

Harcharan

Vs

State of Haryana

Civil Appeal No. 3620 of 1982

(D. A. Desai. R. M. Misra JJ)

16.11.1982

ORDER

1. Special leave granted.

2. By a notification dated June 29, 1966, under Section 4 of the Land Acquisition Act ('Act' for short), respondent State of Haryana acquired land admeasuring 495 bighas 9 biswas and 12 biswansis pukhta situate in village Faridabad, for the planned development of Sector 14 of Faridabad Complex. A declaration under Section 6 of the Act followed. Thereafter the Land Acquisition Collector proceeded to determine the compensation on the footing that the land was agricultural land. The measure of compensation determined by him was as under : (i) cultivated land at the rate of Rs 190 per biswa pukhta; (ii) banjar jadid and banjar qadim at the rate of Rs 152 per biswa pukhta; and (iii) Ghair mumkin land at the rate of Rs 100 per biswa pukhta. Various claimants who were covered by the award sought reference under Section 18 of the Act. The learned District Judge enhanced the compensation in respect of some plantation land but otherwise affirmed the award of the Land Acquisition Collector. The present appellant filed R.F.A. No. 667 of 1973 in the High Court of Punjab & Haryana at Chandigarh. The High Court proceeded to ascertain and evaluate the market price of the land acquired as on the date of notification under Section 4 of the Act. During the pendency of the appeal the appellant moved an application under Order 6, Rule 17 read with Order 41, Rule 3 and Section 151 of the Code of Civil Procedure for amendment of the memorandum of appeal seeking higher compensation on the allegation that the acquired land had the potentiality of a building site. The High Court rejected the application by a cryptic order which reads as under :

We see no reason for the amendment, particularly after a lapse of six years of the filing of R.F.A. dismissed.

Hence this appeal by special leave.

3. In the application seeking leave to amend the memorandum of appeal the appellant urged that in Regular First Appeal No. 416 of 1974 decided on April 4, 1979, the High Court held that all lands in Ballabhgarh-Faridabad Controlled Area between Delhi-Mathura Road and Agra Canal except a strip up to 500 feet along the Mathura Road had the same potentiality and awarded compensation for the land acquired for the development of Sector 16 of Faridabad Complex at the rate of Rs 10 per square yard. It was further alleged that in Regular First Appeal No. 381 of 1977 and Regular First Appeal No. 563 of 1977, while evaluating the market value of the land for development of Sector 17 of Faridabad Complex, the High Court was pleased to award compensation at the rate of Rs 10 per square yard on the footing that the land had the potentiality of building site. It was also

alleged that for the land acquired for development of Sector 13 of Faridabad Complex situated in Ballabhgarh-Faridabad Controlled Area compensation was awarded by the High Court at the rate of Rs 10 per square yard on the footing that the land had the potentiality of building site. After reciting the aforementioned averments, the appellant had stated that the land involved in dispute and acquired for development of Sector 14 is situated in the Ballabhgarh-Faridabad Controlled Area and must be held to have the same potentiality and, therefore, the compensation ought to be awarded on the footing that it has the potentiality of a building site. The appellant accordingly sought amendment of the memorandum of appeal for change of ascertainment of compensation. It is this application which was dismissed by the High Court in limine principally on the ground as transpires from the order extracted above that the application was moved nearly six years after the appeal was filed.

4. It is a well settled principle that the best evidence with regard to evaluation of price of land in a proceeding for ascertainment of compensation for land acquired under the Act is the award of the court, subject of course, to the comparison of the land areawise, topographywise and usewise. The appellant sought amendment relying on this principle. The question is whether the High Court was justified in dismissing this petition in limine. Order 6, Rule 17 in terms provides that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be necessary for the purpose of determining the real questions in controversy between the parties.

5. Appellant contends that his land is acquired; that it has the potentiality of a building site which can be used for industrial or commercial purposes; and that Faridabad-Ballabhgarh Complex is primarily an industrial complex and, therefore, he must be awarded compensation on the footing that the land has the potentiality of a building site and not as has been done by the Land Acquisition Collector and the District Judge on the footing that it is agricultural land. Now, the principal and primary question while ascertaining compensation for land acquired under the Act is the market value of the land on the date of the notification under Section 4. The determination of this question depends upon the nature and potentiality of the land. It is the real question in controversy between the parties. To effectively and finally adjudicate this controversy necessary pleadings ought to be available. To highlight this real controversy it may become necessary to amend the pleadings. When an appeal is preferred the memorandum of appeal has the same position like the plaint in a suit because plaintiff is held to the case pleaded in the plaint. In the case of memorandum of appeal same situation obtains in view of Order 41, Rule 3. The appellant is confined to and also would be held to the memorandum of appeal. To overcome any contention that such is not the pleading the appellant sought the amendment. It was declined on the sole ground that it was delayed by six years because the High Court does not refer to any other ground for rejecting this application. The High Court has not held the averments in the application about the various decisions rendered by the same High Court as being untrue or otherwise. Therefore, the foundation for the amendment is neither shaken nor knocked out. We are, therefore, left to the only question whether the appellant should be denied an opportunity to agitate what is the market value of the land and what would be justly due to him on the ground of delay in moving the application for amendment of pleadings. We need not dilate on this question in view of the decision of this Court in *Ganesh Trading Co. v. Moji Ram* ((1978) 2 SCR 614 : (1978) 2 SCC 91 : AIR 1978 SC 484), wherein it has been observed as under : (SCC p. 93, para 2)

Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between parties,

and to prevent deviations from the course which litigation on particular causes of action must take.

6. In that case an application for amendment of the plaint with a view to altering the cause of action itself and to introduce indirectly through an amendment of his pleadings an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there, was rejected by the High Court and the plaintiff's revision petition to the High Court did not meet with success. This Court granted the application for amendment simultaneously observing that even though this Court would not ordinarily interfere with interlocutory orders, the Court felt compelled in order to promote uniform standards and views on questions basic for a sound administration of justice and in order to prevent very obvious failures of justice, to interfere even in such a matter in a very exceptional case such as the one that was before the Court.

7. The position before us is far better than the situation was before the Court in the aforementioned case. The appellant sought amendment relying upon the decisions of the High Court itself and the decisions provided a comparable yardstick for effectively disposing of the real controversy before the High Court and the amendment was sought before the High Court proceeded to dispose of the appeal.

8. Accordingly, interest of justice demands that we allow the appeal, set aside the order of the High Court rejecting the application and grant the amendment application and remit the matter to the High Court. The High Court will permit the respondent to raise any contention permissible in law and dispose of the appeal on merits. In the circumstances of the case there will be no order as to costs.

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