(1998) 11 P&H CK 0135

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 2281 of 1991

Union of India (UOI) and Another APPELLANT

Vs

Hardit Singh and Others RESPONDENT

Date of Decision : 19-11-1998

Acts Referred:

Court Fees Act, 1870 — Section 13
Land Acquisition Act, 1894 — Section 23

Citation : (1999) 121 PLR 447 : (1999) 2 RCR(Civil) 623

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Ashutosh Mohanta, for the Appellant; M.L. Sarin Alka Sarin, Rajiv Bhalla, K.L. Dhawan, R.S. Minhas and Sanjay Majithia, for the Respondent

Judgement

Swatanter Kumar, J.—Nearly 372 regular first appeals and cross objections have been listed together for disposal as they arise from common notification but different awards though granting identical amount of compensation payable to the claimants for acquisition of their lands under the provisions of the Land Acquisition Act, 1894, hereinafter referred to as the Act.

2. For the course of action which the Court proposes to adopt in these cases, it is not necessary to discuss the facts in great detail, but reference to the facts of the main cases in a concise manner, would suffice the purpose. Vide notification u/s 4 of the Act dated 15.7.1987 published in the Gazette of Punjab Government dated 24.7.1987, 9630 Kanals 17 Marias of land was proposed to be acquired in eight villages namely, Simbli Gujran, Fatehgarh, Najo Chak, Lahri, Mirzapur, Bias Lahri, Panjupura and Naushera-nal-Bandan, in Tehsil Pathankot, District Gurdaspur. The notification u/s 6 of the Act dated 15.7.1987 was published on 31.7.1987. The Special Land Acquisition Collector, vide his Award No. 3 of 1988-89 dated 31.7.1989 awarded uniform rate of compensation in respect of all the above villages in addition to the compensation payable for construction and trees. The amount of compensation awarded was as under-

Nehri, Chahi, Gair Mumkin Abadi Rs. 35,000/-per acre (Rs.218.75 per marla) Barani I and Barani II Rs. 25,000/- per acre (Rs.160.00 per marla) Banjar Qadim and Banjar Jadid Rs. 12,500/- per acre (Rs.78.00 per marla) Gair Mumkin Rs. 1,000/- per acre (Rs.6.25 per marla)

3. Being dis-satisfied with the amount awarded, the claimants filed references u/s 18 of the Act before the learned District Judge, Gurdaspur. Both the parties adduced oral as well as documentary evidence. The Union of India as well as the State objected enhancement in view of the evidence led while the claimants claimed increase in the amount of compensation by Rs. 3,500/- to Rs. 20,000/- per marla in their respective cases. The learned Additional District Judge dealt with this entire bunch of cases in different groups and passed 32 awards on different dates though awarding the same amount of compensation. The details of the awards passed by the trial Court are as under :-

Sr. LAC No. Name of the parties Date of Decision No. 1. 1/91 Puran Banti v. U.O.I. 02.05.1991 2. 30/91 Hardit Singh v. U.O.I. 02.05.1991 3. 48/91 Behari Lal v. U.O.I. 28.04.1992 4. 30/91 Surinder Nath v. U.O.I. 28.04.1992 5. 166/91 Bela Singh v. U.O.I. 02.02.1993 6. 145/91 Pardhan Singh v. U.O.I. 19.04.1993 7. 9/93 Parshottam v. U.O.I. 31.10.1994 8. 20/92 Mali Ram v. U.O.I. 09.05.1995 9. 19/92 Sansar Chand v. U.O.I. 09.05.1995 10. 17/92 Gurdit Singh v. U.O.I. 24.04.1995 11. 10/92 Bishan Lal v. U.O.I. 03.05.1995 12. 136/95 Balvinder Singh v. U.O.I. 03.05.1996 13. 239/95 Sansar Singh v. U.O.I. 06.06.1996 14. 133/95 Thuru Ram v. U.O.I. 10.08.1996 15. 61/93 Amar Singh v. U.O.I. 16.12.1996 16. 64/60/95 Santokh Singh v. U.O.I. 03.03.1997 17. 22/63/92/97 Balwant Singh v. U.O.I. 04.06,1997 18. 58/95 Mangat Ram v. U.O.I. 06.09.1997 19. 254/97 Sawaran Lal v. U.O.I. 10.09.1997 20. 11/92 Mali Ram v. U.O.I. 16.06.1995 21. 41/91 Anand Parkash v. U.O.I. 02.11.1995 22. 33/28/92 Suram Singh v. U.O.I. 07.09.1996 23. 9/93 Gurmukh Singh v. U.O.I. 06.04.1998 24. 134/91 Didar Singh v. U.O.I. 09.09.1995 25. 32/91 Banarsi Dass v. U.O.I. 02.11.1995 26. 9/32 Sartaj Singh v. U.O.I. 03.05.1995 27. 29/91 Ambo Devi v. U.O.I. 02.05.1991 28. 12/92 Sansar Chand v. U.O.I. 24.04.1995 29. 27/94 Thuru Ram v. U.O.I. 03.03.1997 30. 25/92 Gurdeep Singh v. U.O.I. 28.03.1995 31. 49/91 Hakumat Rai v. U.O.I. 18.04.1995 32. 40/91 Charan Singh v. U.O.I. 28.04.1992

4. The learned Additional District Judge took into consideration the different sale-deeds which had been produced on record by the parties, other sale instances, awards passed by the Courts in relation to adjacent villages and awarded Rs. 1,44,000/- per acre for Nehri/Chahi land and for other land amount of Rs. 1,12,000/- per acre (Rs.900/- per Maria for Nehri/Chahi and Rs. 700/- per Maria in respect of other lands). In addition to this the claimants were awarded solatium at the rate of 30% and interest at the rate of 9% and 15% per year u/s 28 of the Act, besides 42.6% over and above the price already fixed by the Collector with regard to fruit bearing trees.

5. Union of India had produced 17 sales deeds/ sale instances, whereas the

claimants had also proved on record nine sale deeds. The addition to these sale instances there were four awards placed on record being Ex.P/3 to Ex.P/6 by the claimants and Ex.R.19 by the Union of India. This is the total evidence produced on record in all the cases. It may be mentioned at this stage that in some of the cases and specially in the cases of village Naushera Nal Bandan only one award was produced on record. In relation to village Beli Akalian Ex. P.4 was produced on record and there were no other sale instances. However, as already noticed, same amount of compensation was awarded by the learned Additional District Judge for all these villages uniformly for the Nehri and Chahi iand, while for other land similar amount was awarded on account of compensation.

6. The Union of India took the view that the compensation awarded was more than four times to the amount awarded by the Collector and was not based on any plausible reasoning or evidence. While, on the other hand, according to the claimants, keeping in view the sale instances and other evidence produced on record, the amount of compensation awarded was much less. The apparent dis-satisfaction on the part of the parties led to filing of various regular first appeals by the Union of India, as well as by the claimants and cross objections have been filed by the claimants in the regular first appeals preferred by the Union of India.

7. The learned Counsel appearing in various regular first appeals have been heard at great length. As the above mentioned two regular first appeals mainly cover the entire controversy, it would be appropriate to concentrate on the merits of these two appeals and reference to various cases wherever appropriate would also be made in this judgment. The judgment, thus, would cover the afore stated about 372 regular first appeals and cross objections filed by the parties from 31 awards above mentioned.

8. While learned Counsel appearing for the respective parties intended to argue their respective cases founded on the sale instances and awards produced by them, they took up the plea that the sale instances produced by the other party could not be looked into as they have not been proved in accordance with law. The net result of the acceptance of this submission is that all the safe deeds i.e., 17 sale deeds produced by the Union of India and 9 sale instances produced by the claimants cannot be looked into and the case at best could be decided on the strength of five awards which have been produced on record of other villages and cases. Thus, this contention raised on behalf of the parties is bound to outset.

9. The learned Counsel for the parties, referred to the very recent judgments of the Hon''ble Supreme Court of India in the cases of A.P. State Road Transport Corporation, Hyderabad Vs. P. Venkaiah and others, and Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., to contend the sale deeds which are not proved on record by examining either the vendor or the vendee cannot be looked into for the purposes of determining the amount of compensation payable to the claimants. In order to appropriately appreciate the submissions and to apply the principles enunciated by the Hon''ble Supreme Court of India in the above cases, it will be relevant to refer to the material

contents of the judgments at the very outset.

10. In the case of P. Venkaiah and others (supra) the Hon''ble Supreme Court held as under:-

''Admittedly, none of the persons connected with the documents, namely, neither the vendee nor the vendor has been examined. This Court in Kummari Veeraiah and Others Vs. State of A.P., , held that in the absence of adduction of any evidence through the vendor or the vendee, the documents per se cannot be relied upon. This was reiterated in State of Bihar Vs. Madheshwar Prasad, . Acceptance of certified copy of the sale deed u/s 51-A relates only to the production of the original sale deeds but it does not dispense with proof of the contents of the documents, relative features vis-a-vis 193, the land under acquisition. All is needed to be proved by examining the persons connected with the same and parties to the document. Following the above ratio, we hold that the view taken by the High Court and that of the reference Court is entirely illegal.

The appeal is accordingly allowed. The judgment and award of the reference Court as modified stand set aside. The matter is remitted to the reference court for disposal of the matter afresh after an opportunity is given to adduce evidence afresh and the same is considered. No costs."

11. On the very next day, the Hon''ble Supreme Court while reiterating the above principles in great detail, pronounced the judgment in Kurra Sambasiva Rao''s case (supra) and elaborated the need for a fair and reasonable assessment of market value which was always a question of fact. It has held by the Supreme Court as under:

"In that case, the features required to be present are: it must be within a reasonable time of the date of the notification: it must be a bona fide transaction; it should be a sale of land similar to the land acquired or land adjacent to the land acquired and it should possess similar advantageous features. These are relevant features to be taken into consideration to prove the market value of the acquired land as on the date of the notification published u/s 4(1) of the Act. This would be established by examining either the vendor or the vendee. If it is proved that they are not available, the scribe of the document may also be examined in that behalf. Section 51-A of the Act only dispenses with the production of the original sale deed since acquisition proceedings would take long time before award of the compensation attains finality and in the meanwhile the owner of the said deed is precluded from using the same for other purpose vis-a-vis this land. The marking of the certified copy is per see is not admissible in evidence unless it is duly proved and the witnesses viz. the vendor or the vendee are examined. This principle has been repeated in a catena of subsequent decisions of this Court."

"Whether fair and reasonable and adequate market value is always a question of fact depends on the evidence adduced, circumstantial evidence, and probabilities arising in each case. The guiding star or the acid test would be whether a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of the notification u/s 4(1) of the Act; but not an anxious buyer dealing at arm''s length with throw away price nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value. The judge should sit in the arm chair of the said willing buyer and seek an answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the Court proposed to fix for the acquired lands in the available market conditions. The Court is, therefore, enjoined with the bounden duty of public function and judicial dispensation in determination of the market value of the acquired land and compulsory acquisition."

12. The Court is bound by the law laid down by the Hon''ble Apex Court. The only plausible conclusion upon application of these principles to the facts of the present case is that all the 26 sale instances or sale deeds placed on record cannot be read in evidence as admittedly neither the vendor nor the vendee of the said sale deeds were examined and no steps were taken to examine the scribe or any other person who could prove the said sale deeds in accordance with the provisions of the Indian Evidence Act. The effect of this irresistible conIcusion is that this Court will have to rely only on the five awards which have been produced on record. Ex.P.5 is an award which relates to village Damtal (Himachal Pradesh), where the learned Additional District Judge had awarded Rs. 500/- per Maria, but it is conceded at the bar that the same was reduced by the High Court of Himachal Pradesh to Rs. 200/- per marla. The other award relates to village Beli Kalian where Rs. 300/- per marla was given to Nehri and Chahi land and other lands were awarded Rs. 225/- per marla. Ex.P.6 is the award relating to village Dhaki and Najo Chak where Rs. 400/- per marla was awarded. The Union of India had relied upon Ex. R.19 where compensation at Rs. 375/- per marla was awarded by the Courts. On this basis it is contended by the learned Counsel for Union of India that the awards produced by the claimants have no bearing on the matters in issue of the present case because the awards per se cannot determine the amount of compensation payable to the claimants. They relate to the villages which cannot be called adjacent to the land acquired in the present case. He further contended that Ex.R.19 would be the fair basis because it is just one kilometre away and the awards is of 1988. On the other hand, learned Counsel for the claimants have argued that the awards produced by the claimants could form a reasonable basis for awarding of compensation because the lands are very near and the notifications as well as the awards are in proximity to the acquisition of the present land.

13. Necessary corollary that follows to the above argument is whether it would be fair for this Court to adjudicate upon the quantum of compensation in absence of the sale-deeds which cannot be taken into consideration, as even now

conceded by the counsel for the parties. In order to answer this basic query the principles of fair and reasonableness must be applied to the cases of acquisition in determination of compensation. Large chunks of land are acquired by the Union of India and the State Governments for public purposes or such other ancillary purposes, which are founded on the social welfare schemes and are in the larger interests of the country.

14. It is equally true that a land owner who looses his land by acquisition in some cases may have even the consequence of being deprived of his livelihood to some extent. Thus, the Courts have to derive a balance between various factors which would ultimately lead to a fair and reasonable award of compensation to the claimants without burdening the Union of India or the State Governments to pay exorbitant amount of compensation. A fair, reasonable and adequate market value would, in any case, will have to be determined on adequate and cogent evidence. The Courts would obviously not try a complete guess work. The Courts may award compensation on annual increase by adopting the method of rule of thumb. But, both these principles must ultimately found some nexus to the evidence adduced on record. Absolute guess work in my humble view is neither permissible nor legislatively intended. To derive an equi-balance between the entitlement of a claimant and obligation of the State to pay the awarded amount, reasonable, cogent and proper evidence appears to be sine quo non. It is quite difficult to believe that there would be no sale instances in a given case. It is very rare case where small pieces of land are being acquired by the authorities. It is normally larger chunk of land which is acquired. ,

15. The Hon''ble Supreme Court of India in the case of P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, cautioned the Courts that market value of the acquired land and its building potentials must be determined with reference to the material to be placed on recorcLand is made available by the parties and it should not be based solely on surmises, conjectures or pure guess.

16. In the case of Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri, , the Hon''ble Supreme Court held as under: -

"Where there were bona fide and genuine sale transactions in respect of the same land under acquisition wherein the claimant who was vendee had sold at Rs. 5/- per sq. yards, the High Court would not be justified in excluding such transaction and placing reliance on award of some other land for awarding compensation at the rate of Rs. 10/- per sq. yards, within a time lag of nine month from the bona fide transaction by seller."

17. Another argument raised on behalf of the claimants is that most of the sale deeds produced by the Union of India reflected a sale consideration lower than the amount which is awarded even by the Collector. According to the learned Counsel all these sale deeds are inadmissible and for this purpose he places reliance upon the provisions of Section 25 of the Act.

18. This contention is a complete misconstruction and misreading of the statutory provisions of Section 25 of the Act. The prohibition placed under the provisions of the said Section is upon the amount to be awarded by the Court and not upon the admissibility of the documents. The Court is obliged not to award the amount which is less then the amount awarded by the Collector, but to say that the sale instances otherwise proved in accordance with law would become inadmissible per se is an interpretation which is neither intended by the Legislature nor would be in conformity with any settled principles of interpretation of Statute. The sale instances, if otherwise proved in accordance with law, would be a relevant piece of evidence to determine the increase in land price and consequently the increase which the claimants may be entitled to on some basic price. It would also be a relevant piece of evidence to show the intended increase in price in comparison to the other lands. Admissibility of a document and its relevancy on case is a question which has to be considered by the Court de-hors the restriction indicated in the provisions of Section 25 of the Act. The provisions of the said section would become relevant only at the time of awarding of amount by the Court to the claimants. Thus the contention of the learned Counsel for the claimants needs to be rejected.

19. The cumulative effect of the above discussion is that it would not be fair and proper for this Court to determine the amount of compensation payable to the claimants and/or comment upon the claim of Union of India that the amount awarded by the learned Court below is in excess, merely on the basis of the limited admissible evidence on record. The principles of fairness would demand that the party should be afforded in opportunity to prove the said documents in accordance with law. If the process of law is truncated with an object to award the amounts in the present manner, it is bound to prejudicially affect the interests of not only the Union of India but also the claimants. The amount of the village Damtal would hardly be of any consequence as the amount stands considerably reduced and the land is located in an area of different State. Rival contention in regard to other two awards, I do not wish to discuss on merits in detail, so as to avoid the rights of any party being jeopardised before the Court below. As the sale deeds are inadmissible and interests of large number of claimants as well as the Union of India are very heavy, it would neithe/ be fair nor equitable for this Court to pronounce the amount of compensation on more than one or two awards placed on record. There is considerable variation even in the amounts awarded in those awards and the Court would have to find out some reasonable basis to award the amount of increase of those awards which again must be based on some evidence on record. In these circumstances the interest of justice demands that the matter should be remanded to the learned Court below for adjudication and determination of compensation in accordance with law. Such an approach would not be derivative in any manner, but would be reiteration of the directive contained in the judgment of Supreme Court of India in the case of P. Venkaiah (supra).

20. Another essential feature which the Court must take into consideration is that

the present cases before the learned Trial Court are not one of the cases of no evidence or where there is no possibility of proper evidence which is admissible in accordance with law being led before the learned trial Court. In fact the parties had led evidence which is not admissible as per law but can be rendered admissible by compliance to the required principles of law and the principles enunciated by the Hon''ble Apex Court as stated above. The evidence now so produced would not only be relevant but would be enough material bearing on all aspects of this case i.e. award of compensation, element of increase, if the claimants are entitled to, and even for proper application of rule of thumb. Well accepted canon of law is that reasons is the soul of the decision making process. Lack of reasoning would render judicial decision open to attack on that ground alone. Even on that analysis remanding of the case would not only be justifiable but appears to be essential.

21. As a result of above conclusion the ancillary matter that falls for consideration is that what directions should be issued while remanding the matter to the learned Court below so as to avoid un-necessary delay and prevention of inconvenience in awarding the payment of amount of compensation to the claimants. The Court, if cannot prevent the expenses resulting from the order of remanded, it may at least make efforts to reduce the expenses to the minimum. Consequently, while remanding the matter to the learned Court below, on all the 32 awards, the following directions are issued:-

i) All the matters arising from the 26 awards afore-referred are hereby set aside and are remanded to the learned court below for adjudication in accordance with law.

ii) All these matters are hereby directed to be consolidated and the evidence by the parties would be led in the case of Puran Banti and Ors. v. Union of India and Ors..

iii) All the claimants would be permitted to lead evidence in the case of Puran Banti to prove the sale instances which have been produced on record, in accordance with law.

iv) The evidence already lead by the parties in various cases would also be permitted to the evidence in the lead case so as to avoid any prejudice to any party. The net result of the evidence already led and which now may be adduced by the parties in furtherance to this order of remand.

v) If any application for additional evidence for producing additional sale deeds or relevant documents by either parties, is filed, the same shall be dealt with by the learned Courts below in accordance with law and keeping in mind the relevancy of such documents to the matters in issue. The said application shall be entertained by the learned trial Court only if filed within 2 weeks from the date of first appearance in that Court.

vi) The learned Trial Court is requested to endeavour its best to complete the proceedings and pronounce the award as expeditiously as possible preferably within a period of six months from the date certified copy of this order is placed on the record of the trial court.

vii) The parties are directed to appear before the learned trial Court on 21.12.1998.

viii) Keeping in view the fact that the matter is being remanded for lack of admissible evidence on record and for the reasons stated above, this is a fit case where certificate could be issued to the parties concerned for refund of appropriate Court fee paid upon the memorandum of appeal. Keeping in view the provisions of Order 41 Rule 23-A of the CPC read with Section 13 of the Court Fees Act and following the law laid down by the Hon''ble Supreme Court of India in the case of State of Uttar Pradesh Vs. Pt. Chandra Bhushan Misra, and a Division Bench of this Court in the case of Sohan Singh Vs. The Oriental Bank of Commerce, , I am of the considered view that sufficient reasons exist justifying a substantial trial by way of leading proper and leading evidence under the order of remand entitling refund of Court fee to the parties. Consequently, it is directed that the appropriate Court Fees affixed on the memorandum of Appeal/Cross Objections, shall be refunded to the parties. Certificates in this regard be issued.

22. In view of the detailed discussion above, all the Regular First Appeals, preferred either by the claimants or the Union of India and the Cross Objections filed in the said appeals are hereby disposed of and the awards afore-mentioned are hereby set aside. The matter is remanded to the learned Trial Court to be dealt with and disposal of in accordance with law after granting opportunities to the parties in the light of the directions contained above, in the facts and circumstances of the case, there shall be no orders as to costs.