Rs. 10,75,555.55 4. Exhibit P-12 Rs. 20,000/- 10x30 Feet Rs. 29,04,290.42 5.

Exhibit P-17 Rs. 9,500/- 1650 Sq. Feet Rs. 2,50,804.56 6. Exhibit P-18 Rs. 13,000/- 2475 Sq.Feet Rs. 2,28,799.99 7. Exhibit P-19 Rs. 10,000/- 32x82 Feet Rs. 1,66,009.26 The sale instances produced by the State are Exhibits R-1, R-2 and R-3, which are detailed below:

Sr. Sale Instance Amount of Sale Area Per Acre No. Consideration sold Price 1. Exhibit R-1 Rs. 1,47,262.50 53K.-11M Rs. 22,183.33 2. Exhibit R-2 Rs. 1,90,000.00 15K-13M Rs. 97,933.97 3. Exhibit R-3 Rs. 45,000.00 18K Rs. 20,166.66 10. A comparative analysis of the above charts would show that the sale instances produced by the claimants-appellants relate to very small plots of land. It is quite understandable that the small areas are sometimes sold at a very high rate and price fetched by such sales instances can not at all be relatable to large tracts of land acquired. Therefore, the sale instances relied on by the appellants cannot be taken into consideration for assessing the just compensation for the acquired land. There is also no evidence on record that the acquired land is having potential for developing into a residential and commercial area. On the other hand, as per Exhibit R-2, sale instance produced by the respondent-State, the market price of comparable land comes to Rs. 97,933.97 per acre.However, the other sale instances produced by the State are on the lower side. Therefore, I am of the view that the market value of the acquired land assessed by the Reference Court appears to be quite reasonable and as such, no interference with the findings of the Court below on the quantum of compensation is called for.

11. As regards, the claim of Malkiat Singh, son of Gurcharan Singh, it is not disputed that he is one of the co-owners of the acquire land. From the records, it is apparent that he had submitted an application, duly supported by an affidavit, for enhancement of compensation. However, the learned Additional District Judge has rejected his claim only on the ground that he had himself admitted having not signed the claim petition as well as the affidavit. Learned Counsel for the appellants argued that the claimant being a rustic person could not understand the intricacies of the questions put to him in cross-examination. However, in the examination-in-chief, he categorically stated that he has filed the application for enhancement of compensation. Even otherwise, it is well es-'' tablished that a co-owner is as much owner of entire property as a sole owner of the property. He would, therefore, be entitled to receive compensation pro-rata. Moreover, being a welfare State, the respondent, having acquired the property of its citizen, could not take objections merely on technical grounds. In fact, the State Government has no role to play as to who is entitled to receive the compensation, rather it is for the claimants inter-se to claim for compensation and the Court would examine and award the compensation to the rightful person(s). Admittedly, the land is jointly owned by all the claimants in equal shares. Even if one of the co-owners made a statement in the Reference Court that he and other co-owners are dissatisfied with the award made by the Collector, it would amount to making request on behalf of all the co-owners and they would be entitled to enhanced compensation, even though it was not expressly stated by each of the co-owners

for enhancement. The Apex Court in the case of A. Viswanatha Pillai and others Vs. Special Tahsildar for Land Acquisition No. IV and others, , in similar circumstances, has observed as under:

... It is surprising that the State having acquired the property of a citizen would take technical objections regarding the entitlement of the claim. The State certainly is right and entitled to resist claim for enhancement and lead evidence in rebuttal to prove the prevailing price as on the date of notification and ask the court to determine the correct market value of the lands acquired compulsorily under the Act. But as regards the persons entitled to receive compensation are concerned it has no role to play. It is for the claimants inter se to the claim for compensation and the Court would examine and award the compensation to the rightful person.

It is settled law that one of the co-owners can file a suit and recover the property against strangers and the decree would ensure to all the co-owneRs. It is equally settled law that no co-owner has a definite right, title and interest in any particular item or a portion thereof. On the other hand he has right, title and interest in every part and parcel of the joint property or coparcenary under Hindu Law by all the coparceneRs. In Kanta Goel Vs. B.P. Pathak and Others, , this Court upheld an application by one of the co-owners for eviction of a tenant for personal occupation of the co-owners as being maintainable. The same view was reiterated in Sri Ram Pasricha Vs. Jagannath and Others, and Pal Singh Vs. Sunder Singh (Dead) by Lrs. and Others, . A co-owner is as much an owner of the entire property as a sole owner of the property. It is not correct to say that a co-owner''s property was not its own. He owns several parts of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner in the property. That position will undergo a change only when partition takes place and division was effected by metes and bounds. Therefore, a co-owner of the property is an owner of the property acquired but entitled to receive compensation prop rata. The State would plead no waiver nor omission by other co-owners to seek reference nor disentitle them to an award to the extent of their legal entitlement when in law they are entitled to.

12. In view of the above, it is clearly established that even if one of the co-owners made a statement being dissatisfied with the award made by the Collector, all the co-owners are entitled to enhanced compensation even if it was not expressly stated by them, as the applicant would be acting on behalf of all the claimants by necessary implication.

13. Accordingly, the findings of the Additional District Judge with regard to disenti-tlement of Malkiat Singh to receive enhanced compensation is set aside and it is held that Malkiat Singh shall also be entitled to enhanced amount of compensation as awarded by the Court below along with statutory benefits.

14. Resultantly, R.F.A. No. 2214 of 1990 and cross objections filed by State are dis-missed. R.F.A. No. 2213 of 1990 qua Surjit Singh and Swaran Singh as well

as cross objections filed by State are dismissed while appeal qua Malkiat Singh, son of Gurbachan Singh (appellant No. 3) in R.F.A. No. 2213 of 1990) is partly allowed as indicated above.

