

Inder Singh And Ors. Etc. Etc vs Union Of India Etc. Etc on 27 April, 1993

Equivalent citations: 1993 SCR (3) 371, 1993 SCC (3) 240, 1994 AIR SCW 1552, 1993 (3) SCC 240, (1993) 3 RRR 221, (1993) 3 SCJ 89, 1993 UJ(SC) 2 208, (1993) 2 CIVLJ 872, (1993) 2 LANDLR 65, (1993) 1 RENTLR 815, (1993) 3 SCR 371 (SC), (1993) 50 DLT 572, (1994) 1 CIVILCOURTC 243, 1993 REVLR 2 142, (1993) 3 JT 653 (SC)

Author: K. Ramaswamy

Bench: K. Ramaswamy, R.M. Sahai

PETITIONER:

INDER SINGH AND ORS. ETC. ETC.

Vs.

RESPONDENT:

UNION OF INDIA ETC. ETC.

DATE OF JUDGMENT 27/04/1993

BENCH:

RAMASWAMY, K.

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RAMASWAMY, K.

SAHAI, R.M. (J)

CITATION:

1993 SCR (3) 371

1993 SCC (3) 240

JT 1993 (3) 653

1993 SCALE (2) 667

ACT:

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Land Acquisition Act, 1894:

Sections 4, 18, 32-Acquisition of land-Compensation-Payment of-Potential value for future development-Comparable sale transaction-Consideration of-Determination and payment of compensation-Ordered.

HEADNOTE:

The Respondents acquired some lands for setting up Brick Kilns. The lands consisted of Abi (cultivated land), Barani (rainfed land) and ghair munkin (waste land) and the

Collector fixed the compensation @ at Rs. 23,600, Rs. 17,000 and Rs. 12,000 per acre of the respective lands.

On a reference the Civil Court enhanced the compensation to Rs.33,600 per acre for Abi lands. No enhancement was allowed in respect of the other categories of land. It however allowed solatium at 15 % and interest at 6 % p.a. on the enhanced compensation. On appeal, a Single Judge of the High Court confirmed the same. These appeals were filed against the said Judgment of the High Court.

The appellants contended that the acquired lands had the potential value for residential and commercial purposes and there was no justification for classification of the lands and all the lands shall be treated at par in determination of market value; that in a similar case, the market value was enhanced to Rs. 75,000 per acre and in view of the fact that certain mutation entries showed a market value of similar lands ranging from Rs. 1,16,000 to Rs. 1,60,000, per acre the appellants claimed for compensation of at least at Rs. 75,000 per acre.

On behalf of the Respondents it was contended that the mutation record was not admissible as no one connected with the sale transactions was examined to prove the documents, the ground for sales, comparative advantages and their respective situation; that the lands possessed comparable or better amenities and whether the lands are very near to the lands under

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acquisition. The compensation awarded by the Collector at the rate of Rs. 15,525 per acre was upheld by the Reference Court, and this offered a reasonable base to fix the market value of the lands under acquisition.

Partly allowing the appeals, this Court,

HELD: 1. Neither the appellants nor the Land Acquisition Officer had examined witnesses in proof of the sale transactions referred in the mutation entries. It is settled law that a claimant is entitled to just and reasonable compensation under s. 23, To determine the market value of the lands, it is necessary to examine witnesses to prove the prevailing prices as on the date of publication of the notification under s. 4(1). The sale transaction of the same Lands or sales of lands situated in the neighbourhood possessed of same or similar advantages would furnish as evidence of comparable sales. It would be possible to have reliable evidence when sale transactions are proved by either the vendor or the vendee and if either of them was not available, the attesting witness who had personal knowledge of the transactions is to be examined by producing either the original sale deed or certified copies thereof as evidence. Since at the relevant time it was not being insisted upon, none of the witnesses were called to prove the sale deeds or to prove the sale transactions. Thus, the documentary evidence of sale transactions or the mutation entries on either side are clearly not admissible and

therefore, they cannot be looked into, and are accordingly excluded from consideration. (375-GH, 376 (H-E))

2. The situation of the lands clearly shows that the lands are situated very close to developed Chandigarh planned city and are very near to Sukha Lake and the railway track. They are situated within the frozen zone for future potential development of the city. Though the acquisition was for establishment of Brick Kilns, by its very nature the lands may not immediately be capable of being used for residential or commercial purposes, but certainly possessed of potential value for future development as residential and commercial purposes. There is a distinction between the lands acquired for Motor Market or Mansa Housing Complex on the one hand and the lands under acquisition on the other hand, though the lands are Aabi lands going by the situation of the lands, the market value of the land acquired for motor market do not render any assistance as a comparable price. This would be of assistance to assess a fair and reasonable compensation in fixing the market value though an amount of guess work is involved. This Court is conscious of the fact that it should not be founded on feats of imagination hedged with

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undue emphasis of compulsory deprivation of the possession of the lands of the appellant. For the exercise of State's power of eminent domain statutory solatium is the premium the State pays. Therefore, the approach should be pragmatic to recompense the appellants to secure alternative lands or to invest in profitable business for rehabilitation. It is seen that the Reference Court awarded a sum of Rs. 33,600 per acre to Aabi land. No doubt there is a steady rise in prices of lands. Considering the totality of the facts and circumstances, the market value @ Rs. 42,000 per acre would be just and fair for Aabi lands and at Rs. 38,000 per acre for Barani lands. The market value of ghair mukin land at Rs. 12,000 per acre awarded by the Civil Court is confirmed. The appellants are entitled to solatium and interest on the enhanced market value at 15 per cent and 6 per cent respectively from the date of taking possession till the date of payment as the award and the order of the Civil Court are prior to the periods mentioned in the Amendment Act 1984 came into force. (376G,H, 371 A-F))

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 335- 342/1982.

From the Judgment and Order dated 18.8.1981 of the Punjab and Haryana High Court in Regular First Appeal Nos. 2605, 2604, 2606, 2610, 306, 308, 10 and 11 of 1980. D.V. Sehgal, L.R. Singh and Yunus Malik for the Appellants. Ranjit Kumar and G.K. Bansal (NP) for the Respondents. The

Judgment of the Court was delivered by K. RAMASWAMY. J.: By Notification published in the Haryana State Gazette on October 12, 1976, under section 4(1) of Land Acquisition Act 1 of 1894 for short 'the Act', the respondent Union Territory of Chandigarh acquired a total extent of 70.09 acres of land situated in Manimajra near Chandigarh for a public purpose, namely, to set up Brick Kilns therein. The lands comprised in different Khasra numbers within H.B. No. 375, out of which 63.09 acres are Abi cultivated lands, the rest are Barani (rainfed land) and, ghair munkin (waste land) bouldars, trenches etc. By award dated January II, 1977, the Collector fixed a sum of Rs. 23,600 as market value of Abi, Rs. 17,000 per acre to Barani and Rs. 12,000 to Ghair Munkin lands. On reference under- s. 18, the Civil Court enhanced the compensation to Rs. 33,600 per acre to Abi lands and no enhancement to other categories with solatium at 15 per cent and interest at 6 percent per annum on the enhanced compensation from the date of taking possession till date of payment. On appeal the learned Single Judge in R.F.A. No. 2605 of 1980 etc, by judgment dated August 18, 1981 confirmed the same. Thus these appeals by special leave. As common questions of law arise for decision, they are disposed of by common judgment.

Appellants' contentions is that the acquired lands possessed of potential value for residential and commercial purposes and there is no justification for classification of the lands and all the lands are entitled to parity to determine the market value. By notification dated June 30, 1976 in the same village under the same H.B. No. 375, 54.37 acres were acquired for construction of Motor Market Complex. The Collector and the Civil Court awarded the same market values as were fixed in these appeals but the learned Single judge denied parity of market value to these lands while enhancing the market value at Rs. 75,000 per acre to the similar lands in belting No. 2 and awarded @Rs. 3, 72,200 to the lands abutting the main road upto a depth of 140 feet in other case. Therein the Single Judge relied upon Ex. P28 of the year 1972 in which 17 marlas of land was sold @Rs. 75,000 per acre, Having relied upon the same and having enhanced the market value, the same yardstick should have been applied in awarding market value to the lands under acquisition. The learned counsel also placed strong reliance on 6 mutation entries which would show that the market value of the lands ranges between Rs. 1,16,000 to 1,60,000 per acre and -the appellants, therefore, are entitled to compensation at least @ Rs. 75,000 as claimed by them. He also contended that having found that the lands are possessed of potential value being similar to the lands in other appeal, the appellants are entitled to parity in determination of the market value as well. The Haryana Govt, acquired by notification dated January 8, 1971 vast extent of lands in Judian Village for Mansa Housing and Commercial Complex and thereunder Abi/irrigated lands were awarded at a sum of Rs. 28,800 per acre which was confirmed by the High Court. After five years the notification was issued on October 12, 1976, the Court should have taken note of steady rise in prices and have suitably enhanced the market value. Since no one was appearing for the respondent, we sent for Mr. Ranjit Kumar, the previous standing counsel for the Union Territory, Chandigarh and requested him to assist the court. Accordingly he has meticulously analysed the entire evidence and rendered valuable assistance. He contended that the lands are situated beyond railway line on North-West and 1/2 k.m. to the motor market on the other side of the road. The lands are nearer to Sukhna Choe (lake) at a distance of one furlong. The mutation record is not admissible as none, connected with the sale transactions, were examined to prove the documents; the grounds for sales, comparative advantages and their respective situation. The motor market is situated in a developed area on the Eastern side of the road and the lands in these cases are located away from those lands. Shri Ranjit

also contended that lands in Judian Village for Mansa Housing and Commercial Complex were nearer to abadi possessing better amenities and they do not afford any comparable grounds. He contended that the lands for canalisation of Sukhna Choe was acquired by notification dated March 21, 1972 and the Reference Court upheld the award of the Collector at Rs. 15,525 for Abi lands which was confirmed by the High Court. The location being very near to the lands under requisition, they offer reasonable base to fix market value. Notification was issued under s.6 of the Punjab New Capital (Perefery) Control Act, 1952, freezing development of the lands situated within a radius of 10 miles from Chandigarh boundary for any residential and commercial purposes. Therefore, they are not possessed of any potential value. The learned Judge on the same day decided both the cases upholding the award of the Civil Court in these cases while enhancing the market value in motor market cases relied on by the appellants. He was aware of the location and differential value between two types of land. Therefore, he was not inclined to enhance the market value of the land under acquisition.

The first question that arises for consideration is whether the High Court has committed any legal error in affirming the market value determined by the Reference Court. The Dist. Judge, Chandigarh in L.P.J. No. 105/70 and batch, found that the total extent of the land acquired is 70.09 acres, 560 Kanal 15 mawla, out of which 63.91 (51 i Kanal) 6 Marla are Abi land and 4.22 (33 Kanal 15 Marla) is Barani land and the rest are Ghair Munkin lands. It is admitted by the witnesses that the acquired land is nearer to the railway track and also situated at a distance of 1- 1/2 k.m. from timber and motor market. They are situated in wide area with the population of about 3000-3500. There are about 200 shops situated in Manimazra town. The acquired land is towards north-western side of Manimazra. The railway line is 2 to 3 furlong from Manimaira on the northwestern side. They are also situated near the boundary of Chandigarh and one furlong from Sukhna Choe. It was also admitted that part of the land is situated in Sector 26. Thus it could be seen that the lands are situated very near to Chandigarh.

Neither the appellants nor the Land Acquisition Officer had examined witnesses in proof of the sale transactions referred in mutation entries Ex. P4 to P8 on behalf of the appellants and R1 and R2 on behalf of the respondent. It is settled law that claimant is entitled to just and reasonable compensation and under s. 23 to determine the market value of the lands the prevailing prices as on the date of the publication of the notification under s. 4(1), the sale transaction of the same lands or sales of lands situated in the neighbourhood would furnish as evidence of comparable sales. The price which a hypothetical willing vendor might reasonably expects to obtain from a willing purchaser would form the basis to fix the market value. It would be possible to have reliable evidence when sale transactions are proved by either the vendor or the vendee and if either of them was not available, the attesting witness who had personal knowledge of the transaction is to be examined by producing either the original sale deed or certified copies thereof as evidence. Under s. 5 1A of the Act as amended in 1984 the certified copies have been permitted to be brought on record as evidence of sale transaction recorded therein. The examination of the witnesses is to find that the sale transactions are bonafide and genuine transactions between willing vendor and willing vendee as reasonable prudent men and the price mentioned is not throw away price at arms length or depressed sales or brought into existence to inflate market value-, of the lands under acquisition and the sales are accommodating one. Equally it must be brought on record the comparative nature of

the lands covered under the sale deed and the acquired lands whether adjacent or actual distance or possessed of similar advantages and whether transactions themselves are genuine and bonafide transactions. This proposition of law, since settled law, in fairness, has not been disputed across the bar. The contention is that at the relevant time it was not being insisted upon. Therefore, none of the witnesses were called to prove the sale deeds or to prove the sale transactions. Therefore, when evidence of potential value is available, the same could be considered. We find merit in the contention. At one time we thought of remanding the cases but we find that it would be needless prologation and the complexion on ground by now would have been completely changed. In view of the above settled legal position and the circumstances, the documentary evidence of sale transactions or in the mutation entries on either side are clearly not admissible and therefore, they cannot be looked into, and are accordingly excluded from consideration. The only question, therefore, is whether the lands are possessed of potential value and whether the same treatment could be meted out to Abi and Barani lands. Ghair Munkin land stands on a different footing and, therefore, they cannot be equated with the Abi and Barani lands. The situation of the lands as extracted here in before clearly shows that the lands are situated very close to developed Chandigarh planned city and are very near to Sukhna Lake and are also nearer to railway track. They are situated within the freezed zone for future potential development of the city. Thereby, it is clear that though the acquisition was for establishment of Brick Kilns, by its very nature may not immediately be capable of being used for residential or commercial purposes, but certainly possessed of potential value for future development as residential and commercial purposes. Then what would be the reasonable market value prevailing as on the date of notification. As rightly contended by Shri Ranjit Kumar that there is a distinction between the lands acquired for motor market or Mansa Housing Complex on one hand and the lands under acquisition on the other hand, though the lands are Abi lands. The acquired lands are situated on the western side of Manimazra Panchkula road and the motor market was situated on the other side of the road. Therefore, the market value of the land acquired for motor market do not tender any assistance as comparable prices. Obviously for that reason the same learned Single Judge while deciding both the appeals on the same day declined to enhance the market value to these lands while he awarded to lands in 2nd belt at Rs. 75,000 per acre. We have no information whether any appeal was filed against that judgment. But certainly the facts of these cases would assist us to assess a fair and reasonable compensation in fixing the market value though an amount of guess work is involved. We are conscious of the fact that it should not be founded on feats of imagination hedged with undue emphasis of compulsory deprivation of the possession of the land of the appellants, for the exercise of State's power of eminent domain, statutory solatium is the premium the state pays. Therefore, the approach should be pragmatic to recompense the appellants to secure alternative lands or to invest in profitable business for rehabilitation. It is seen that the Reference Court awarded a sum of Rs.33,600 per acre to Abi land. There is a steady rise in prices as reflected in the judgment in the other appeals relied on by the learned counsel for appellants. The High Court also recorded a finding in that behalf in those appeals. The lands are situated in the same H.B. No. 375, though at different places and distance having future potential development. Considering the totality of the facts and circumstances we find that market value @ Rs. 42,000 per acre would be just and fair. This value should be for Abi and for Barani lands at Rs. 38,000 per acre and the market value to ghair munkin land at Rs. 12,000 per acre awarded by the Civil Court is confirmed. The appellants are entitle to Solatium and interest on the enhanced market value at 15 per cent and 6 per cent respectively from the date of taking

possession till the date of payment as the award and the order of the Civil Court are prior to the periods mentioned in the Amendment Act 1984 came into force. In the circumstances parties are directed to bear their own costs. G.N. Appeals Partly allowed.