

Smt. Risali and ors. Vs. the State of Haryana and anr.

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Court : Punjab and Haryana

Decided On : Aug-07-1997

Reported in : (1997)117PLR785

Judge : G.S. Singhvi and; M.L. Singhal, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 23

Appeal No. : Letters Patent Appeal No. 382 of 1987 in Regular First Appeal No. 2232 of 1985

Appellant : Smt. Risali and ors.

Respondent : The State of Haryana and anr.

Advocate for Def. : V.K. Vashishtha, Adv.

Advocate for Pet/Ap. : Jaswant Jain,; J.P. Chhokar and; Ravi Kapoor, Adv.

Disposition : Appeal dismissed

Judgement :

G.S. Singhvi, J.

1. Letters Patent Appeals No. 382 to 386 and 1139 to 1155 of 1987 are directed against the judgment of the learned Single Judge dated 3.2.1987. Letters Patent Appeals No. 847 to 849 of 1990 are directed against the judgment dated 2.8.1988

passed by the learned Single Judge allowing the cross objections filed by the appellants in terms of the order dated 3.2.1987 passed in R.F.A. No. 1982 of 1985 'Puneet Kumar v. Haryana State and Anr.

2. Facts which are necessary for adjudicating these appeals are that vide notification dated 9.6.1981 issued Under Section 4 of the [Land Acquisition Act, 1894](#), the Government of Haryana in the Housing Department initiated action for acquisition of 88 Bighas 13 Biswas of land situated in Kalka, Tehsil Kalka, District Ambala for setting up of Housing Board Colony, Kalka. This was followed by notification Under Section 6 of the Act of 1894. Vide award dated 10.9.1982, the Land Acquisition Collector-cum-Sub Divisional Officer, Kalka directed the payment of compensation at the rate of Rs. 35,000/- per acre at a uniform rate alongwith 15% compulsory acquisition charges. He also granted Rs. 1,250/- along with 15% compulsory acquisition charges to the claimant-Bishambhar Dass for the foundation laid by him in the acquired land. Compensation amounting to Rs. 8,461/- alongwith 15% compulsory acquisition charges were ordered to be paid to Smt. Birmati in respect of the saw mill. The Land Acquisition Collector also awarded Rs. 18,300/- plus 15% compulsory acquisition charges in respect of the building belonging to Om Parkash. The claimants sought reference Under Section 18 of the Act. Vide his judgment dated 14.6.1985, the Additional District Judge, Ambala disposed of the 44 references. He directed the payment of compensation at the rate of Rs. 17/- per square yard alongwith 30% solatium and interest in terms of the Land Acquisition (Amendment) Act, 1984. In some individual cases, additional compensation was also ordered to be paid by the learned Additional District Judge. The claimants as well as Haryana Housing Board for whom the land was acquired filed appeals. Vide his judgment dated 3.2.1987, G.C. Mittal, J. (as he then was) allowed 27 appeals filed by the claimants and generally enhanced the amount of compensation from Rs. 17/- per square yard to Rs. 21/- per square yard. However, for the claimants who purchased the lands vide Ex.P.14 to Ex. P.16 at the rate of Rs.35/- or Rs. 36/- per square yard. The learned Single Judge directed the payment of compensation at the rate of Rs. 35/- or Rs. 36/- per square yard. The learned Single Judge also directed the grant of benefit of the amendment made in the Land Acquisition Act by the Amending Act of 1984.

3. R.F.A. No. 2107 of 1985 and other connected appeals filed by the Housing Board Haryana were dismissed by I.S. Tiwana, J. On 2.8.1988. Simultaneously, he accepted the cross objections filed by the claimants in terms of the judgment dated 3.2.1987 passed in R.F.A. No. 1982 of 1985.

4. Still not satisfied, the claimants have filed these appeals under Clause X of the Letters Patent.

5. Shri Jaswant Jain, Shri J.P. Chhokar and Shri Ravi Kapoor, learned counsel appearing for the appellants, challenged the impugned judgments mainly on the ground that the learned Single Judges have failed to properly appreciate the documentary evidence available on the record and the fact that the entire land acquired by the Government had great potential for urbanisation and also on the ground that the learned Single Judges have discriminated between the claimants by giving more compensation to those claimants who had purchased the acquired land. Shri Jain also produced before us typed copy of the decision dated 31.8.1992 rendered by the learned District Judge, Ambala in L.A.C. No. 178 of 1991 and submitted that, in respect of similar land acquired vide notification dated 12.12.1990 compensation at the rate of Rs. 300/- per square yard has been awarded by the Reference Court and this is clearly indicative of under valuation of the properties of the appellants. Shri Jain submitted that the acquisition notification issued prior to the acquisition of the appellants' land as also the notification issued thereafter can legitimately be taken into consideration for the purpose of determination of compensation. Shri V.K. Vashishtha, learned counsel for Housing Board, Haryana argued that the judgment of the learned Single Judge does not suffer from any error of law warranting interference by the Division Bench. Shri Vashishtha submitted that the learned Additional District Judge, Ambala as well as the learned Single Judge, have considered all the aspects and they have properly appreciated the documents placed on the record before ordering steep enhancement in the amount of compensation from Rs. 7.25 to Rs. 17/- per square yard by the Reference Court and from Rs. 17/- to Rs. 27/- per square yard by the learned Single Judge.

6. We have thoughtfully considered the rival contentions and have perused the award passed by the Land Acquisition Collector on 10.9.1982 alongwith evidence produced by the parties, the judgments rendered by the learned Additional District Judge, Ambala and the Learned Single Judges on 3.2.1987 and 2.8.1988.

7. At the out set, we consider it appropriate to remind ourselves that we are not hearing the first appeal against the judgment rendered by the competent Court but are hearing an appeal against the judgment of the learned Single Judge and the parameters which apply for re-appreciating the evidence while hearing a first appeal cannot be invoked while exercising jurisdiction under Clause X of the Letters Patent. What we have to examine is whether the impugned judgments suffer, from any error of law. An error of law which can be discovered by a detailed appreciation of the evidence produced by the parties before the Land Acquisition Collector or after re-evaluation of the findings recorded by the learned Additional District Judge and the learned Single Judge cannot be termed as an error of law apparent on the face of the record. Therefore, unless we are convinced that the learned Single Judge has over-looked any material evidence or has applied wrong principles of law while deciding the first appeals filed by the appellants, there will be no justification to interfere with the impugned judgment.

8. In support of their plea for enhancement of the market rate of the land determined by the Collector, the claimants produced 19 witnesses, namely, Sarvshri Bachna Ram Patwari, Hari Kishan, Sardara Singh, Hari Om Goel, Advocate, Smt. Ramesh Rani, Sohan Lal, Randhir Singh, Chander Mohan, Ram Sarup, Tarsem Lal, Smt. Joginder Kaur, Chuni Lal, Sita Ram, Ishwar Dass, B.S. Bansal, Om Parkash, K.K. Chopra, Advocate, Shambhu Dayal and Hari Kishan Sharma and also tendered documents including 12 sale-deeds executed between 9.5.1980 to 5.8.1981 to substantiate their claim that the market value of the property was Rs. 500/- per square yard at the time of publication of notice Under Section 4 of the Act. The respondent-State produced copies of the four sale-deeds (Ex.R.1 to Ex. R.4) and a copy of building assessment record (Ex.R.7). The learned Additional District Judge made an in depth analysis of the oral evidence and observed:

'So far as the situation and location of the present acquired lands is concerned, the Haryana State has admitted in its written statement that it abuts Ambala-Kalka Road and adjoins Govt. College and Roadways Depot. The Housing Board, Haryana (respondent No. 2) has also admitted in its written statement that the acquired land is situated on the Ambala Kalka Highway and is within the local limits of Municipal Committee Kalka; and Govt. College, Kalka also adjoins the acquired land. The Collector, in his impugned award, has also observed that the land, being acquired, is next to Govt. College towards Pinjor side and is situated on the Ambala-Kalka High way. All this shows that the acquired land is situated adjoining the Govt. College, Kalka and abutting the Ambala-Kalka High way.

P.W.1- Bachna Ram, Patwari, Halqa Kalka has deposed that one Petrol Pump, Offices of the Transport Company and other Commercial Enterprises are there on the Ambala-Kalka Road just close to the acquired land towards Ambala side and the Abadi of Kalka is also near the acquired land and the acquired land was within Municipal Limits of Kalka at the time of its acquisition. This fact that the acquired land was part of the municipal limits of Kalka at the, time of its acquisition has been admitted even by respondent No. 2, in its written statement and so, this fact stands established. So far as its distance from the Abadi of Kalka Town is concerned, the statement of Shri Hari Om Goel, Advocate Kalka (P.W.4), who is a resident of that place and is totally an independent and respectable witness, inspires full confidence, when he states that the abadi of Kalka starts at a distance of 500/700 yards from the acquired land. In this situation, when the acquired land is a part and parcel of the Municipal area of Municipal Committee, Kalka and abuts an important road i.e. Ambala-Kalka High way and being near to the Abadi, it is but natural that the acquired land had the potential for being developed as residential and commercial site; and more so, when several residential buildings and shops etc. had been built up near the acquired land. Admittedly, the acquired land was stonny at the time of its acquisition, but the same could be used for constructing the building for residential and commercial purposes, after incurring some expenses for levelling the same. No doubt, there was a grave-yard near the acquired land of some of the claimants, but that grave-yard has now been abandoned and is not being used as such, which fact stand established from the evidence of almost all the PWs and especially P.W. 18 Shambhu Dayal and

P.W.17 Kewal Krishan Chopra, Advocate; and, as such the existence of an abandoned grave-yard near the acquired land, which the Wakf Board had agreed to give on lease to Sh. Kewal Krishan Chopra (as stated by him) has not diminished the value and utility of the present acquired land. The existence of Govt. College, Kalka, Sofia School, Petrol Pump, Transport Offices and Cinema in the vicinity of the acquired land has changed its character from Rural to Urban. The respondents have not led any evidence neither documentary nor by way of producing any witness, to rebut the aforesaid evidence of the claimants, and which now under the circumstances, has to be taken into consideration.

Even Shri Bachna Ram, Patwari Halqa Kalka, has deposed that the abadi of Kalka adjoins the acquired land and the Kalka town is expanding towards the acquired land, which is within the Municipal limits of Kalka.

The site plan Ex.P.2 produced by the claimants shows that the acquired land abuts abadi on one side and Govt. College, Sofia School and Bazar on the other side, whereas across the road from the acquired land are situated the offices of Transport Company, Flour- Mills, Haryana Roadways Workshop and other residential and commercial buildings. So the ocular testimony of the claimants coupled with the site plan and other evidence on record clearly establishes the situation and location of the present acquired land and its surroundings all around.'

9. He then analysed each sale transaction relied upon by the claimants and observed;

'It would be worth-while to note here that the lands sold vide sale-deeds Ex.P.14, Ex. P.15, Ex. P.16, Ex. P.17, Ex. PW5/1, Ex. PW 17/1, Ex. PW17/2, Ex. PW17/3, Ex. PW17/4, Ex. PW18/B and Ex. PW18/C pertain to the small pieces of plots, varying from 2 biswas to 5 biswas and they were sold at the rate of ranging from Rs. 20/- per sq. yard to Rs. 250/- per sq. yd. However, they are not helpful in determining the value of the large chunks of the acquired land as it is a well known fact that the sale of small plots of land generally fetch much higher price and as such, such sale instances should not be relied upon the evaluating the value of the large chunks of the acquired land, as held in case. The Collector, Lakhimpur v. Bhuban Chand Dutt's Reported in AIR 1971 Supreme Court, page 2015, wherein

the Hon'ble Supreme Court was pleased to observe that in determining the compensation, the value fetched by small plots of land cannot be applied to land covering a very large extent, as the large area of land cannot possibly fetch a price at the same rate, at which small plots are sold. The same view was taken by our Hon'ble High Court in case reported in AIR 1980 Punjab & Haryana (Division Bench) page 27. Small plots generally fetch a higher value than the large plots for the simple reason that there are more ready purchasers of small plots, involving as they do, lesser amount of investment and so, there can, therefore, be no comparison between the value of small plots and of the large ones and so the market value of the present acquired land cannot be ascertained on the basis of these sale-deeds, comprising of very small plots. Moreover, it has remained a mystery that a part of the acquired land was sold on 17.9.1980 at the rate of Rs. 22/- per sq. yard according to sale-deed Ex.P.13 but another part of the acquired land was Sold on 24.2.1981 at the rate of Rs. 35/- per sq.yard and similarly, another part of the acquired land was sold on 24.2.1981 at the rate of Rs. 36/- per sq. yard vide sale deed Ex.P.16. There is no evidence to show that the rates have gone to so high in five months' period in between Sept., 1980 to Feb., 1981. Under these circumstances, the submission of the Ld. Govt. Pleader that the claimants, having come to know about the impending acquisition of the present acquired land, got executed and registered such like sale-deeds at a highly exaggerated and fabulous sale consideration, just to create evidence in their favour, for the present Land Acquisition Cases, has got much weight and the sale-deeds Ex. P. 14, Ex. P. 15 and Ex. P.16 do not depict the true market value mentioned therein and it appears that the vendees in these cases having come to know of the acquisition proceedings, about which notification u/s of the Act was issued just about four months thereafter, got the sale deeds executed in their favour with exaggerated sale prices so that such sale instances may be helpful to all those whose lands were going to be acquired shortly and who would be able to produce the sale instances in their favour during the course of evidence in the Court.

The other sale instances produced by the claimants, namely Ex. P.17, P.W.17/1, to Ex.P.W.17/4, Ex.P.W.18/B and Ex.PW18/C are liable to be discarded as they pertain to the very small pieces of land and are situate away from the acquired land and especially when we have got the sale instance pertaining to the acquired

land itself, namely sale-deed Ex. P.13, Ex. P.14, Ex. P.15 and Ex. P.16 and Ex.P.W.5/1 out of which Ex. P.14, Ex. P.15 and Ex. P.16 have already been discussed and discarded.

Now we have got sale deed Ex. P.13, vide which 1 bigha 10 biswas of the acquired land was sold for Rs. 33,000/- i.e. at the rate of Rs. 22/- per sq.yd. on 17.9.1980. This sale-deed relates back to the month of Sept., 1980 when the vendees of that sale-deed were hardly aware that the present land were going to be acquired and moreover whole of the sale-consideration was paid by the vendees to the vendors before the Sub Registrar at the time of registration of the sale-deed. So, taking from any angle, this instance of sale is positively helpful in determining the market value of the present acquired land which finds further corroboration from Ex.P.W.5/1 vide which a part of the acquired land was sold at the rate of Rs. 20/- per sq. yd. on 9.5.1980. However, in this sale-deed, it finds mentioned that whole of this land abuts the Ambala-Kalka Road towards its front side and on that account, it might be sold at some higher rate, which the remaining acquired land could not have fetched and which would be of its three fourth value i.e. Rs. 17/-per sq. yd. The evidence produced by the State i.e. Ex.R.1 to Ex.R.4 are liable to be discarded, inasmuch as the Collector did not make these sale-deeds the basis of the impugned award and he granted compensation at a higher rate than envisaged in these sale-deeds. Considering the entire evidence on record oral as well as documentary and particularly the situation of the land and its potentiality and placing reliance on sale-deed Ex.P.13, I am of the considered view that the market-value of the present acquired lands at the time of publication of the notification u/s 4 of the Act was Rs. 17/- per sq. yard as discussed earlier. Hence, I hold accordingly and decide this issue in this way.'

10. In his judgment, the learned Single Judge held that the learned trial court was not justified in discarding Ex.P.14 to E.x.P.16 on the ground that the same were not executed by the claimants with a view to inflate the price of the land after they had come to know about the impending acquisition. The learned Single Judge further held that the sale instance of small pieces of land would not be relevant for evaluating the agricultural land but when land having potential for urbanisation is acquired, then even small instances become relevant subject to the cut which may

be imposed for carving out plots by leaving roads and open spaces. He then proceeded to rely on the instances Ex.P.14 to Ex.P.16 and held that the average price of these sales comes to Rs. 35/- to Rs. 36/- per square yard. The learned Single Judge imposed cut of 25% for leaving out roads and open spaces and concluded that the market price of the land comes to Rs. 27/- per square yard. The learned Single Judge also referred to Ex. P.13 and Ex. P.17 but did not rely upon them for accepting the claim of the appellants. In respect of the claimants who had purchased the lands vide Ex.P.14 to Ex. P. 16, the learned Single Judge directed the payment of compensation at the same rate at which the claimants had purchased the land.

11. In our opinion, the appreciation of evidence undertaken by the learned Additional District Judge and the learned Single Judge cannot in any manner be termed as erroneous. Rather, the learned Single Judge has been considerably liberal in relying on Ex.P.14 to Ex.P.16 for directing the enhancement of the compensation awarded by the learned Additional District Judge, While doing so, the learned Single Judge over looked the fact that, the sale instances related to extremely small pieces of land measuring 4 to 5 Biswas as compared to the acquired land which measure 88 Bighas 13 Biswas. In his testimony, P.W.1 Bachna Ram had stated that the land of village Kurari adjoins the present acquired land and it abuts the Ambala-Kalka road and there exists a petrol pump, offices of Transport Company and other commercial enterprises near the acquired land, but he also admitted that the acquired land is a stonny and there did not exist any tubewell or other source of irrigation in respect of the acquired land. P.W.4 Hari Chand God, Advocate admitted that the sale-deeds Ex. P.13 to Ex. P.17 pertain to the small plots and he was unable to say whether they were genuine or not. He admitted that the abadi of Kalka was at a distance of 500 to 700 yards and the Railway Station was at a distance of 2/2-1/2 kilometers and further that there was no shop across the acquired land at the time of acquisition. A look at the table given in the judgment of the learned Additional District Judge shows that the land was sold vide Ex. P.13 dated 17.9.1980 for an average price of Rs. 22/- per square yard. Ex. P.14 to Ex.P.16 are dated 23/24.2.1981. Average price of the land sold vide these documents comes to Rs. 34/-, Ex.P.17 dated 5,8.1981 is in respect of two Biswas of land sold at the rate of Rs. 90/- per square yard, whereas

Ex. P.W.17/1 Ex. P.W.17/2 and Ex. PW 17/3. were in respect of small pieces of land measuring 3 Biswas, 24 feet x 35 feet and 3 Biswas (at Kuradi). These lands were sold for Rs. 126/-, Rs. 99/- and Rs. 80/- per square yard respectively but they could not furnish sound basis for determination of the market value of the property in question and in our considered view the learned Single Judge did not commit any error in granting enhanced compensation at the rate of Rs. 27/- per square yard.

12. Although the learned Single Judge did not refer to the legal precedents but the view taken by him is consistent with the law laid down in the subsequent decisions in Administrator Genl. of West Bengal v. Collector, Varanasi, A.I.R. 1988 S.C. 943, Land Acquisition Officer, Bhiru and Ors. v. Jasti Rohini (Smt.) and Ors., (1995)1 S.C.C. 717, P. Ram Reddy and Ors. v. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Ors., (1995)2 S.C.C 305, Tarlochan Singh and Anr. v. State of Punjab and Ors., (1995-2)110 P.L.R. 100 (S.C).

13. The argument of Shri Jain that the learned Single Judge has discriminated between the appellants and the claimants who had purchased the land vide Ex.P.14 to Ex.P.16 may be correct, but that cannot be made basis for awarding higher compensation to the appellants. In our opinion, the learned Single Judge may not have been justified in awarding higher compensation to some of the claimants merely because they had purchased the land just before the issuance of the notification, but that cannot be made a ground to award higher compensation to the appellants.

14. We also do not find any substance in the submission of Shri Jain that we should enhance the compensation on the basis of the award passed by the learned Additional District Judge, Ambala on 31.8.1992. That award can have no relevance for deciding whether the learned Single Judge has erred in awarding compensation to the appellants at the rate of Rs. 27/- per square yard.

15. The judgment of this Court in Puran v. State of Haryana, (1986-1)89 P.L.R. 453 and Sohan Lal v. State of Haryana and Ors., 1985 P.L.J. 126 do not have direct bearing to the issue which we have decided and, therefore, we do not find any reason to accept the submission of the learned counsel for the appellants.

16. For the reasons mentioned above, the appeals are dismissed.

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