(1980) 02 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 64 of 1975 with Cross Objection No. 1284-CII of 1975

The State of Punjab APPELLANT

Vs

Smt. Lila Wati RESPONDENT

Date of Decision : 27-02-1980

Acts Referred:

Punjab Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 8(4)(a)

Citation : (1980) 02 P&H CK 0014

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : G.S. Grewal, Addl A.G. Pb, for the Appellant; M.L. Sarin, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—This order will dispose F.A.Os. Nos. 64, 65, 66, 67, 68, 69 and 70 of 1975, alongwith the cross-objections filed in all the appeals as all of them arise out of the same judgment.

2. By two separate notifications, dated 23rd October, 1953 and 21st April, 1954, the agricultural land measuring 28 Kanals 2 Marlas, was requisitioned by the State Government for the construction of cheap tenements near the Industrial Area of Jullundur. The requisitioned land was situated on the road leading to Sodal. Subsequently, the said land was acquisitioned in April, 1963, under the Punjab Requisitioning and Acquisition of Immovable Property Act, 1963 (hereinafter referred to as the Act), and the compensation was determined at the rate Rs. 420/- per Kanal by virtue of the provisions contained in sub-section (4)(a) of Section 8 of the Act, according to which the compensation had to be paid at the market value or twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition, whichever is less. Since the petitioners were not satisfied with the compensation awarded by the State Government on the basis of compensation allowed by the

Military Officer, District Judge, Jullundur was appointed as the Arbitrator under the provisions of the Act. The following issues were framed for the determination of the dispute between the parties:-

1. At the time of the acquisition what was the right, title or interest of each claimant or set of claimants as the case may be, in the acquired property or in any part thereof?

2. Whether and, if so, what amount each claimant or set of claimants is separately entitled to get in consequence of the acquisition of this property?

3. Whether the claimants are entitled to get any sum or compensation for compulsory acquisition?

4. Whether and, if so, what amounts are the claimants entitled to get as interest by way of compensation?

The learned District Judge by his order dated 13th June, 1967, refused to enhance the amount of compensation and maintained the amount as allowed by the Military Officer.

3. There was an appeal to the High Court against the said order dated 13th June, 1967. Though the learned Single Judge dismissed the same on 15th March, 1972 but in Letters Patent Appeal, which was decided on 8th January, 1973, clause (b) of Sub-sec. (4) of Section 8 of the Act, was held to be ultra vires of Article 31 of the Constitution of India and the following order was then passed:-

We, therefore, accept this appeal, set aside the order of the Arbitrator and remand the case back to him for determination of the compensation in accordance with the provisions of Clause (a) of sub-section (4) of Section 8 of the Punjab Act. In as much as this point was not raised before the learned Single Judge, although in a decision of the Supreme Court was available. We make no order as to costs.

On remand, an opportunity was given to the parties for leading evidence and consequently, issue No. 2 was determined afresh by taking note of the evidence, which was recorded before the order of remand and the one recorded subsequently After discussing the evidence produced by the parties, the learned District Judge fixed the market value of the acquired land on the date of acquisition, i.e. in April, 1963, under Clause (a) of sub-section (4) of Section of the Act, as being Rs. 190/- per marla. Consequently, it was held that all the petitioners are entitled to recover compensation at that rate. The claim for solatium and interest on the amount awarded was disallowed on the ground that "I am of the view that the petitioners cannot re-open this point after a judgment against them has been given by the Hon''ble Single Judge. On the same reasoning I do not want to award any interest to the petitioners on the compensation which is liable to be enhanced at the market value which I have fixed." Feeling aggrieved against this order of the District Judge, acting as Arbitrator under the Act, the State has filed the said appeals; where as the claimants have filed the cross-objections.

4. The learned counsel for the State contended that the land was only agricultural land, and, therefore, the Arbitrator has wrongly allowed the compensation at the rate of Rs. 190/- per Marla, taking into consideration that the acquired land was such which could be used for purposes other than agriculture. After hearing the learned counsel for the appellants and going through the evidence, I do not find any force in the appeals filed by the State. Apart from the other evidence, in the two notifications issued in the years 1963 and 1954, the 1and in dispute was requisitioned by the State Government for the constitution of cheap tenements near the Industrial Area of Jullundur. This itself is sufficient to hold that the acquired land had the potentiality (sic) being used for purposes other than agriculture and it has been rightly held so by the Arbitrator.

5. As regards the cross-objections filed on behalf of the proprietors, a preliminary objection has been raised on behalf of the State, that the same are not maintainable under Order 41, Rule 22 of the Code of Civil Procedure, as the same is not applicable to these proceeding. In support of his contention, he has relied upon a Division Bench Judgment of this Court in F.A.O. No. 85-D of 1976, decided on 17th December, 1965. On the other hand, the learned counsel for the respondents has relied upon Union of India v. Virsa Singh (1979) 81 P.L.R. 340 Major Triloki Nath Bhargava and another v. Smt. Jaswant Kaur and others (1975) 77 P.L.R. 242, and Smt. Shenti Devi and others v. General Manager, Haryana Roadways, Ambala and others (1971) 73 P.L.R. 543. In Smt. Shanti Devi''s case (supra), a full Bench judgment of this Court, it has been held therein that the High Court while hearing appeals u/s 110-D of the Motor Vehicles Act, would act as a Court and that a proceeding even if at its inception has a semblance of an arbitration proceedings, would not retain its character as such in appeal. In my opinion, the ratio of this judgment is fully applicable to the present case. In Major Triloki Nath Bhargava''s case (supra) which was again a case under the Motor Vehicles Act it was held that the cross-objections are maintainable at the hands of a respondent in an appeal u/s 110-D of the Motor Vehicles Act to the High Court. In para 4 thereof, the matter has been fully discussed and ultimately it has been held that "Consequently, the cross objections filed by the claimant respondent in response to the appeal of the owner and the insurer of the Vehicles were maintainable, and the objection of Mr. Suri against the maintainability of the same is without force and is repelled". In view of these judgments of this Court, the preliminary objection of the learned counsel for the State has no force.

6. The learned counsel for the respondents in their cross-objections, has vehemently contended that the learned District Judge, though has referred to a sale-deed Exhibit P-1, dated 24th July, 1961, relating to the land measuring 1 Kanal, 6 Marlas, sold for Rs. 65,000/-, the average price of which comes to Rs. 250/- per marla, but has pieced reliance on Exhibit P-3 only, a sale deed, dated

19th May, 1962, relating to land measuring 1 Kanal 1 Marla, sold for Rs. 4,000/-, the average of which comes to Rs. (sic) Paise per marla. The location of there plots sold by Exhibits P-1 and P-3, is clear from the Site-Plan, Exhibit P-5, which also shows the acquired land itself. The learned District Judge has observed that the land pertaining to Sale-Deed, Exhibit P-3, adjoins the acquired land and the situation of both the lands is such that it is difficult to hold that their value was different. The learned counsel for the claimants contended that the land, subject-matter of Exhibit P-1, also adjoins the acquired land and since the average of that land comes to Rs. 250/- per Marla, the sane should have been allowed by the learned District Judge to them. I find force in this contention. From the plan, Exhibit P-5, it is quite apparent that the land of Exhibit P.1, also adjoins the acquired land, though on the opposite side. The learned counsel for the State was unable to point out that why the average price of this land, which is the subject-matter of Exhibit P-1 should not have been allowed to the claimants. In Shri Radhey Sham v. The State of Haryana and others 1980 P.L.J. 77, a Division Bench judgment of this Court, it has been observed, that "As regards the instances, Exhibits R-2, R-3 and R-10, the claimant would be justified in saying, in view of the Supreme decision, in Shri Rani M. Vijaylakshmamma Rao Bahadur Ramie of Vuyyur v. The Collector of Madras (1969) 1 M.L.J. 45, and a decision of this Court in Punjab State v. Mohinder Singh LPA No. 110 of 1977 decided on April 12, 1979, that he is entitled to the market value on the basis of sale deeds fetching the highest value, prevailing in the market." So keeping in view the said observation, the respondents are entitled to market value on the basis of sale-deed. Exhibit P-1, fetching the highest value prevailing in the market at the relevant time which was Rs. 250/- per marla. Consequently, the amounts of compensation is enhanced from Rs. 190/- per marla. to Rs. 250/- per Marla and the respondents will be entitled to recover the amount of compensation at that rate.

7. As regards the claim to the solatium and the interest, which has not been allowed by the learned District Judge, the matter has been settled by a Full Bench of this Court in Hari Krishan Khosla v. The Union of India and another (1974) 76 P.L.R. 658, under this very Act. It has been held therein, that "the petitioners are entitled to claim and receive from the Central Government solatium at 15 per cent per annum on the amount of compensation allowed to them for their land which has been acquired by the Government, and also interest at six percent per annum on the amount of compensation." Consequently, in view of this judgment of the Full Bench, it is held that the respondents are entitled to claim and receive solatium at 15 percent per annum on the amount of compensation allowed to them for their land by this Court and also interest at 6 percent per annum on the amount of compensation.

8. For the reasons recorded above, the appeals fails whereas the cross-objections are accepted and the order of the Arbitrator i.e. the District Judge, is modified to the extent that the respondents will be entitled to the compensation at the rate of Rs. 250/- per Marla along with solatium at 15% per annum and the

interest at the rate of 6 per cent.

