

(2009) 01 P&H CK 0175
In the Punjab And Haryana At Chandigarh

The State of Punjab and Others

APPELLANT

Vs

Gurbax Singh

RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Land Acquisition Act, 1894 — Section 18, 25, 4, 6

Citation : (2009) 154 PLR 406 : (2009) 5 RCR(Civil) 432

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Judgement

Rakesh Kumar Jain, J.—This judgment shall dispose of 16 Regular First Appeals bearing Nos. 3003 to 3011, 3183 to 3186, 3265, 3550 of 1993 and 85 of 1994 filed by land owners/claimants and by the State of Punjab against the award of Additional District Judge, Patiala dated 8.4.1993. Since identical question of law and facts are involved in these appeals, therefore, these appeals are being disposed of by a common judgment. However, for the sake of convenience, the facts are being taken from RFA No. 3003 of 1993 titled as State of Punjab and Ors. v. Gurbax Singh.

2. Land measuring 164 kanals 17 marlas situated in village Mubarakpur, Tehsil Rajpura, District Patiala was notified u/s 4 of the Land Acquisition Act, 1894 (for short "the Act") dated 27.9.1987, published in extra ordinary Gazette dated 28.9.1987, followed by notification of declaration issued u/s 6 of the Act dated 21.1.1988, at public expense, for public purpose, namely, for setting up of a project of M/s Mohan Fibres Products Ltd. in village Mubarakpur. The acquired land was classified as under:

Chahi 57K - 10M Barani 103K - 18M Gair Mumkin 3K - 9M ----- Total
164K - 17M

The Land Acquisition Collector, Industries Department (Punjab) (for short "the Collector") vide his award No. 3 for the year 1988-89 dated 14.6.1988, determined the compensation of the acquired land as under:

S. No. Nature of land Area Rate per acre 1. Chahi 57K - 10M 50,000/- 2. Barani 103K - 18M 22,000/- 3. Gair Mumkin 3K - 9M 12,000/- ----- 164K - 17M

3. The land owners/claimants were not satisfied with the award of the Collector, therefore, they filed objections u/s 18 of the Act. The Collector referred the objections to the Civil Court for adjudication. Both the parties led their oral as well as documentary evidence. The land owners examined claimant Gurbax Singh, who appeared as PW1 and deposed that two factories, railway station and rest house are situated near the acquired land which is also located on the main Kalka road. He also stated that Abadi of villages Mubarakpur and Meerpur is joint and the land acquired from the area of villages Mubarakpur and Meerpur is at a distance of 5 killas from each other. He further deposed that focal point is about one kilometer from the acquired land. Similar statement was made by another claimant Amarjit Singh, who appeared as PW3. Kuldip Singh, Patwari Halqa Mubarakpur appeared as PW2 and provided Aksh Latha Ex.P8. Besides oral evidence, the land owners also produced six sale deeds which are tabulated as under:

Sale deed Area sold Village Amount No. & date Ex.P1

1528/1.12.1987 0-2M Meerpur Rs. 6,000/- Ex.P2 521/2.6.1988 16-0M Mubarakpur Rs. 2,80,000/- Ex.P3 1453/9.7.90 11K-6M Bhankharpur Rs. 10,00,000/- Ex.P4 1514/28.11.91 2-0K Mubarakpur Rs. 1,58,000/- Ex.P5 1190/23.9.91 2-3K Mubarakpur Rs. 1,85,000/- Ex.P6 1191/23.9.91 1-13M Mubarakpur Rs. 1,43,000/-

4. The land owners had also produced copy of the award dated 2.4.1992 rendered in the case of Hari Kishan v. State of Punjab by Sh. S.S. Kanwal, Additional District Judge, Patiala in respect of the land acquired for the purpose of setting up an Industrial Focal Point at Village Meerpur, Tehsil Rajpura in which compensation was awarded by the Collector @ Rs. 75,000/- per acre and was then enhanced to Rs. One lac per acre vide award of the Court dated 2.4.1992.

5. As against the aforesaid evidence, the beneficiary respondent-M/s. Mohan Fibre Products Limited tendered the following sale deeds:

Sale deed Area sold Village Amount No. & date

Ex.R1 15K-12M Mubarakpur Rs. 39,000/- 1849/28.1.86 (Barani) Ex.R2 8K-0M -do- Rs. 10,000/- 1986/11.2.86 (Barani) Ex.R3 3K-7M -do- Rs. 8,375/- 1750/9.1.86 (Barani) Ex.R4 1K-9M -do- Rs. 3,000/- 1502/3.12.85 (Barani) Ex.R5 7K-11M -do- Rs. 11,000/- 1065/13.8.87 (Barani) Ex.R6 8K-19M -do- Rs. 40,000/- 1343/15.10.87 Ex.P7 8-0K -do- Rs. 6,000/- 511/2.6.1987 (Barani)

6. The learned Reference Court rejected all the sale deeds which were relied upon by the claimants on the ground that they are post notification sale deeds and out of the six sale deeds, one pertains to another village Bhankharur. It was observed that there was evidence brought on record by the claimants that the

land covered under the sale deeds was of the same quality but value and potentiality of the land differed and also the claimants have failed to locate the land of the sale deeds by way of a site plan. The other evidence, relied upon by the claimants, in the shape of award dated 2.4.1992 was also not taken into consideration on the ground that award in that case was dated 2.4.1992 whereas notification in the present case was issued in the year 1987. Insofar as the sale deeds Ex.R1 to Ex.R7 tendered by the respondents are concerned, those were also not found helpful for the reason that these sale deeds relate to Barani quality of land which was not comparable with the acquired land running into big chunk of land measuring 20-60 acres.

7. After taking into account the entire evidence on record, it was found that the acquired land has potentiality for being developed into residential, commercial and industrial area and keeping in view all these facts, ultimately the Reference Court vide the impugned award, granted compensation as follows:

Chahi Rs. 75,000/- per acre Barani Rs. 27,000/- per acre Gair Mumin Rs. 17,000/- per acre

8. Still dissatisfied, the claimants as well as State of Punjab have come up in the aforesaid appeals before this Court. During the pendency of this appeal, the appellants in one case i.e. RFA No. 3186 of 1993 filed an application No. 10302-CI of 2008 seeking exemption from filing certified copies of judgment dated 16.7.2001 passed by Additional District Judge, Patiala attached as Annexure A-1 and judgment dated 19.5.2004 passed by a Single Bench of this Court in RFA No. 2617 of 1992 attached as Annexure A-2. That application was allowed as prayed for on 14.11.2008. Another application bearing No. 10303-CI of 2008 was filed under Order 41 Rule 27 read with Section 151 of the CPC (for short "CPC") to lead additional evidence in which notice was issued on 14.11.2008 to the State of Punjab for 1.12.2008. Sh. Manohar Lall, Addl. A.G. Punjab appearing on behalf of the State has filed reply to the aforesaid application bearing CM No. 10303-CI of 2008 in the Court today. I have perused the application as well as reply and I am of the view that application bearing No. 10303-CI of 2008 deserves to be allowed on the ground that evidence, which is sought to be produced on record is firstly record of the Court and secondly it has come in existence after the passing of the impugned order of the Reference Court. Therefore, it falls within the provisions of Order 41 Rule 27(A)(b) of CPC and as such, the same is allowed and the documents Annexures A-1 and A-2 are being taken into consideration on merits.

Sh. S.N. Saini, learned Counsel appearing on behalf of the appellants has first referred to the award Annexure A-1 dated 16.7.2001. The brief facts of the award Annexure A-1 are that pursuant to the notification issued on 14.6.1988 u/s 4 of the Act followed by notification of declaration issued u/s 6 of the Act dated 11.11.1988, 459 kanals 10 marlas (57.43 acres) of land in the revenue estate of village Meerpur, Tehsil Rajpura, District Patiala was acquired at public expenses for public purpose, namely, for setting up an industrial Focal Point at Dera Bassi. The Collector vide his award dated 12.9.1989, assessed the market value of the

acquired land into two belts and awarded compensation for special belt land measuring 46 kanals 19 marlas @ Rs. 1 lac per acre and for simple belt land measuring 412 kanals 11 marla @ Rs. 1 lac per acre and for simple belt land measuring 412 kanals 11 marla @ Rs. 75,000/- per acre. The Additional District Judge, Patiala vide his judgment dated 2.4.1992 redetermined the compensation for special belt @ Rs. 1,25,000/- per acre and for simple belt @ Rs. 1 lac per acre. The State was not satisfied with the award dated 2.4.1992, therefore, they preferred appeal in the High Court. Vide order dated 20.1.2000, this Court had set aside the award of the Additional District Judge dated 2.4.1992 and remanded the matter to the Court of Additional District Judge, Patiala for fresh disposal. After remand of the case, the Additional District Judge, Patiala redetermined the compensation vide his award dated 16.7.2001 @ Rs. 1, 18,125/- per acre besides awarding all the statutory benefits in terms of the provisions of the Act.

9. In the judgment Annexure A-2, the facts are that vide notification issued u/s 4 of the Act dated 14.6.1988 published in the Govt. Gazette on 15.6.1988, land of village Mubarakpur, Tehsil Rajpura, District Patiala was acquired for the public purpose, namely, for setting up of an Industrial Focal Point at village Mubarakpur. The Collector awarded compensation @ Rs. 75,000/- per acre. On reference, learned District Judge awarded Rs. One lac per acre. Both the State of Punjab as well as the land owners came up in appeal. This Court, vide its award dated 19.5.2004, while taking into account the award Annexure A-I as well as sale deed of Village Mubarakpur dated 2.6.1988 whereby 6 kanals of land was sold for Rs. 2,80,000/- which comes to Rs. 1,40,000/- per acre, granted compensation @ Rs. 1,20,000/- per acre.

10. Learned Counsel for the appellants has vehemently contended that the compensation has already been settled by this Court to the tune of Rs. 1,20,000/- per acre in respect of the land acquired in village Mubarakpur itself, on the basis of sale deed pertaining to the same village. Therefore, he claimed that the impugned award should be modified and claimants be awarded compensation to the tune of Rs. 1, 20,000/- per acre.

11. On the other hand, learned Counsel for the State of Punjab has vehemently contended that in the case decided by this Court vide Annexure A-2, the sale deed, which has been relied upon is prior in time as the sale deed Ex.A2 is dated 2.6.1988 and in the said judgment (Annexure A-2), notification was issued on 14.6.1988 whereas in the present case the notification u/s 4 of the Act was issued on 27.9.1987, therefore, a post notification sale deed can not be relied upon in the present case and as such, no further compensation can be enhanced as rightly observed by the learned Reference Court. Learned Counsel for the State has further contended that compensation insofar as Barani land is concerned should be reduced in view of sale deeds Ex.R1 to Ex.R7.

12. I have given my thoughtful consideration to the contentions raised by both the learned Counsel for the parties.

13. In the present case, it is undisputed that notification u/s 4 of the Act was issued on 27.9.1987 and the appellants/claimants relied upon sale deed of the same village Mubarakpur dated 2.6.1988 as Ex.P2. The said sale deed was not considered by the learned Reference Court on the ground that the same is post notification and is not located by the appellants/claimants. Sh. S.N. Saini, learned Counsel for the appellants relied upon a decision of the Hon'ble Supreme Court in the case of Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, in which the Supreme Court has held that even post notification sale deed can be considered if it is in proximity in time and is a genuine sale instance. Insofar as the genuineness of the sale instance is concerned that has already been tested as it has been taken into consideration by this Court in judgment Annexure A-2. Therefore, the only short-coming is in respect of its proximity in time of notification issued u/s 4 of the Act. The learned Counsel for the appellants has submitted that if the sale deed is 9 months subsequent to the notification u/s 4 of the Act, appropriate cut may be applied and compensation may be redetermined. I am in agreement with the argument raised by the counsel for the appellants that since the sale deed has been found to be genuine, the same can be applied in view of the decision of the Supreme Court in Chiman Lal Hargovindass v. Special Land Acquisition Officer (supra) but the same has to be followed by applying a cut of 15% in this regard. After applying 15% cut to the amount determined in respect of village Mubarakpur vide Annexure A-2 wherein sale deed has been considered as Ex.A2 and the compensation has been awarded Rs. 1,20,000/- per acre, the value comes out to be Rs. 1,02,000/- per acre. Insofar as the argument of the counsel for the respondent-State is concerned that compensation for Barani land should be determined in view of sale deeds Ex.R1 to Ex.R6, in my view, this argument cannot be considered because the amount derived from the sale deeds Ex.R1 to Ex.R6 is less than the award of the Collector and in view of Section 25 of the Act sale deeds Ex.R1 to Ex.R6 have to be kept out of consideration.

14. Keeping in view the totality of the circumstances mentioned here-in-above, the appeals filed by the appellants/claimants are hereby allowed and impugned award is modified to the extent that the appellants shall be entitled to compensation of Rs. 1,02,000/- per acre.

15. Since it has been observed by the Reference Court in the impugned award that "land had all the potentialities for being developed into residential, commercial and industrial area, no manner of doubt is left from the aforesaid evidence that the acquired land had great potential for being used for residential and commercial purposes". The learned Counsel for the appellant contends that uniform rate should be awarded. In this regard, he relies on a decision of this Court in Harchal Singh v. State of Punjab 1991(1) R.L.R. 389 : 1991 (1) R.R.R. 353 wherein it has been held that once urbanization has come up and acquired land has gained potential for urbanisation, fixing of market price on the basis of agricultural quality loses its significance and the entire land has to be considered as one quality. Besides the above, learned Counsel for the appellants also relied

upon judgments in Kehar Singh and Others Vs. Punjab State and Others, . In the present case, the land in question has been acquired for industrial purpose itself for the use of Limited Company, namely, M/s Mohan Fibres Ltd., therefore, there is no doubt that it can be used for industrial purpose. Keeping in view the law laid down in the aforesaid judgments as well as the fact that purpose of acquisition is industrial, I hold that the appellants shall be entitled to compensation at uniform rate in respect of the entire acquired land @ Rs. 1,02,000/- per acre.

16. With these observations, the appeal filed by the claimants are hereby allowed. The appellants shall also entitled to statutory benefits in view of the provisions of the Amended Act with costs of the appeals.

17. However, the appeals filed by the State of Punjab are hereby dismissed without any order as to costs.