
(2005) 10 P&H CK 0072

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 805 of 1993

The Jalandhar Improvement Trust

APPELLANT

Vs

Vidya Suri (Smt.) and Others

RESPONDENT

Date of Decision : 18-10-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 18

Citation : (2006) 142 PLR 153 : (2006) 1 RCR(Civil) 631

Hon'ble Judges : Viney Mittal, J;H.S. Bedi, J

Bench : Division Bench

Advocate : S.C.P. Pathala, for the Appellant; Mukal Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Viney Mittal, J.—This order shall dispose of two Letters Patent Appeals being Letters Patent Appeals No. 805 and 806 of 1993 as both the appeals have arisen out of the common judgment of the learned Single Judge. The learned Single Judge had allowed the writ petitions filed by me claimant-respondents and had directed that the compensation for their acquired land would be payable at a uniform rate.

2. Land measuring 499 kanals 17 marlas situated in Jalandhar City adjoining to Jalandhar Cantt. road lying within the municipal boundaries was acquired by the Jalandhar Improvement Trust for the development of a scheme known as "50 acre development scheme". A notice u/s 36 of the Town Improvement Act was issued on June 21, 1963 in this regard. The Land Acquisition Collector, Improvement Trust, Jalandhar vide his award dated July 21, 196 classified the land in two categories. For belt "A" the Collector allowed the compensation at the rate of Rs. 115/- per marla. For the remaining land, comprised in belt "B", the acquired land was assessed at the rate of Rs. 50/- per marla. The claimants were not satisfied. They claimed references u/s 18 of the Land Acquisition Act for enhancement of compensation. The matter was accordingly, referred to Tribunal.

3. The Tribunal decided the aforesaid references through separate awards. In reference No. 5 of 1967, an award dated May 8, 1974 was given qua the land falling in belt "A". The aforesaid land was ordered to be assessed at the rate of Rs. 260/- per marla. The remaining land qua belt "B" was adjudicated vide award dated February 9, 1983. In reference No. 4 of 1967 and reference No. 7 of 1967, the learned Tribunal upheld the carving out of separate belt "B". However, it enhanced the compensation to Rs. 170/- per marla. The claimants were also held entitled to 15% solatium on the enhanced amount of compensation besides 6% per annum interest from the date of their possession till the payment of the enhanced compensation.

4. Dissatisfied with the aforesaid award dated February 9, 1983, the claimants preferred two separate writ petitions being Civil Writ Petitions No. 4748 and 4749 of 1983. The learned Single Judge through his judgment dated March 3, 1993 held that there was no justification for the two belts and the entire acquired land was liable to be assessed at a uniform rate i.e. at the rate of Rs. 260/- per marla which was the market value for the land falling in belt "A". The learned Single Judge also held that the solatium was payable on the entire amount of compensation as well as the interest as per provisions of Section 28 of the amended Act.

5. Aggrieved against the judgment of the learned Single Judge, appellant-Improvement Trust has now chosen to approach this Court through the present two appeals.

6. We have heard Shri S.C. Pathela, learned Counsel appearing for the appellant-Improvement Trust and Shri Mukul Aggarwal, Advocate learned Counsel appearing for the respondents and with their assistance have also gone through the record of the case.

7. Shri S.C. Pathela, learned Counsel for the appellant has primarily raised two grounds. Firstly, it has been argued that the learned Single Judge, in exercise of his powers under Articles 226/227 of the Constitution was not justified in enhancing the compensation by assessing the entire land uniformly. Secondly, it has been argued that in any case the two belts which had been carved out by the Land Acquisition Collector and which had been upheld by the Tribunal also were wholly justified and there was no warrant for disturbing the aforesaid classification.

8. We have duly considered the aforesaid contentions of the learned Counsel for the appellant but find no merit in the same. To appreciate the first contention of the learned Counsel, certain observations made by the Apex Court need to be noticed. In the case of *State of A.P. v. P.V. Hanumantha Rao and Anr.* 2003(10) SC 121, the Apex Court while examining the correctness of an order passed under the provisions of Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, noticed the following facts:

28. On examination of the relevant provisions of the Act of 1982 and in the light

of its objects and reasons, it is apparent that in cases of alleged land-grabbing, exclusive jurisdiction is conferred on the Special Court. Jurisdiction of a Civil Court on such subject matter stand ousted. The Special Court has been conferred powers of a Civil Court to examine all questions of title and possession with respect to the land alleged to have been grabbed. The findings of the Special Court are binding and conclusive on the parties and all others having interest in the land which is alleged to have been grabbed. Against the decision of the Special Court, no appeal is provided. The only remedy of the aggrieved party is to approach to the High Court under Article 226 or 227 of the Constitution of India. It is on the basis of the aforesaid provisions that we have to determine the scope of interference of the High Court in writ jurisdiction in the judgment and decision of the Special Court...

(emphasis supplied)

Thereafter it was observed as follows:

30. True, it is that remedy of the writ petition available in the High Court is not against the "decision" of the subordinate court, tribunal or authority but it is against the "decision-making process". In the "decision-making process", if the court, tribunal or authority deciding the case, has ignored vital evidence and thereby arrived at erroneous conclusion or has misconstrued the provisions of the relevant Act or misunderstood the scope of its jurisdiction, the constitutional power of the High Court under Article 226 and 227 can be invoked to set right such errors and prevent gross injustice to the party complaining.

31. In the case of Surya Dev while examining the nature and ambit of power of the High Court to issue writs under Article 226 or 227 of the Constitution, the above stated legal position has been recognised by observing thus:

39. Though we have tried to lay down broad principles and working rules, the facts remains that the parameters for exercise of jurisdiction under Article 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.

32. This Court has recognised the right of the High Court to interfere with orders of subordinate courts and tribunals where (1) there is an error manifest and apparent on the face of the proceedings, such as, when it is based on clear misreading or utter disregard of the provisions of law, and (2) a grave injustice or gross failure of justice has occasioned thereby.

33. No doubt, it was held that neither in exercise of the power of writ under Article 226 nor in supervisory jurisdiction under Article 227, the High Court will convert itself into a court of appeal and indulge in reappraisal or evaluation of evidence. The power of the High Court in writ jurisdiction to interfere where important evidence has been overlooked and the legal provisions involved are

misinterpreted or misapplied has been recognised even in the case of Sawarn Singh on which strong reliance was placed on behalf of the State. The relevant observations are:

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law.

9. In the case of Smt. Shail Vs. Shri Manoj Kumar and Others, , the Apex Court while relying upon the law laid down in Surya Dev Rai Vs. Ram Chander Rai and Others, held that in exercise of power of superintendence conferred under Article 227 of the Constitution of India on the High Court, the High Court does have power to make such directions as the facts and circumstances of the case may warrant, may be, by way of guiding the inferior court or tribunal as to the manner in which it would proceed hence and the High Court has the jurisdiction also to pass itself such a decision or direction as the inferior court or tribunal should have made. Although it was held that the jurisdiction under Article 227 of the Constitution is to be exercised sparingly and with care and caution but is certainly one vesting in the High Court and meant to be exercised in appropriate cases.

10. A Division Bench of this Court while deciding L.P.A. in the case of Ludhiana Improvement Trust v. Hari Shanker 1986 RRR 540 held as under:

The only contention raised before us by the learned Counsel for the appellant is that the learned Single Judge should not have interfered with the determination of the compensation in exercise of his jurisdiction under Article 226 of the Constitution of India. A similar contention was raised before the learned Single Judge and was repelled on the ground that the Tribunal had ignored the relevant evidence. In our view, the learned Single Judge was right in going into the legality of the award of the Tribunal as the relevant evidence was ignored while determining the amount of compensation.

11. In view of the law laid down by the Hon"ble Supreme Court of India and also the Division Bench of this Court as noticed above, it is apparent that when there is an arbitrary exercise of power or an error apparent on the face of record or any other error of law committed by a Tribunal, then this Court has the jurisdiction under Articles 226 and 227 of the Constitution of India to correct the aforesaid errors. It is well settled by now that when there is misreading of evidence, misapplication of law or ruling out of any evidence available on the record or when the order does not disclose the reasons i.e. the decision making process is not disclosed to the Court, then this Court always interferes and comes to the rescue of the aggrieved party.

12. In the backdrop of the aforesaid proposition of law, we may notice certain observations made by the Tribunal in para 8 of the Award, which have also been

noticed by the learned Single Judge, as follows:

A perusal of the plan Ex.A-3 based on "Sharaja Aks" coupled with the evidence of the parties leaves no doubt that the acquired land is located along the Jalandhar-Nurmahal Metalled Road beyond the Nakodar-Railway tract towards Jalandhar Cantt. Side. The other end of this scheme touches the Jalandhar City-Cantt. Metalled road ... No doubt, the land immediately abutting the Jalandhar City-Cantt. Road was better situation as the Khalsa College for boys and girls St. Joseph Convent School, Atwal House, Atwal Cold Storage, Ruby Nelson Memorial Hospital etc. are located along this road but the potential of the remaining land for being used for residential purposes is also uniform. The very factum that this land has been acquired for the development of a residential scheme, known as 50 acres development scheme, further supports this conclusion. Even Harbhajan Ram Kanungo (RW1) admits that this land is located beyond the railway track Nakodar and along the Jalandhar-Nurmahal metalled road whereas on the other side of this railway track are the colonies known as New Jawahar Nagar and Mota Singh Nagar. The testimony of Kewal Krishan attorney of the petitioners also proves this fact. So there is no escape but to hold that the market value of this land on the relevant date i.e. 21st June, 1963, has to be assessed keeping in view its potential of being used for residential purposes and not on the basis of agricultural land.

13. We may also notice the observations made by the learned Single Judge in his judgment under challenge as follows:

It is clear from the finding recorded by the Tribunal itself that the potential of the entire land for being developed for residential purpose is uniform and its market value had to be assessed on that basis and not on the basis of its being agricultural land. In view of this finding recorded by the Tribunal, there is hardly any jurisdiction for bifurcating the land in two Belts for the purpose of awarding compensation. It is common case that one end of the land acquired was along the Jalandhar Nurmahal metalled road and on the other end are the colonies known as New Jawahar Nagar and Mota Singh Nagar which are residential colonies. When land in both the Belts as carved out by the Collector and upheld by the Tribunal have similar potentialities and are within the municipal limits and the entire area having been acquired for the same object and purpose, it cannot, in my opinion be allowed to be treated differently in the matter of assessment of compensation. Accordingly, I hold that the entire area acquired for the development of the aforesaid scheme should be treated at par and its market price should be the same, namely, Rs. 260/- per marla as found by the Tribunal for the so called Belt "A". The petitioners are, therefore, held entitled to compensation for their land at the rate of Rs. 260/- per marla.

14. The reading of the observations made by the Tribunal and also the findings recorded by the learned Single Judge clearly shows that the entire acquired land for the above said scheme was situated within the municipal limits of Jalandhar and there was all around development adjoining the acquired land. The aforesaid

findings recorded by the Tribunal do not justify any differential treatment for the various parts of the acquired land. The entire land had uniform potential and any part of the acquired land could not be treated to be merely agricultural in nature. Consequently, the learned Single Judge was wholly justified in holding that the belting system as adopted by the Collector and the Tribunal was wholly without any justification.

15. From the perusal of the judgment of the learned Single Judge, we find that no further enhancement was granted by the learned Single Judge and the assessment of the market value as assessed by the Tribunal for belt "A" has itself been adopted for belt "B" also. We entirely agree with the aforesaid assessment.

16. We also find that the claimants were entitled to solatium and interest on the entire amount of compensation as per the amended provisions of the Act.

17. Consequently, we do not find any merit in the present appeals. The same are dismissed.