

Food Corporation of India, Faridkot, Punjab

Vs

Makhan Singh and another

Civil Appeals Nos. 1711-1737 of 1992

(M. M. Punchhi, S. C. Agrawal JJ)

21.04.1992

JUDGEMENT

PUNCHHI, J.:-

1. In this batch of 87 matters, 19 are special leave petitions preferred by the Food Corporation of India through its District Manager, Faridkot, Punjab, and the remaining by some claimant - land - owner against the Food Corporation of India. The dispute is about the correct assessment of the market value of the land acquired by the State of Punjab for the Food Corporation of India. Notice was issued to the contesting parties indicating to them that the matter may finally be disposed of at the notice stage itself. Therefore these have been heard in full. On behalf of the Food Corporation of India, Mr. G. L. Sanghi, Sr. Advocate has been heard and Mr. Rajender Sachar, Sr. Advocate for the claimant-land-owners. Special leave is granted in all these matters.

2. Land measuring 400 Kanals 12 Marlas (a little over 50 acres) situated in the revenue estate of village Danewala, Tehsil Muktsar, District Faridkot, Punjab, was acquired for construction of foodgrain godowns. Notifications under Ss. 4 and 6 were issued simultaneously on the same day, that is, 20th December, 1977. The District Collector of Faridkot on January 31, 1984 awarded compensation for the acquired land differentiating between Nehri lands and Barani lands at the rate of Rs. 30,000/-per acre and below. Being not satisfied, the claimant-land-owners moved the Collector, Faridkot, for reference under S. 18 of the Act for enhancement of compensation. Two references were filed by the Food Corporation of India as well for reduction. The Additional District Judge on receipt of the references went into the matter and held the references by the Food Corporation of India barred under the proviso to Sub-sec. (2) of S. 50 of the Act. In the other references, the Food Corporation of India as well as State of Punjab were arrayed by the claimant-land-owners themselves as respondents. The Additional District Judge after examining the matter awarded a uniform rate of Rs. 1,20,000/- per acre for the land acquired, vide his award dated on 13-6-86. Since the matter was pending in the Court of the Additional District Judge when the Land Acquisition (Amendment) Act, 1984, came into force, solatium at the rate of 30% was ordered to be paid on the market value of the land. The claimants were also held entitled to interest at the rate of 12% per annum from the date of Notification under S. 4 of the Act to the date of the Award of the Collector or from the date of taking possession whichever is earlier, and from the date of taking possession till one year thereafter at the rate of 9% per annum and in the rate of 15% per annum from the date of expiry of one year from the date of taking of possession till payment.

3. The appeals of the Food Corporation of India and the State of Punjab on the one hand and appeals

of the claimant-land-owners on the other, respectively asking for reduction and enhancement of compensation, were dismissed by a common judgment by a learned single Judge of the Punjab and Haryana High Court on August 16, 1988. The assessment at the rate of Rs. 1,20,000/- per acre was affirmed but on a different reasoning than the one adopted by the Additional District Judge. Likewise, Letters Patent Appeals by the respective parties to a Division Bench of the High Court were dismissed maintaining the measure of compensation at the rate of Rupees 1,20,000 / - per acre still on a different reasoning than the one adopted by the learned single Judge or the Additional District Judge. Since the reasoning has differed from Court to Court, we became inclined to examine the issue over again and come to a decision regarding the rate of compensation which would be just and equitable in the circumstances, as well as meeting the requirements of law.

4. The purpose of the Land Acquisition Act is to empower the Government to acquire land only for public purposes or for a company, and, where it is for a company, the acquisition is subject to the provisions of Part VII. Public purposes being such divers in nature the Governments of the time have been undertaking large scale acquisitions to promote and achieve the common good. The Act is neither a tool in the hands of the Government to deprive any person of his land without payment of its market value, solatium at the prescribed rate and statutory interest, nor a bonanza to a land owner whose land has been acquired, permitting him to get a fanciful inflated price. The Act therefore provides a machinery to determine the market value of the land as existing on the date of the notification under S. 4 of the Act. S. 15 of the Act mandates that in determining the amount of compensation, the Collector shall be guided by the provisions as contained in S. 23 and 24. S. 23 contains a list of positives to be taken into account by the Court determining compensation. The first requirement is that the Court must take into consideration the market value of the land on the date of the publication of the Notification under sub-sec. (1) of S. 4 of the Act. This is the reason why courts have looked for comparable sales of lands at or close to the date of the Notification under S. 4(1) of the Act to discover a basis towards determining compensation. Somewhere in the process, where difficulties crop up, the courts employ the rule of thumb, since compensation has to be assessed and arms cannot be raised in despair. It is the bounden duty of the Court while ascertaining compensation to see that it is just, not merely to the individual whose property is taken, but to the public which is to pay for it even if it be a public corporation set up for public needs.

5. Before we enter into the merits of the case it would be necessary to meet a preliminary objection raised by Mr. Sachhar as to the maintainability of the appeals by the F.C.I. The proviso to sub-sec (2) of S. 50 was pressed into service, which was employed by the Additional District Judge to reject the two references under S. 18 of the Act sought by the F. C. I. It was asserted by Mr. Sachhar that when the said provision debar the local authority or company from demanding reference under S. 18, it logically follows that it cannot file an appeal against the Award of the Court. The Award of the Court was made on 13-6-86 under the amended provisions of the Act. S. 54 provides for appeals in proceedings before Court. It says that subject to the provisions of the Code of Civil Procedure 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the Award, or from any part of the Award of the court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the Supreme Court subject to the provisions contained in S. 110 of the Code of Civil Procedure, 1908 and in 0. 45 thereof. Mr. Sachhar had no quarrel with the proposition that an appeal could lie under S. 54 at the instance of the State of Punjab or one of its officers. The objection is to the maintainability of the appeals by the F. C. I. for whose purpose the land was acquired. We are not inclined to agree with Mr. Sachhar for three reasons. In the first place, it is evident that in the references sought the claimant-land-owners themselves had impleaded the F.C.I. and the State of Punjab as contesting parties. Before the

Additional District Judge, the F.C.I. was a keen contestant. Having suffered the Award from the Additional District Judge after a grim battle it had the right to file an appeal under S. 54 to the High Court. The F.C.I. may not have had the right to ask a reference under S. 18 but this only meant that it could not seek reduction of the compensation as awarded by the Collector because the award was an offer by the State through the Collector. S. 25 too is also a pointer to that effect that the amount of Award by the Collector is kept sacrosanct and compensation can in no event be less than the one awarded by the Collector. Conversely, subject to the provisions of S. 25, there is no bar for enhancement of compensation from the sum awarded by the Collector. And when there is no such bar the appeals of the F.C.I. in the very nature of things attack the amount awarded by the Court over and above the amount awarded by the Collector. In the second place, such an objection was not raised at any stage in the proceedings before the Courts below. No effort was made by the claimant-land-owners to get struck off the F. C.I. as party in the proceedings before the Additional District Judge. No objection was made either before the learned single Judge or before the Division Bench of the High Court with regard to the maintainability of the appeals preferred at those two stages by the F.C.I. The objection now at such a belated stage cannot be allowed to be raised for the first time in the Supreme Court, whatever be its merit. In the third place, this Court in its discretion under Art. 136 of the Constitution, has wide powers to permit any person to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India. The objection raised in either event does not appeal to us and we accordingly reject it.

6. As has been said earlier the land acquired is a large area of a little over 50 acres which is within the municipal area of Malout Town, though in the revenue estate of village Danewala. It abuts the railway line on one side across which is the revenue estate of Malout. One and a half years earlier about 70 acres of land was acquired by the State of Punjab vide notification dated 30-6-76 on the other side of the railway line for setting up a grain market. That land abutted the G.T. Road on one side. There is a tendency of extension of urbanisation from Malout towards village Danewala. Evidence has been led to show that on the G. T. Road, shops have been constructed, petrol pumps, factories, workshops and godowns have come up. Evidence has also been led to show that there is demand of land for commercial and residential purpose on the G.T. Road and near about. The land has been found by the High Court to be neither touching nor being accessible from the G.T. Road. It was shown in the revenue papers to be used for agricultural purposes. From these particulars the courts below have come to the conclusion that the land had potential of urbanisation. We have no reason to differ from such view.

7. Before the Additional District Judge the claimant-land-owners produced copies of the sale deeds Ex.A-6 to A-23 to support their claim which were tabulated by the learned Judge in his Award. These are 18 in number. Significantly, none of these sales exceeded one Kanal of land. A Kanal is 1/8th of an acre. Rather in the 18 instances only 2 sales were of one Kanal each and those were Ex.A.-16 and A-23 which appealed, in one form or the other, to the courts below. The others were of areas less than even half a Kanal or even lesser. Apart from the sizes of the plots sold, the first five sales were within the period starting from 30-3-77 to 16-11-77. The remaining sales were from 18-12-78 to 11-7-84. The instant acquisition being of 20-12-77 the only sale prior to that date which could be relevant in point of time was of 1 - 1 / 2 Marla of land (1 - 1 / 13 of a Kanal) on 16-11-77 disclosing at its price per acre at Rs. 15,78,560/-. This instance was rightly rejected by the Additional District Judge. The sale next in point of time, but after 20-12-77, was A-11 dated 20-12-78, and even though the area sold was less than one Kanal the price revealed was Rs. 96,800/- per acre. This sale for whatever reason, was overlooked by the Additional District Judge. Besides he rejected all the sale instances provided by the State showing market rate far far below than what was

claimed by the claimants. He, however, fell for two later sales Ex.A-16 and A-23 by adopting the following reasoning :-

"So, in these cases, I am inclined to follow the transactions relating to at least one Kanal of land, thus, the relevant transactions are covered by the copies Exs. A-16 and A-23. Vide sale deed Ex.A-16, one Kanal of land was sold for Rs. 30,000/- on 30-6-1981 and vide sale deed Ex.A-23, one Kanal of land was sold for Rs. 15,000 on 6-6-79, vide Ex. A-23, the land sold comprised in Khasra No. 359 which is quite close to the acquired land. The Notification under S. 4 of the Act was issued on 20-12-77 so the transaction dated 6-6-1979 reveals a proper and appropriate data for determining the market value of acquired land. This transaction gives the market value of the land at the rate of Rs. 1,20,000/- per acre. The other transaction covered by Ex.A16 is dated 30-6-81 and it reveals the price at the rate of Rs. 2,40,000/- per acre. The learned counsel for the respondents rightly submitted that this, transaction took place much after the Notification of acquisition and, thus, it cannot provide appropriate data for determining the market value of the acquired land. The only relevant transaction relating to at least one Kanal of land is dated 6-6-1979 which gives the market value of Rupees 1,20,000/- per acre. This transaction, to my mind, gives the just and adequate criteria for determining the market value of the acquired land.

From another angle, the market value of the acquired land can be determined by taking into consideration the two transactions i.e. Exs.A-16 and A-23 of one Kanal each as those two transactions took place after the Notification for acquisition and they reveal the average price of Rupees 1,80,000/ per acre. Since these transactions took place after the Notification under S. 4 of the Act, so one third of the average price is to be deducted towards the road and parks and, thus, after deducting 1/3rd price, its market value again comes to Rs. 1,20,000/- per acre."

8. When asked to give Rupees 1,40,000/per acre as compensation as was given for the land acquired for the grain market in Mandi Malout in the earlier year the learned Additional District Judge observed as follows:

"..... the land acquired for the new Grain Market was towards Malout town from the railway line. So that very compensation cannot be appropriately awarded for the acquired land in question, though never the less that amount of compensation can be taken in mind while guessing the market value of the acquired land. Since Rs. 1,40,000/- per acre was awarded for the acquired land for the new grain market vide copy Ex.A-24, the land in question has equally the potential value and is at little distance from the G.T. Road and is very close to the railway line and within the municipal limits of Malout, but it being situated across the railway line, the proper yardstick to determine the market value of this land is the transactions Exs.A-16 and A-23, which reveal the market value to be Rs. 1,20,000/-per acre, as observed above. The land covered by those transactions is quite close to the acquired land."

9. On that premises, the Additional District Judge determined the market value of the land at Rs. 1,20,000/- per acre.

10. Before the learned single Judge in the High Court in appeal, the claimant-landowners abandoned reliance on Exs.A-16 and A-23. The learned single Judge then observed as follows :-

"The primary submission of the learned counsel for the claimant appellant while conceding that the sale instances Exs. A-16 and A-23, as relied upon by the lower Court, were not very relevant for the purpose of determining the market value of the acquired land, is that the sale instances Exs. A-6 and A-10 provide the best possible material to answer the question posed in the earlier part of the judgment."

11. The claimants failed to convince the learned single Judge to rely upon the sale instances Exs. A-16 to A-10. With regard to Award, Ex. A-24 the learned Judge observed as follows:

"It is not in dispute that the land covered by Ex. A-24 (in the light of Exhibit A-1) lies along with Abohar Dabwali road and a railway line intervenes the two blocks of land, i.e., one covered by Ex. A-24 and the presently acquired land. Thus apparently the land covered by Ex. A-24 had a better access -and better potential than the suit land. It appears that on this account the lower Court did not treat the two lands at par and thus assessed the market value of the suit land at Rs. 1,20,000/- instead of Rs. 1,40,000/- per acre. Mr. Garg, however, is at pains to urge that this cut deserves to be increased further or, in other words, the price of the suit land be reduced to about Rs.93,000/- per acre by applying a cut of about 33% on the rate determined vide Ex. A-24. That does not appear to be justified. The lower Court has already, as pointed out above, reduced the rate by Rs. 20,000/- per acre.

It is in this manner that the rate of Rs. 1,20,000/- was stuck to.

12. In Letters Patent Appeal, the Division Bench in variation of both the reasoning of the courts below observed as follows:

"On a consideration of the matter, we are of the view that there is no scope for interference in these appeals. The Land Acquisition Court in para 6 of its award. has tabulated the instances and a look at the same shows that decision of the learned single Judge is well based. Acquisition was made in December, 1977 whereas instances A- 11 and A-23 dated 18-12-1978 and 6-6-1979 show that the price fetched was Rs. 96,800/- per acre and Rupees 1,20,000/- per acre respectively."

13. Instance A-11, though of a small area, revealed the price at the rate of Rs. 96,800/- per acre, was closer to the date of the Notification having taken place a year thereafter, but earlier than sales A-16 and A-23. Yet the Division Bench fell for maintaining the market price at Rs. 1,20,000/- by observing as follows:-

"Moreover, there was another acquisition slightly earlier to the present acquisition for the new grain market for which compensation was awarded by the Court at the rate of Rs. 1,40,000/- per acre. That land was situated on Abohar Dabwali road and had higher potential as compared to the land in question which is not accessible by road. Accordingly, the value at Rs. 1,20,000/- per acre for the land in dispute has been correctly assessed by the Land Acquisition Court and upheld by the learned single Judge."

14. This Court as the last Court of appeal, will ordinarily not interfere in an award granting compensation unless there is something to show not merely that on the balance of evidence it is possible to reach a different conclusion, but that the judgment cannot be supported by reason of a

wrong application of principle or because some important point affecting valuation has been overlooked or misapplied. Besides, generally speaking, the appellate Court interferes not when the judgment under appeal is not right, but only when it is shown to be wrong. See in this connection, *The Dollar Company, Madras v. Collector of Madras*, (1975) 2 SCC 730 : (AIR 1975 SC 1670). Added thereto are other rules of prudence that the courts do not treat at par land situated on the frontage having special advantage and the land situated in the anterior undeveloped area, or to compare smaller plots fetching better price with large tracts of lands. See in this connection *Periyars and Pareekanni Rubbers Ltd. v. State of Kerala*, AIR 1990 SC 2192.

15. Bearing these principles in mind, we now proceed to examine the matter. Learned counsel for the claimant-land-owners placed before us a plan showing the topography of the area. We had the advantage of using it without objection from learned counsel of the F. C.I. It is evident that if one comes from Malout towards village Danewala on the G.T. Road, one has first to pass the railway crossing and then go some distance to reach the plot which is subject-matter of sale Ex.A-11 facing G.T. Road. Then one has to go further down to reach plot of land covered by sale instance Ex.A-16 facing the G.T. Road on the other side. At a short distance further down is the plot of land covered by sale instance Ex. A-23 again facing the G.T. Road, almost opposite to land of sale instance Ex.A-16. These are the only instances which have been chosen at one stage or the other for consideration. Before crossing the railway line lies the large chunk of land which was acquired for constructing a grain market for Malout Mandi having considerable frontage on the G.T. Road. It is evidently close to the DAV College. Besides it surrounds the office of the Market Committee. As observed by the learned single Judge of the High Court the grain market land covered by award EX.A-24 had a better access and better potential than the land under acquisition. Obviously the two lands could not be treated at par as the market value of the instant land cannot be the same. So far there can be no dispute. Amongst the three sale instances figuring in the discussion, sale Ex.A-11 is the closest in point of time having taken place on 18-12-78 (about a year after the date of notification under S. 4 of the Act) and distance wise closest from the land acquired for grain market, Malout. This discloses the rate of Rs. 96,800/- per acre, even though the area involved is less than half a Kanal. Only a plot, sizeable though, intervenes between this plot and the land under acquisition. This sale instance engaged the attention of Letters Patent Bench of the High Court and not by any of the two courts below. The next in point of time is sale instance Ex.A-23 showing the rate of Rs. 1,20,000/ per acre but the land sold was only one Kanal. It took place on 6-6-79 about 1 1/2 years later than the date of S. 4 notification. This sale instance engaged the attention of the Additional District judge and the Letters Patent Bench but was dropped from consideration by the learned single Judge on the concession of the claimant-land-owners. Lastly in point of time is sale instance Ex.A16 of 30-6-81 involving one Kanal of land, the rate being Rs. 2,40,000/- per acre. In point of situation, plot covered under Ex.A-16 is almost opposite to plot covered by sale Ex,A23 but slightly towards Malout town. Ex.A16 took place two years after sale Ex.A-23 and as such was about 3 x 1/2 years after the date of the notification. Sale Ex.A-16 appealed to the Additional District Judge only. as a supporting material to grant compensation at the rate of Rs. 1,20,000/- per acre on the basis of sale Ex.A-23. Sale Ex.A-16 neither appealed to the learned single Judge nor to the Letters Patent Bench. Sale Ex.A-16 having been discarded by the learned single Judge as well as by the Letters Patent Bench of the High Court and the Additional District Judge, too having used it only in a limited way, as disclosed in his reasoning, we feel that sale Ex.A-16 should be totally ruled out from consideration because it was too distant in point of time having taken place 3-1 / 2 years after the date of notification. Having discarded the same the supporting foundation to maintain sale price at the rate of Rupees 1,20,000/- per acre either on the basis of sale instance Ex.A-23 or on the basis of award Ex.A-24 become shaky and open to question.

16. Now we have seen sales Ex. A- 11 as well as Ex.A-23 are of very small areas and have taken place a year and a year and half "respectively from the date of S. 4 notification. Evidently they are at an advantageous position being on the G.T. Road as compared to the land under acquisition which has no access to the G.T. Road and is of a large area. These sales have as such no positive role to play. If at all, some role is due to sale Ex. AI 1, which is closest in point of time, and distance wise more close to Malout town, and on account of its situation. This tells us that for a small plot at an advantageous position on the G.T. Road the rate was Rs. 96,000/per acre a year after the date of the notification under S. 4. The land under acquisition cannot fetch on any reasoning the same price as fixed in sale Ex. A-11, because comparably the area acquired is large, almost 800 times than the land sold vide Ex. A- 11. So the land acquired has to fetch a price lesser than the price of Rs. 96,800 per acre. At this stage, it would be relevant to mention that in the grounds of appeal before the High Court, the Food Corporation of India disclosed its willingness to pay a sum of Rs. 80,000/ -per acre for the land acquired. In the same strand the learned counsel appearing for the F.C.I. had projected before the learned single Judge that there should be a further cut to reduce the compensation from Rs. 1,20,000/ - per acre to about Rs. 93,000 / - per acre. These statements by themselves are no concessions and are at best indications of vacillation to find the correct market value. On such statements public purses cannot be allowed to open their mouths. Having regard to these conflicting claims we get to the view that important points affecting valuation had been overlooked or misapplied in arriving at and sticking to the rate of compensation at Rupees 1,20,000/- which would require a correction from us. We feel that in the facts and circumstances of the case the compensation must in comparison get lower than the price at which sale Ex.A-11 took place, but at a figure which does not overlook the rate as given in award Ex.A-24. Now we lift our thumb and put it to reduce the compensation to Rupees 80,000/ - per acre slicing down 1/ 6th (roundedly) from the rate reflective from sale instance Ex. A- 11 and 1 / 3rd from the rate of Rs. 1,20,000/ - as deduced from award Ex.A24, because of the poor locale, disadvantageous position and lack of contiguity to the expansion of Malout town due to the obstructing railway line. In our opinion, compensation at the rate of Rs. 80,000/ - per acre is just and fair in the circumstances, and we hold so.

17. Accordingly, the appeals of the Food Corporation of India are allowed, the judgment and decrees of the High Court as well as the Award of the Additional District Judge are modified to the extent aforementioned; other conditions of solatium and interest subsisting. The appellant F.C.I. shall have its proportionate costs. The appeals of the claimant-land-owners appellants are dismissed but with no order as to costs. Order accordingly.

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