
(1985) 08 P&H CK 0091
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2214 of 1984

The Improvement Trust, Hoshiarpur	Vs	APPELLANT
The Land Acquisition Tribunal, Hoshiarpur and others		RESPONDENT

Date of Decision : 28-08-1985

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (1985) 08 P&H CK 0091

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : I.J. Malhotra, for the Appellant; Sarwan Singh, for the Respondents Nos. 1 and 2 and Mr. R.K. Handa, for the Respondents Nos. 3 and 6, for the Respondent

Final Decision : Dismissed

Judgement

I.S. Tiwana, J.—These 18 Civil Writ Petitions Nos. 1778, 2212 to 2216, 2386 to 2388 and 3032 to 3040 of 1984 filed by the Improvement Trust, Hoshiarpur, are directed against the same common award of the Land Acquisition Tribunal, and are, thus, being disposed of together.

2. As per the impugned award, the Tribunal has determined the market value of the land acquired for the Trust on the basis of its categorisation into "A", "B" and "C" Blocks in the light of their location vis-a-vis the Hoshiarpur-Garhshankar Road. For "A" Block it awarded compensation at the rate of Rs. 1000/- per marla, for "B" Block Rs. 850/- per marla and for "C" Block Rs. 700/- per marla. Besides this the claimants have also been held entitled to solatium and interest at the rate of 15 per cent and 6 per cent respectively.

3. As already indicated above, the respective land references u/s 18 of the Land Acquisition Act, 1894 (for short, the Act) were consolidated by the Tribunal and it recorded the evidence of the parties at one place for the trial of the following two primary issues :--

1. Whether the compensation awarded to the claimants is inadequate and if so, to what extent ? O.P.A.

2. Whether the claimants in References Nos. 3 to 7 and 9 received the awarded compensation amount without protest and if so, what is its effect ? O.P.R.

4. The award is now sought to be assailed on the grounds--

(i) the Tribunal has not properly appreciated the evidence on record and has, thus, increased the rate of compensation without any justifiable cause; and

(ii) the onus of proving issue No. 2, as noticed above, was wrongly placed on the Trust and since the claimants in those references had failed to establish that they had protested about the inadequacy of the compensation awarded, the Tribunal could not entertain their claim.

5. Having heard the learned counsel for the parties, I however find no merit in the stand of the Trust. So far as the contention at (i) is concerned, all that is being said is that certain pieces of evidence should have been relied upon by the Tribunal in preference to others. The star argument in this regard is that the Tribunal wrongly ruled out of consideration certain sale instances relied upon by the Trust on the ground that they disclosed a lower rate of market value than what had been awarded by the Collector. According to the learned counsel of the Trust, this could not be a ground in law to ignore those instances. He, further, contends that a reading of the award shows that the Tribunal was virtually treating the Collector as an agent of the Trust and, thus, concluded as if the Trust was bound by the acts and conclusions of the Collector. He also maintains that a part of the acquired land was a low lying area, but the Tribunal had made no distinction on that account while determining the market value of the said land. These submissions of the learned counsel, however, do not impress me at all.

6. By now, it is well established that a Collector while making an award u/s 11 or serving a notice on the owner of the land u/s 12 of the Act acts as an agent of the Government or the authority for which he is acquiring the land, that is the Trust in the instant case and the legal character of the award made by him is that of a tender or offer by him on behalf of the Government or the acquiring authority. Observations to this effect exist in two Supreme Court judgments at least, that is Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, and Mohammed Hasnuddin Vs. State of Maharashtra, .

7. In this view of the matter, the Tribunal committed no mistake in treating the Land Acquisition Collector as an agent of the Trust and the determination of the market value of the suit land by him as an offer of price on behalf of the Trust. In the light of this settled position, the Tribunal was perfectly justified in ignoring those sale instances produced and proved by the Trust which disclosed a lower rate of market value than what had been awarded by the Collector. Further, the learned counsel is not in a position to pinpoint the area which can be said to be low lying. Further I am of the opinion that in the absence of any such conclusion

or finding by the Collector, the Trust cannot agitate about this matter, more so when it never challenged the award of the Collector on that account. I am also of the view that in these proceedings I cannot possibly sit as a Court of appeal and re appraise the whole evidence with a view to change the conclusions recorded by the Tribunal. While disapproving such an approach by a learned Single Judge in similar matters a Division Bench of this Court in *The Jullundur Improvement Trust v. Inder Singh* (1983) 85 P.L.R. 190 observed that unless the award of the Tribunal can be styled as perverse or there is an error on the face of the record, the same does not call for any interference. Since the learned counsel for the petitioner has failed to show that the Tribunal had taken into account any inadmissible piece of evidence or had omitted to consider any other important circumstance or evidence, I find it impossible to set aside the impugned award.

8. So far as the placing of onus of issue No. 2 on the Trust is concerned, I am of the view that, though the initial burden of proving that the award of the Collector is wrong or is inadequate in any manner rests on the claimant before the Court, yet in case the acquiring authority pleads a bar to any enhancement in the amount of compensation, for any reason, it is for that authority to prove or substantiate the same. The learned counsel contends that the Trust could not be made to prove the negative, that is, the claimants had not accepted the compensation without protest. He, however, concedes that the non-acceptance of the award by the person interested and the making of the application within the specified time are pre-requisites of a valid reference u/s 18 of the Act. When such a reference is made, then to my mind, a legal presumption arises that the Collector was prima facie satisfied about the right of the claimant to have the matter referred to the Court. Such a presumption is envisaged by the provisions of section 114 of the Evidence Act [Illustration (e)]. No doubt, this presumption is not conclusive and the acquiring authority being not a party before the Collector at the time of making the reference may not be bound by the validity of the reference, but for dislodging this presumption the onus is essentially on that authority. Thus, I reject this argument of the learned counsel. Then what is urged by the learned counsel in this regard is that some of the claimants before the Court had not stated either in their applications u/s 18, or in their statements that they had received the amount of compensation from the Collector under protest and in the absence of the same, the Court could not entertain their claim. He further points out that at least in Reference No. 7, *Surta Singh Patwari* (R.W. 1) examined on behalf of the Trust had categorically stated that at the time of payment of the amount of compensation to *Darshan Singh, Joginder Kumar, Amar Singh and Mohinder Singh* (all claimants in Reference No. 1) on 1st October, 1982, they did not raise any objection about the inadequacy of the compensation and in the face of this statement, their claim at least should have been declined. It deserves to be highlighted here that the Trust did not examine any other evidence to discharge the onus placed on it vide issue No. 2 except the above-noted statement of *Surta Singh, Patwari* (R.W. 1). This evidence of the *Patwari* has been countered by *Amar Singh and Darshan Singh*, claimants, as

P.W. 4 and P.W. 6 respectively when they deposed that while receiving the cheques of the amount of compensation, they had protested about the correctness of the adequacy of the compensation, but the Patwari did not make any record of the same. In the face of this, the Tribunal's preference of the evidence of these claimants to that of Surta Singh, Patwari (R.W. 1) cannot possibly call for any interference. This is more so when, to my mind, the Trust can reasonably be held guilty of not producing the best evidence, that is the statement of disbursement of the amount of compensation which essentially is part of its records. It is a matter of common knowledge that while making payments to the landowners or claimants, their signatures or thumb impressions are obtained against the entries showing the particulars of the land acquired and the amount of compensation payable to them. The non production of this documentary evidence in possession of the Trust does entitle the Court to draw an adverse inference against it. As, already pointed out, except the statement of Surta Singh, Patwari (R.W. 1) and that too qua the claimants in Reference No. 7, no other evidence has been produced by the Trust to show that the claimants had accepted the compensation without any protest.

8. No other point having been urged by the learned counsel for the petitioner, I find no merit in this petition and thus, dismiss the same but with no order as to costs.