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(1993) 03 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4748 of 1983

Vidya Suri APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 03-03-1993

Acts Referred:

Citation : (1993) 2 CurLJ 61 : (1993) 2 LJR 331 : (1993) PLJ 442 : (1993) 2 RRR 618

Hon'ble Judges : N.K.Sodhi, J

Advocate : Yogesh Goyal, Advocate, Ashok Aggarwal, Senior Advocate, Advocates for appearing Parties

Judgement

N.K. Sodhi, J.

1. This order will dispose of two writ petitions 4748 and 4749 of 1983 as the orders impugned therein are the same and common questions of law and fact arise in them.

2. An area measuring 499 kanals 17 marlas including the land of the petitioners located in the revenue estate of Jalandhar City along the Jalandhar Cantt. road and within the boundaries of Jalandhar municipality was acquired by the Jalandhar Improvement Trust for the development of a scheme known as ''50 acre development scheme'' as per notification issued under Section 36 of the Town Improvement Act which corresponds to the provisions of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as ''the Act''). While determining the compensation to be awarded to the land owners, the Land Acquisition Collector, Improvement Trust, Jalandhar (for short, ''the Collector'') as per his award dated July 21, 1966 divided the acquired land into two Belts, i.e., Belt ''A'' and Belt ''B''. The land of the petitioners falls in Belt ''B''. In respect of land included in Belt ''A'', the Collector allowed compensation at the rate of Rs. 115/ per marla whereas the land comprised in Belt ''B'' was assessed to compensation at the rate of Rs. 50/ per marla. Being not satisfied, the landowners filed reference under Section 18 of the Act for enhancement of

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compensation. The tribunal while maintaining the two Belts in which the acquired land was divided by the Collector determined the market price of the land in Belt ''A'' at the rate of Rs. 260/ per marla and in regard to the land in Belt ''B'' the market price was fixed at the rate of Rs. 170/ per marla. The award of the Collector was modified and the amount of compensation payable to the land owners was accordingly enhanced. In addition to the enhanced compensation, the land owners including the petitioners whose land fell in Belt ''B'' were granted solatium at the rate of 15% but only on the enhanced amount of compensation and not on the entire amount of compensation. They were also allowed statutory interest but that too only on the amount of compensation minus solatium. The award of the Tribunal modifying that of the Collector has been impugned in the present writpetitions filed under Article 226 of the Constitution.

3. It was contended on behalf of the petitioners that there was no justification for dividing the acquired land into two Belts and assessing different rates of compensation. It was urged that the entire land falls within the municipal limits of Jalandhar town and was acquired for the same purpose, namely, for the development of ''housing development scheme'' by the Trust and had the same potential for development as residential colony. I find merit in this contention. The only reason given by the Collector for dividing the land into two Belts is that part of it was situated on the metalled road leading to Jalandhar Cantt. which was put in Belt ''A'' while the other land as its rear was under cultivation except a small portion and since there was no abadi then its value was sought to be assessed for agricultural purposes. The Tribunal gave no reasons for maintaining the two Belts but found that potential of the entire land for being used for residential purpose was uniform. It would be pertinent to notice here the finding which the Tribunal recorded after examining the evidence led by the parties. In para 8 of the judgment it was held as under :

"A perusal of the plan ExA3 base on ''Shajra Aks'' coupled with the evidence of the parties leaves no doubt that the acquired land is located along the JalandharNurmahal metalled road beyond the Nakodar Railway tract towards Jalandhar Cantt. side. The other end of this scheme touches the Jalandhar CityCantt. metalled road..... No doubt, the land immediately abutting the Jalandhar CityCantt. road has 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 purpose 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 Kaungo (RW1) admits that this land is located beyond the railway track Nakodar and along the JalandharNurmahal 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

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to be assessed keeping in view its potential of being used for residential purposes and not on the basis of agricultural land."

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 justification 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 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 socalled Belt. The petitioners are, therefore, held entitled to compensation for their land at the rate of Rs. 260/ per marla.

4. It was then submitted that the petitioners are also entitled to solatium on the total amount of compensation awarded and not on the enhanced amount only. They have also claimed interest under Section 28 of the Act as amended by Act No. 68 of 1984. It may be recalled that the Tribunal while enhancing the compensation from Rs. 50/ per marla to Rs. 170/ per marla granted the petitioners solatium only on the enhanced amount of compensation. I agree with the learned counsel for the petitioner that there is no warrant in allowing solatium on the enhanced amount of compensation only. The petitioners would be entitled to solatium on the entire amount of compensation and since the award of the Tribunal is dated February 9, 1983, they would also be entitled to interest according to the amended provisions of Section 28 of the Act. The award of the Tribunal stands accordingly modified and the writ petitions are disposed of in these terms. Parties are left to bear their own costs.

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