
(2008) 12 P&H CK 0060
In the Punjab And Haryana At Chandigarh

Union of India (UOI) and Another

APPELLANT

Vs

Maouza Singh and Others

RESPONDENT

Date of Decision : 01-12-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2009) 154 PLR 152

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Judgement

Rajesh Bindal, J.—This order will dispose of a bunch of 41 appeals, as the same arise out of a common acquisition. RFA Nos. 1865 to 1879 of 1995, 1915, 2038, 2068, 2078, 2118, 2119 of 1995 and 1829 of 1996 have been filed by the land owners seeking further enhancement of the compensation for the acquired land. RFA Nos. 325, 326, 328 to 344 of 1996 have been filed by Union of India for reduction of the amount of compensation awarded to the land owners by the learned court below. The facts have been noticed from RFA No. 325 of 1996.

2. Briefly, the facts are that vide notification dated 4.1.1989, issued u/s 4 of the Land Acquisition Act, 1894 (for short, "the Act"), State of Punjab acquired the land measuring 112 acres, 7 kanals and 10 marlas, situated in Village Rampura, Tehsil Fazilka, District Ferozepur for stationing of 113 Battalion BSF. The same was followed by notification dated 18.1.1990 issued u/s 6 of the Act. The Land Acquisition Collector (for short, "the Collector") vide his award determined the market value of land at Rs. 91,425/- per acre for Banjar land; Rs. 40,000/- per acre for Nehri land and Rs. 20,000/- per acre for Barani kind of land. However, learned District Judge, Ferozepur, on reference u/s 18 of the Act, determined the market value of the entire land at Rs. 2,00,000/- per acre.

3. Learned Counsel for the land owners submitted that while determining the value of the acquired land, the learned court below did not consider the evidence led by them in the form of awards pertaining to the acquisition of land in the vicinity and also various sale deeds produced by them. Reference was made to

sale deeds Ex.A-5 to Ex.A-18 and earlier judgment and award pertaining to the acquisition of the land in the vicinity of the acquired land, namely, Ex.A-19 and Ex.A-20. The assessment of value of the land has been made without any basis ignoring the entire evidence. With regard to judgment (Ex.A19), it was submitted that acquisition therein was vide notification dated 9.12.1987 for the purpose of setting up of Grain Market and the market value was assessed at Rs. 64/- per square feet. The location thereof is merely 3 kilometers from the acquired land which is also situated on the main road leading to Abohar from Ferozepur. The area even in between the two portions of land had been developed as number of industrial units, shops, residences and other establishments were existing. Fish Farm of the Government was just opposite the acquired land on the National Highway. The city was expanding on this side on the National Highway. Even otherwise, the land situated on National Highway always remain in more demand as compared to the land situated behind it or in the city because of better infrastructural facilities there and its connectivity. As far as award (Ex.A20) is concerned, the submission is that the acquisition therein was for the purpose of Jail Garden, which is also not far off from the acquired land as the same is in Fazilka City, where the value of the acquired land therein vide notification dated 11.9.1989 was assessed at Rs. 10,000/- per marla.

4. As far as sale deeds (Ex.A5 to Ex.A18) is concerned, the submission is that the same have been ignored by the learned court below merely for the reason that the same are for small pieces of land which as such could not be ignored as at the most a reasonable cut could be applied thereon keeping in view the fact that acquisition in the present case was for a big chunk of 112 acres, 7 kanals and 10 marlas of land. However, on a query by the court, learned Counsel for the land owners were candid in their stand that location of sale deeds (Ex.A5 to Ex.A18) and also the land pertaining to judgment (Ex.A20) have not been located on the site plan produced by them on record showing their comparability with the acquired land. Relying upon a judgment of Hon"ble the Supreme Court in The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another, , it was submitted that judgment (Ex.A19) could very well be relied upon as distance is no factor to reject the same once the acquisition is in the vicinity.

5. In addition to the above contentions seeking increase in the value of the acquired land, additional submission made by learned Counsel for the land owners is that possession of the land in question was taken by the State somewhere in 1987 and the acquisition was made vide notification dated 4.1.1989. Reliance was sought to be placed on document (Ex.A22/A) dated 12.11.1987, a communication by Divisional Forest Officer, Ferozepur to Commandant, 57 BN BSF about the assessment of trees standing on the acquired land. Reference was also made to letter dated 22.7.1987 and 7.3.1990 regarding assessment of trees standing on the acquired land. It is sought to be claimed that from the aforesaid documents, it is clearly established that possession of the land was taken in January/February, 1987 and it was for that

reason only that assessment ? of the trees standing thereon was being got made by BSF authorities, for the benefit of which the land in question was acquired, as otherwise there was no reason for them to get the value of the trees assessed. Learned Counsel further referred to a suggestion put to RW1-Inspector Harbhajan Singh regarding this fact which though was denied by him.

6. The enhancement in the value of trees on the acquired land was also sought by referring to document Ex.AW22/A on the ground that assessment thereof was made in 1987, whereas the land was acquired on 4.1.1989. As per the assessment made, three categories were made, i.e., Poles, Category-III, Category- IV and Category-V as per the life of the trees. Because of difference in the period on the date when the assessment was made and the date of acquisition, the category of trees from Pole will change to Category-V and accordingly, the value thereof will also increase.

7. In R.F.A. No. 2068 of 1995 Milkha Singh v. Union of India and Anr. another contention raised is with regard to the claim on account of tubewell which was installed on the acquired land. For the purpose, reference was made to documents Ex.A15/A to Ex.A15/D in the form of electricity bills etc. which are in the name of Kartar Singh, father of Milkha Singh. The submission is that in spite of the fact that the tubewell was standing on the acquired land, no compensation was paid therefor. Learned Counsel even referred to the statement of RW1-Harbhajan Singh, who in his cross-examination admitted that there was one tubewell standing on the acquired land which was energised by power. He further submitted that no other land owner had produced any documentary evidence with regard to their claim of tubewell as it was only Milkha Singh, who produced evidence in the form of electricity bills. None has been granted compensation on account of acquisition of tubewell, whereas one was admittedly existing on the spot. The submission was that once Milkha Singh had produced documentary evidence to show the existence of the tubewell, compensation is required to be paid to him, as claimed. In R.F.A. No. 1879 of 1995- Jagdev Singh v. Union of India and Anr. a claim of Rs. 1,50,000/- was made on account of loss of rent. The submission was that on the land owned by Jagdev Singh, a plinth had been raised which had been rented out to District Food & Supplies Controller vide agreement Ex.A-4 at a rent of Rs. 12,000/- per month w.e.f. 16.5.1987 for a period of three years. Because of acquisition of the land, immediately the lessee stopped paying rent on account of which the land owners suffered loss of Rs. 1,50,000/-. In R.F.A. No. 1875 of 1995, Rajinder Singh v. Union of India and Anr. claim was made regarding severance with the plea that out of five acres of land owned by him, some land remained unacquired, to which there was no approach and accordingly, he was entitled to compensation on account of severance.

8. Learned Counsel for Union of India submitted that the learned court below has failed to discuss any of the evidence produced by them on record to show the fair value of the land in the vicinity. The sale deeds produced by them have been totally ignored. Even if the location of the land pertaining to the sale deeds had

not been shown in the site plan produced by them, but still even if it is considered that these are situated at a far off place, but forms part of land of the same village, the same would certainly show the value of the land in the area. He further submitted that in the award of the Collector, the land had been categorized as Chahi, Banjar and Barani, whereas the learned court below, without there being any basis, categorised the entire land into one and determined the value thereof at Rs. 2,00,000/- per acre. Even if the reason given by it is accepted, still the same would increase the value of chahi land to nearly Rs. 1,80,000/- per acre and not other categories of land, as has been done by the learned court below. As far as reliance on judgment (Ex.A19) is concerned, the submission is that there the acquisition was for a small piece of land for expansion of Grain Market. The piece of land therein was situated just close to the existing Grain Market and while determining the value of the acquired land therein, this Court had relied upon the auction price of the plots sold in the Grain Market, which cannot be made the basis for determination of fair value of the acquired land in the present case for the simple reason that prices at which the plots are auctioned is not a safe method for the purpose of determination of fair value of big chunk of land. Reliance was placed upon Raj Kumar and Others Vs. Haryana State and Others, . The second contention raised by him was that even in their oral statements, the claimants stated that value of the acquired land was about Rs. 20,00,000/- per acre, whereas the value of the acquired land in judgment (Ex.A19) was Rs. 27,85,000/- per acre, meaning thereby that even the land owners knew that the acquired land is of lesser value, as compared to the land under consideration in judgment (Ex.A-19).

9. Heard learned Counsel for the parties and perused the record. As far as location of the land is concerned, the same is not disputed.

10. From a perusal of the site plan (Ex.AW21/A), it is evident that the acquired land is situated almost 3 kilometers away from the crossing from where a road leads from Highway towards Abadi in Fazilka city. However, it is also a fact that the area on the Highway is also urbanised. The Grain Market has been set up on the Highway just near the crossing. There are hotels, dhabas and other commercial establishments which are located between the Grain Market and the acquired land at different place. Government Fish Farm is also situated opposite the acquired land.

11. Now coming to the evidence led by the land owners for the purpose of determination of fair value of the acquired land, sale deeds (Ex. A-5 to Ex. A- 18) were produced. However, on a query by the court as regards the location thereof, the reply had to be candid that the same is not located on the site plan produced on record by them. In the absence thereof, the contention of learned Counsel for the land owners that those have not been considered at all is totally untenable. It is always the location and the comparability of the land forming part of the sale deeds, relied upon by the land owners, vis-a-vis, the acquired land which is to be seen for the purpose of determination of fair value of the acquired land and in

the absence of sufficient material on record to show the location of the acquired land and also the land forming part of the sale deeds, it would be totally inappropriate to place reliance thereon.

12. As far as reliance on award (Ex.A-20) is concerned, the same is pertaining to acquisition of land for Jail Garden vide notification dated 11.9.1989. Even the location of the Jail or the Jail Garden, for which the land was acquired, had not been shown in the site plan. All what was sought to be argued that this land pertained to village Painchhan-wali, which is close to the city of Fazilka and accordingly, this Court should take notice of that award. Reliance on award (Ex. A-20) is also totally misplaced, as the same has not been located on the site plan. However, another factor of which this Court can take judicial notice regarding the land pertaining to award (Ex.A-20) is that the Jail is situated just adjoining the Court premises in Fazilka, which is situated within the thickly populated city, where there all around are commercial establishments and residential area is existing.

13. Now coming to the judgment (Ex.A-19) passed by this Court pertaining to the acquisition of land for extension of Grain Market at Fazilka is concerned, in my opinion, even reliance thereon also would not be safe, as the same was located just adjoining the already developed area near the crossing from where the road leads to the city of Fazilka. Reliance therein was placed on the rates at which small plots were sold in auction in the Grain Market which cannot be made basis for determination of value of the acquired land which was situated 3 kilometers away. It may also be relevant to add here that even though the reliance was sought to be placed on award (Ex.A-19), where the value of the land was assessed at Rs. 27,85,000/- per acre, whereas PW1- Harjinder Pal Singh, land owner, in his statement stated that the value of the acquired land was nearly Rs. 20,00,000/- per acre, even though the acquisition for the land in judgment (Ex.A-19) was made vide notification dated 9.12.1987.

14. The argument raised by learned Counsel for Union of India regarding the value of the acquired land is also required to be considered, i.e., that the learned court below had done away with the categories of land, as were determined by the Collector, where the same were Banjar, Nehri and Barani. The submission was that there was no reason for the Reference Court to have doubled the amount of compensation considering the value of the land determined by the Collector for Banjar land. Even if that is considered, the same would come out to Rs. 1,80,000/- per acre, whereas in the impugned award, the value determined is Rs. 2,00,000/ per acre. Both the contentions raised by learned Counsel for Union of India are totally misconceived. From the ample evidence on record, it is clearly established that the land being quite close to the city and the area even in between is in the process of urbanisation, where industrial, commercial and residential establishments were in the process of being set up and the land having great potential for its urbanisation. The land cannot be categorised as Banjar, Nehri and Barani as for urbanisation, these factors are totally irrelevant.

Accordingly, the award of the learned court below, as far as it had categorised the land in one class, does not call for any interference.

15. Even the contention raised by learned Counsel for Union of India with regard to sale deeds (Ex.RW2/A, Ex.RW3/I and Ex.R-4) is also totally misplaced for the reason that sale deed (Ex.RW3/I) was registered on 14.5.1992,i.e., after the acquisition of land, whereas the value shown in sale deeds (Ex.W2/A and Ex.R4) are less than the award of the Collector. Accordingly, the same are not relevant.

16. As far as value of the acquired land is concerned, though there is no convincing evidence on record to mathematically justify the value of the acquired and. The sale deeds produced, though may be relevant, have not been located on he site plan. There is award (Ex.A-19) available granting substantial rate for the acquisition carried out vide notification dated 9.12.1987 which is quite close to the city. However, considering the fact that even the acquired land is situated just at a distance of 3 kilometers from there, some thumb rule has to be applied in the resent case and applying the same, in my opinion, it would be reasonable to assess the value of the acquired land, as is situated on the main Highway upto the depth of 100 meters, at Rs. 2,50,000/- per acre as land located upto a certain depth n the main road certainly carries more value, whereas for rest of the land award of he court below is upheld. The land owners shall also be entitled to all the statutory benefits as are available under the Act. No interference is called for as far as claim of severance is concerned as sufficient percentage has already been granted.

17. As far as the claim of the land owners that possession of the land was taken from them in January, 1987 is concerned, I do not find that convincing evidence has been led therefore on record. All what has been referred to is the survey being conducted by the Forest Department for assessing the value of the trees standing on the land which will not show that possession of the land was taken by Union of India even before the formal notification for acquisition therefore was issued. Another factor which goes to show that possession of the land was not taken prior to the acquisition is the evidence led in Land Acquisition Case pertaining to R.F.A. No. 1879 of 1995, where claim of Rs. 1,50,000/- was sought to be made on account of loss of rent of the plinth which had been rented out by the land owners to the District Food and Supplies Controller vide agreement dated 16.5.1987, which was for a period of 3 years. The acquisition in the present case was vide notification dated 4.1.1989 issued u/s 4 of the Act, meaning thereby that possession of the land was not taken in 1987 because in that year, one of the land owners had rented out the plinth to the District Food and Supplies Controller and admittedly upto the date of acquisition, he was getting rent therefor. Accordingly, the claim of the land owner on this account is found to be misconceived and is rejected.

18. As far as claim of the land owners with regard to assessment of the value of the trees is concerned, the submission is that vide Ex.AW22/A, the value of the trees was assessed in 1987. The land was acquired two years later in 1989.

Document (Ex.AW22/A) shows that valuation of the trees was made on the basis of their life. Four categories were made out, namely, Pole, which had a life upto 3 years and thereafter according to the life of the tree, categories-III, IV and V were made. The submission that if the period of two years, i.e., the gap in the assessment of value of the trees and the date of acquisition thereof is considered, all the trees, which were in the category of Pole will change over to category-V and the value thereof is to be assessed accordingly. This submission of learned Counsel for the land owners is found to be meritorious as nothing could be pointed out by learned Counsel for Union of India to dislodge the plea that the value in fact was assessed in the year 1987. The acquisition was made in the year 1989.

19. Accordingly, there was a gap of two years in which the trees had grown and on that account, they were entitled to the value as per the life of the trees, falling in that category. Keeping this in view, the land owners, who were granted compensation on account of acquisition of trees standing on their land, falling in Pole category, would be entitled to compensation at the rate assessed for category-V, as they will change over to that category.

20. As far as claim regarding value of tubewell in Milkha Singh's case (supra) is concerned, the admitted position on record in the statement of RW1 Harjinder Pal Singh is that there existed one tubewell which was energised with power. It is also not in dispute that none of the land owners has been paid any compensation on account of acquisition of tubewell. It is also evident from the record that none except Milkha Singh had produced any documentary evidence to substantiate the claim regarding tubewell as he had produced electricity bills in the name of his father showing payment of energy charges for running the tubewell. Meaning thereby that there was evidence to show that the tubewell was existing on the acquired land. Though the claim on that account is sought to be made at Rs. 50,000/- as cost of the tubewell and Rs. 60,000/- as other charges, but no details as such have been produced. Applying a thumb rule, in my opinion, it would be appropriate to assess the value of tubewell and kotha prepared therefore at Rs. 15,000/-.

21. As far as claim regarding loss of rent in Jagdev Singh's case (supra) is concerned, I do not find any merit in the claim made. Admittedly, the plinth was rented out to District Food and Supplies Controller vide agreement dated 16.5.1987 for a period of 3 years, i.e., upto 15.6.1990. It was only that vide notification, issued on 4.1.1989, that the land was proposed to be acquired. Notification u/s 6 of the Act was issued on 18.1.1990 and the award of the Collector was announced thereafter, meaning thereby that upto that date, the period for which the lease was given by the land owner, had already come to an end. Accordingly, there was no loss of rent as such to him. The claim to that extent is accordingly dismissed.

The appeals are disposed of in the above terms.