

A STATE OF HARYANA AND ANR. ETC.

v.

JOGINDER SINGH ETC.

JANUARY 24, 1997

B [K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Land Acquisition Act, 1894 :*

C *Compensation—Award of—District Judge taking into account the potentiality of the land for urban purposes, as also the fact that a canal passed through several lands—Awarding different rates for different lands—Single Judge of High Court awarding uniform rate—Finding—Mere opinion of the Single Judge—Hence set aside—Award of District Judge confirmed—Claimants not entitled to interest on solatium.*

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 479 of 1997 Etc.

From the Judgment and Order dated 3.9.87 of the Punjab & Haryana High Court in L.P.A. No. 291 of 1987.

E Rao Ranjit and Prem Malhotra for the Appellants.

Rajesh Srivastava, Ujjwal Benerjee H.K.Puri and Ms. Naresh Bakshi for the Respondents.

The following Order of the Court was delivered:

F Delay condoned. Substitution allowed. Leave granted.

We have heard learned counsel on both sides.

G Notification under Section 4(1) of the Land Acquisition Act, 1894 acquiring a long strip of land admeasuring 2916 acres, for digging Panjokhara minor was published on June 24, 1982. The Collector in his award dated September 13, 1982 determined the market value at Rs. 26,000 for Abbi lands, Rs. 20,000 for barani lands and Rs.10,000 in respect of gairmumkin land. On reference under Section 18, the Additional District Judge enhance the compensation to Rs. 93,000 per acre for abbi land, Rs. 84,000 per acre for barani land and Rs. 50,000 per acre for gairmumkin land. On

appeal by the claimant, the learned single Judge awarded uniform rate of value and determined the compensation at uniform rate of Rs.93,000 per acre in respect of all the lands. Letters Patent Appeal filed by the State was dismissed. Feeling aggrieved by this Order in LPA, the appellants have filed this appeal by special leave.

The only question is: whether the learned Judge was right in awarding uniform rate of compensation? Though the State had filed an appeal in the High Court questioning the market value determined by the District Judge at aforesaid rates, it has placed no material before us to adjudge whether the market value given by the District Judge was correct in law. As regards potentiality of the land for urban purposes, as found by the High Court, the District Judge in his award dealt with *in extenso* in paragraph 14 of the judgment as under :

"As regards the oral evidence produced by the petitioners to show that the acquired land had great potential value for commercial and residential purposes I am of the opinion that the said oral evidence produced by the petitioners is not sufficient to hold that the acquired land had any potential value to be used for commercial or residential purposes. The acquired land is out side the municipal limits and is towards the west of Ambala town. Merely because the Government godowns or the railway station are at same distance from the acquired land would be no ground to hold that the acquired land would land had any potential value unless there is cogent evidence to show that there was over all development towards that side, similar is the position with regards to Lyalpur Basti in as much as the said Basti is at some distance from the acquired land as stated by PW3 Prem Nath the said Basti is within municipal limits. Similarly, the existence of Agricultural research institute towards the acquired land would also not show that the acquired land has any potential value. RW I Yogdhian Patwari, admitted the distance of Ram Dass Nagar at some distance from the acquired land and in my opinion the existence of the said Ram Dass Nagar would not shown that the acquired land had any potential value. There is no cogent evidence on the record to show that there was any general development of Ambala city towards to acquired land not there is any evidence on the record to show that the acquired land was connected by any important

- A road. The Ambala Patiala road known as Kapuri road which goes from Ambala to Patiala via a short out through the villages, only bifurcates the acquired land at a particular point where as the acquired land is along strip at a particular point where as the acquired land is along strip of land which had been acquired for construction of Panjokhra Minor. Even otherwise, there is no evidence on the record to show that there was any development on the said Kapuri Road. The existence of the Kapuri Road and the location of the acquired land is clear from the ask Shajra Ex. R.I. produced on the record on behalf of the State. Accordingly I hold that the acquired land had no potential value of any kind and was pure and simple agricultural land."
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In that view of the matter, it was held that the lands are agricultural lands and, therefore, the lands bore no potentiality as on the date of the notification for being used for building purposes. However, the opinion of the learned single Judge was thus :

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- "I have carefully gone through the site plan produced on the record and am of the view that the entire area is in the close vicinity of the Ambala City and its Municipal boundary. Although at the present moment crops are being sown but on the given facts, it can be hardly disputed that the land covered by the acquisition had potential for urban purposes."
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- F The finding, therefore, is a mere opinion of the learned single Judge without any discussion of the factual matrix, as was done by the District Judge. When the canal is passing through several lands, what is material to be taken note of is : what would be the price the land was capable to fetch as on the date of Section 4(1) notification in an open market between willing vender and willing vendee. The High Court took into account future developments.

- G Accordingly, we set aside the order of the High Court and confirm that of District Judge as regards determination of the compensation by the District Judge at the rates mentioned hereinbefore. In paragraph 15, the learned Judge has relied upon similar award, Ex. P3 dated September 4, 1984 with regard to the lands in village Singhwala about which he stated that the distance between the lands in the present village and the Singhwala is hardly 5 to 6 kilas. Under these circumstances and in the absence of any
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evidence placed before us, we are left with no option but to affirm the award of the District Judge. A

The Order of the High Court stands set aside. The award of the District Judge stands confirmed. The learned single Judge has also awarded interest on solatium. In view of the decision of this Court, the claimants are not entitled to interest on solatium and to that extent also it stands set aside. B

The appeals are accordingly allowed but in the circumstances without costs.

G.N.

Appeals are allowed. C