

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).10491/2006

(From the judgement and order dated 24/08/2005 in CWP No.12032/1995 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

KISHAN KUMAR & ORS. Petitioner(s)
VERSUS

STATE OF PUNJAB & ORS. Respondent(s)

(With appln(s) for substitution and directions and c/delay in filing substitution appln. and permission to file additional documents and with prayer for interim relief and office report)

WITH SLP(C) NO. 10586 of 2006

(With office report)

SLP(C) NO. 10587 of 2006

(With appln.(s) for directions and office report)

SLP(C) NO. 10588 of 2006

(With prayer for interim relief and office report)

SLP(C) NO. 10595 of 2006

(With appln.(s) for permission to file additional documents and with prayer for interim relief and office report)

SLP(C) NO. 13352 of 2006

(With appln.(s) for permission to place additional documents on record and exemption from filing typed copies and office report)

SLP(C) NO. 14049 of 2006

(With office report)

SLP(C) NO. 20423 of 2006

(With appln.(s) for substitution and exemption from filing O.T. and c/delay in filing substitution appln. and substitution of deceased petitioner and with prayer for interim relief and office report)

SLP(C) NO. 20425 of 2006

(With appln.(s) for substitution and c/delay in filing substitution appln. and substitution of deceased petitioner and office report)

SLP(C) NO. 5508 of 2007

(With office report)

Date: 28/01/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr.Nidhesh Gupta, Sr.Adv.
Mrs.Priya Puri, Adv.
Mr. Sagar Singhal, Adv.
Mr.S.K.Puri, Adv.

Ms. S. Janani, Adv.

SLP(C)No.13352/06 Mr.S.C.Paul,Adv.
Ms.Rekha Pandey, Adv.

SLP(C)No.5508/07 Mr.Ravinder Kumar, Adv.
Ms. Shalu Sharma, Adv.

For Respondent(s) Mr. T.N. Singh, Adv.
(For Patiala Imp. Mr.Vikas K.Singh, Adv.
Trust)

Mr.Sanjay Sarin, Adv.
Ms.Gagan Deep Kaur, Adv.

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

The applications for substitution are allowed.

Having failed to convince the Division Bench of the Punjab and Haryana High Court to enhance the compensation determined by Land Tribunal, Patiala (for short, 'the Tribunal'), the petitioners have filed these petitions.

The petitioners' land was acquired under the Punjab Town Improvement Act, 1922 (for short, 'the Act') for residential scheme known as "Shaheed Sewa Singh Thikriwala Nagar" framed by Patiala Improvement Trust, Patiala. Notification under Section 36 was issued on 04.01.1974. The same was followed by notification dated 30.12.1976 issued under Section 42 of the Act. The Land Acquisition Collector, Improvement Trust, Patiala passed award dated 28.07.1978. He divided the acquired land in three blocks, i.e., 'A', 'B', 'C' and fixed its market value keeping in view the location and development potential.

Dissatisfied with the quantum of compensation determined by the Tribunal, the petitioners filed applications under Section 18 of the Land Acquisition Act, 1894. Thereupon, the Collector made reference to the Tribunal. After considering the pleadings of the parties and evidence produced by them, the Tribunal determined market value of the land comprised in Block 'A' at the rate of Rs.15 per square yard, for land comprised in Block 'B' at the rate of Rs.12 per square yard and for land comprised in Block 'C' at the rate of Rs.10 per square yard. For the sake of reference, paragraphs 21 to 24 of the judgment of the Tribunal are extracted below:

"21. Now, we determine the market value of the land on the date of Notification. Claimants alleged that the acquired land could be used for commercial purposes and it is very near to the Patiala City, which is galping any development. It will be proper for us to first determine the quality and the nature of the land. Shri Piare Lal, Patwari PW-1 stated that the acquired land is lower in level than the Patiala-Rajpura road and further he stated in the cross-examination by Shri Gupta that acquired land was un-even. Shri S.L. Verma, Engineer no doubt stated in his examination-in-chief that the land could be used for commercial purposes such as shops and Godowns and 58 shops and 17 Godowns could be constructed on the land of the claimant, but his evidence, the basis of which is Ex.P-10 and Ex.P-11 is based on hypothesis. It has been admitted by Shri S.L. Verma that out of walled city of Patiala no complex of several shops has come up. Land of the claimant is away from the lay out city business campus. Acquired land is low lying area than the Patiala-Rajpura road because of the fact that level of the Patiala-Rajpura road was raised. Witness further admits that the acquired land was low lying in level. There are two defence bands to restrain the Patiala Nadi water and the acquired land is within the two bands. This witness was examined in the year 1989. Witness admits that the floods came somewhere in the year 1988 and the rain water over flooded the land in question.

22. From the statement of Sh. S.L. Verma PW-3 we have been able to gather something that claim of the claimant is highly exaggerated one and is untenable. The land in question could not be developed for shopping complex nor for godowns etc. Situation of the acquired land is not healthy so as to attract the shopping complex there. Shri Vinod Mehta though stated that in the year 1970 he sold some plots out of the acquired land at the rate of Rs.17/- or that the value of the structure was about Rs.30,000/-, but we are not satisfied with his statement. He admits that this area was being used for cultivation purposes. Even from the documentary evidence produced by Sh. C.S. Tiwana it was proved that the land was being used for cultivation purposes when it was being given on lease to different persons.

It has been admitted by PW-4 Shri Vinod Mehta that when the land was acquired, it was being used for agricultural purposes. It is being situated between two defence bands. This witness never submitted any site plan or application before the Municipal Committee, Patiala that he wants to construct the godowns. Further, it has been admitted that at the time of acquisition land was outside the Municipal limits. Plot, which was allegedly sold by him at the rate of Rs. 17/- per square yard was situated on the existing road site. Further it has been admitted by this witness that even upto now when his statement was being recorded on 4.11.93, the Urban Estate has not been developed. Witness has not purchased any plot in the Urban Estate in the year 1974. Acquired area was most affected area in the floods of 1988 and the floods which came in the month of July, 1993. The statement of Shri Mukesh Gupta approved Draftsman who prepared site-plan Ex. P-12 is also worthy of credence, as this witness could not tell the position of the acquired land in the year 1974. Rather he admits that in the recent floods the area was most affected.

23. Against the statements of the above witnesses Shri M.R. Vadera, Trust Engineer deposed that when area of the land is to be acquired by the Trust Survey Plan at the first instance has to be prepared and in that plan all the structures are shown. Ex. R-5 and R-6 are the Survey Plans. This witness has stated that the acquired land was low lying and its low lying range starts from 2' to 13'. 80% of the land was low lying to the extent of 7 ft. to 8 ft. After acquisition of the land its earth work was done for the construction of the road. After developing the plots those were sold at the rate of Rs. 125/- per square yard to Rs. 187/- per yard.

24. The documentary transactions, which have been placed on the record from the side of the claimants are not helpful. Either those transactions are post dated or are of very small area. These transactions have to be ignored by us. Though the transactions relied upon by the Trust are also of small area like that of the claimants yet the proved facts remain that this land was always used for agricultural purposes and even after passage of time its potential value has not been increased so as to award rates as claimed by the claimants ranging from Rs. 40/- to Rs. 70/- per square yard. Nevertheless the land is near to Patiala City. With the passage of time and with the increase of population and with the scarcity of the land prices have increased. Earlier in this very notification this very court awarded and assessed the price vide Award dated 28.7.88. It is very difficult for us to go beyond that award. Acting upon these awards dated 28.7.88 passed the Tribunal headed by Hon'ble Mr. Justice A.S. Gill (the then District Judge, Patiala) and the Award dated 20.10.1994 given by this Tribunal, we order that the applicants are entitled to be compensated for their acquired land so that it falls in Block-A as per Award of the collector at the rate of Rs. 15/- per square yard. Acquired land falling in Block-B is assessed at the rate of Rs. 12/- per square yard, which is towards Block-A upto the depth of 1/2 of Block-B of the Award of the Collector and the remaining land is assessed at the rate of Rs. 10/- per square yard. Shri C.S. Tiwana will also get the compensation at the enhanced rate and in terms of our observations contained above. These issues are decided accordingly in favour of the claimants and against the Respondents."

(underlining is ours)

The petitioners challenged the judgment of the Tribunal by filing petitions under Articles 226 and 227 of the Constitution and claimed that they are entitled to compensation at the rate of Rs.40 per square yard with all statutory benefits. The Division Bench of the High Court took

cognizance of the fact that the acquired land was touching Patiala-Rajpura road, but held that the Tribunal did not commit any error by recording a finding that its level was lower than the road and the same was being used for agricultural purposes and further that the compensation determined by the Tribunal was just and reasonable. At the same time, the Division Bench declared that the claimant shall be entitled to other statutory benefits, as are admissible to them in terms of the amended provisions of the Land Acquisition Act except Section 23(1)(a).

Shri Nidhesh Gupta, learned senior counsel invited our attention to the list of documents annexed with the award of the Tribunal and argued that even though the petitioners had produced voluminous record to show that land situated in the vicinity of the acquired land had been sold at the rate of Rs.15 to Rs.30 per square yard and the acquired land had similar attributes, the Tribunal ignored the oral as well as documentary evidence and arbitrarily determined the amount of compensation at the rate of Rs.15/- per square yard for land comprised in Block 'A', Rs.12/- per square yard for land comprised in Block 'B' and Rs.10/- per square yard for land comprised in Block 'C'. Learned senior counsel pointed out that both the sides had produced site plans to show the situation of the land but neither the Tribunal nor the High Court adverted to the same for the purpose of finding out correct location and development potential of the acquired land and on this ground alone the impugned order is liable to be set aside. He also made a grievance that despite the direction given by the High Court, the Trust has not paid the statutory benefits to the petitioners. Learned senior counsel invited our attention to Annexure R-1 filed with the rejoinder affidavit in SLP(c) No.10491/2006 to show that a sum of Rs.1,81,03,346/- is payable to petitioner No.1-Kishan Kumar. Learned counsel appearing for the other petitioners adopted the arguments of Shri Nidhesh Gupta.

We have considered the arguments/submissions of the learned counsel for the petitioners and carefully perused the record.

In support of their claim for award of compensation at the rate of Rs.40 per square yard, the petitioners had produced various sale instances which were marked as Exhibits P-4, P-5, P-6, P-7, P-13 to P-17, P-20 to P-25, P-27 to P-29, P-30-33. They also produced other documents and oral evidence to prove the location of the acquired land and its user.

The Tribunal adverted to the oral as well as documentary evidence and held that the acquired land was not within the municipal limit of Patiala City, that the same was being used for agricultural purposes and that it was uneven and below the road level. The Tribunal referred to the sale instances and held that the same cannot be relied upon for determination of the compensation because no evidence was produced by the petitioners to prove that the quality and other attributes thereof were similar to the acquired land.

Before the High Court, learned counsel for the petitioners argued that the acquired land could be used for commercial purposes because it was in the vicinity of the City of Patiala, which was fast developing, but the same was rejected by the Division Bench by recording the following observations:

"As far as the situation of the acquired land is concerned, there is no dispute that the land was touching the Patiala-Rajpura but at the same time, it is also clear that the land in question was situated within the two bands which have been erected for restraining the water from Patiala Nadi to enter the city. In these circumstances, the observations made by the Tribunal that the land was to be treated as agricultural land cannot be held to be erroneous in any manner. The learned Tribunal has based its assessment on the basis of an earlier Award dated Jul 28, 1988 passed by the Land Acquisition tribunal with regard to assessment of compensation for the land which had been acquired through the same Notification dated January 4, 1974 and for the purpose of development of the same scheme namely, Shaheed Sewa Singh Thikriwala Nagar. The aforesaid Award dated July 28, 1978 had assessed the market value of the entire land in three Blocks namely, Rs.15/- per square yard, Rs.12/- per square yard and Rs.10/- per square yard. As a matter of fact, the Improvement Trust through CM No.25433 of 20092 has placed a copy of the Award dated July 28, 1988 dated on record as Annexure R-1. A copy of the order January 16, 1990

passed in Civil Writ Petition No. 463 of 1990, has also been placed on record whereby a Division Bench of this Court had dismissed a Writ Petition filed by the Improvement Trust, Patiala against the aforesaid Award dated July 28, 1988. Even a copy of the order dated January 9, 1991 passed by the Hon'ble Supreme Court of India whereby the Special Leave Petition filed by the Improvement Trust, Patiala had been dismissed is available on the record. In these circumstances, it is apparent that the Award dated July 28, 1988 passed by the Land Acquisition Tribunal had attained finality. It is not in dispute that the aforesaid Award also pertains to these very acquisition proceedings and for the development of the same scheme. Thus, when the assessment made by the learned Tribunal in the earlier Award has attained finality, then it was only natural for the Tribunal to follow the same in the present proceedings as well. The Improvement Trust cannot be heard to claim that the claimants were entitled to get any lesser compensation than what had been assessed in the earlier proceedings. For the same reasons, the claimants also cannot claim any higher compensation."

In our view, the method adopted by the Tribunal for determining the amount of compensation was consistent with the law laid down by this Court and the High Court did not commit any error by dismissing the writ petitions. We cannot overlook the fact that while assessing market value of the acquired land, the Tribunal had referred to the sale instances produced by the petitioners and declined to rely upon the same by assigning cogent reasons. The High Court could not have, in exercise of power under Articles 226 and 227 of the Constitution interfered with the findings recorded by the Tribunal, which were essentially findings of fact. In any case, we do not find any merit in the petitioners' claim for further enhancement in the amount of compensation because they did not produce evidence to prove that the acquired land was identical or substantially similar to various parcels of land sold by difference persons.

With the above observations, the special leave petitions are dismissed.

However, by taking cognizance of the submission made by Shri Nidhesh Gupta that the petitioners have not been paid the amount of compensation determined by the Tribunal, we direct the Trust to pay the balance amount, if any, due to the petitioners within a period of two months from today.

As a sequel to dismissal of the special leave petitions, all other pending I.As. are also disposed of.

(Satish K. Yadav)
Court Master

(Phoolan Wati Arora)
Court Master