

A MUNICIPAL COMMITTEE, BHATINDA AND ORS.
v.
BALWANT SINGH AND ORS.

JULY 25, 1995

B [K. RAMASWAMY AND K.S. PARIPOORNAN, JJ.]

Land Acquisition Act, 1894 :

C *Award of compensation—Belting—Flat rate of market value—Belting upheld and award of compensation at flate rate—Held : Erroneous, arbitrary and capricious and hence not justified.*

D Certain agricultural lands were acquired for establishing water treatment plant and allied public purposes. The Collector awarded compensation upto a depth of 100 yards at the rate of Rs. 50,000 per acre and at the rate of Rs. 15,000 per acre for the rest of the land. On reference it was enhanced to Rs.1,50,000 per acre in respect of a depth of 50 yards, to Rs. 60,000 per acre for depth of 50 to 100 yards and to Rs. 50,000 per acre for the rest of the lands. On appeal, a Single Judge of the High Court while upholding the principle of belting, disagreed with the distinction between E 50 yards and 100 yards, end granted market value at the rate of Rs. 1,50,000 per acre upto a depth of 100 yards and Rs. 65,000 per acre for the rest of the land. On appeal, the Division Bench granted uniform flat rate of Rs. 1.50,000 per acre to the entire area. Hence these appeals. The cross-appeals have been filed by the claimants.

F Allowing the appeals and dismissing the cross-appeals, this Court

G HELD : 1. The Division Bench committed patent error of law in awarding flate rate. The Single Judge had noticed the prevailing prices of lands abutting the roads and lands behind 100 yards from the road. Since it was found from intrinsic evidence on the factual matrix, he rightly recorded the finding that the court has to resort to belting. It is also to be noted that the sale deeds executed on the same day with reference to the land situated abutting the road and the lands interior to the road did not fetch the same price. Thus, it could be seen that fixation of the flat rate to the entire land is a manifest illegality committed by the Division Bench. H had also not referred to the factual matrix available on record except

discussion on the principles of law laid down in various decisions of that Court. This Court has also considered this aspect of the matter in several decisions and held that in an appropriate case, where evidence on record is available the Court would be justified in fixing the belting and to determine the market value of the land on that basis. Therefore, the Division Bench was not right in awarding the compensation at a flat rate to the entire land. [326-G-H, 327-A-B]

2. The principle of average will not be applied in the case to determine the compensation. The Division Bench did not look into the intrinsic evidence on record. On the other hand, as a general proposition of law, the principle of flat rate was adopted which is clearly illegal. When the transactions and the sale deeds relating to the land abutting the road and the land situated interior, effected on the same day, shows the difference in the price, the former fetched higher value and the latter securing lesser value, it itself would lead to an irresistible conclusion that the application of the principle of flat rate is clearly erroneous, arbitrary and capricious.

[327-D-E]

3. The compensation of Rs. 1,50,000 per acre of the land upto a depth of 100 yards is clearly legal, just and fair. For the rest of the land a sum of Rs. 80,000 per acre would be just and appropriate compensation since the lands situated interior fetched lesser prices as evidenced by the sale deed on record. [327-F]

4. The claimants are not entitled to the payment of additional amount under s.23(1-A) of the Land Acquisition Act, but they are entitled to the enhanced solatium at the rate of 30% and interest on enhanced market value, at the rate of 9% from the date of taking possession for one year and 15% thereafter till the date of the payment of deposit in the Court whichever is earlier. [327-H, 328-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5 of 1993.

From the Judgment and Order dated 11.4.91 of the Punjab & Haryana High Court in L.P.A. No. 231 of 1984.

Muni Lal Verma, S.K. Bagga, Gopal Subramaniam, O.P. Sharma, A.B. Rohtagi, Rajiv Dhawan, Seraj Bagga, Ms. Tanuj Bagga, Ms. S. Bagga Mukul Mudgal, R.C. Gubrale, K.R. Gupta, Vivek, Ashok Sudan, Ms. Namita Sharma, K.R. Mohan, R.K. Garg and N.D. Garg for the appearing

A parties.

The following Order of the court was delivered :

B Notification under s.4(1) was published in the State Gazette on April 9, 1976 acquiring an extent of 116 acres of the agricultural lands for the purpose of establishing Water Treatment Plant and other allied public purposes. The Land Acquisition Collector in his award dated March 20, 1979 awarded compensation upto a depth of 100 yards at the rate of Rs. 50,000 per acre and for the rest of the land he awarded compensation at the rate of Rs. 15,000 per acre. On reference under s.18 of the Act, the C Additional District Judge by his award and decree dated the August 9, 1982, enhanced the market value to a depth of 50 yards at the rate of Rs. 1,50,000 per acre and 50 to 100 yards at the rate of Rs. 60,000 per acre and for the rest at the rate of Rs. 50,000 per acre. On further appeal, the D Learned Singh Judge while upholding the principle of belting, distinction between 50 yards and 100 yards, and granted market value at the rate of Rs. 1,50,000 upto a depth of 100 yards and Rs. 65,000 per acre for the rest of the land. On Letters Patent Appeal, the Division Bench by its E Judgment and Decree dated the April 11, 1991 granted uniform flat rate of Rs. 1,50,000 per acre to the entire area. Thus, these appeals by special leave by the Appellant Municipal Committee.

F Admittedly, as on the date of notification published in State Gazette, the lands are agricultural lands. No sanction of the plan to sell for building purposes was obtained by the Owners. The question is whether the lands are capable of potential value. The Reference Court on consideration of the evidence found thus :

G "The land has obtained potentialities for being put to residential, commercial or industrial uses and is within the urban area of the town (Bhatinda). In such circumstances agricultural qualities of the land not to be made basis for determination of compensation inclusion of the land within the municipal limits earlier to the notification."

H The learned Single Judge while accepting that the lands are possessed of potential value, placed reliance on exhibit A-92 plan prepared by AW-4 and stated that the acquired land abut Sirhind Canal towards the West and

beyond the Sirhind Canal is the Thermal Colony. Towards the South, the acquired land abuts on the Bhatinda-Barnala road, Central Aviation Microwave Centre is also towards the South of the acquired land. The Aviation Centre also abuts on the aforesaid road. Bhatinda-Mansa-Talwandi Sabo Road joins the Bhatinda-Barnala road just in the middle of the acquired land towards the West. There is a bridge over the Sirhind Canal for the Bhatinda-Barnala Road. There are two cinema houses besides numerous residential houses on both sides of that road besides several homes on the Bhatinda-Barnala road. There is a residential colony in Khasra No. 1978. It could thus be seen that though the lands were agricultural lands on the date of notification, since they are situated within the municipal limits and nearer to the built up area the lands have potential value for residential or commercial purposes. The Division Bench also reaffirmed the finding that the lands are possessed of potential value. We, therefore, hold that the lands are possessed of potential value.

The next question is what is the market value to be determined in the case. The learned Single Judge having referred to the sale deeds exhibits A-84 to A-89, found that right from December, 1970, the lands abutting the road are fetching higher price of Rs. 1,20,000 per acre than to the land situated behind the belt of 100 yards and that, therefore, it was concluded thus :

"Whereas out of the same khasra number in December 1970, vide Exhibits A-86 to A-89, that much area or area upto the extent of 300 sq. yards was being sold at an average price of Rs. 1,25,000 per acre. The aforesaid instances also the other instances brought on the record do show that the land abutting on the two roads is of higher value as compared to the land lying behind the belt abutting on the road. Therefore, the belting has to be resorted to. While the Land Acquisition Collector made the belting abutting on the road upto a depth of 100 yards for which higher market value was allowed as compared to the rest of the land, the court below divided the 100 yards belt into two belts, one upto a depth of 50 yards for which Rs. 1,30,000 per acre were allowed and the other beyond the first belt upto 100 yards for which Rs. 60,000 per acre were allowed and for the last Rs. 50,000 per acre was allowed.

A Once the belt abutting on the road is considered to be of higher value, there was no justification in making the second and third belts because to my mind that would be of the same value. Accordingly, the belting made by the court below is set aside and that of the Land Acquisition Collector is restored. For the belt upto a
 B depth of 100 yards on Bhatinda-Barnala road, I am of the view that the market value deserves to be fixed at Rs. 1,50,000 per acre."

The Division Bench while referring to the decisions of that Court with reference to the belting without reference to the evidence on record and consideration there of had concluded thus :

C
 D "On an analytical examination of the aforementioned judicial pronouncements of this Court, it can safely be reiterated or held that the courts of law would generally be disinclined to categories the land and would be inclined to evaluate the entire land at a flat rate whenever it has got the potentialities for being used for residential, commercial and industrial purposes. The factum of the land being situated in a compact block is another consideration which must weigh with the court to do away with the belting system. The location of the land in urban area is another factor leaning
 E towards the grant of flat rate when the entire land is acquired by one notification. Even suburban properties near or around the Municipal town can have the same potentialities until and unless evidence to the contrary is produced.

F The only question is whether the Division Bench was right in awarding uniform rate at Rs. 1,50,000 per acre to the entire land. We think that the Division Bench committed patent error of law in awarding flat rate. It is seen that the learned Single Judge had noticed the prevailing prices of lands, abutting the roads and lands behind 100 yards from the road. Because it was found from intrinsic evidence on the factual matrix, he
 G recorded the finding that the court has to resort to belting. In our view, the learned Single Judge is right. It is also further to be noted that the sale deeds executed on the same day with reference to the land situated abutting the road and the lands interior to the road did not fetch the same price. Thus, it could be seen that fixation of the flat rate to the entire land
 H is a manifest illegality committed by the Division Bench. We may also state

that the Division Bench had not referred to the factual matrix available on record except discussion on the principles of law laid down in various decisions of that Court. This Court has also considered this aspect of the matter in several decisions and held that in an appropriate case, where evidence on record is available the Court would be justified in fixing the belting and to determine the market value of the land on that basis. Therefore, the Division Bench was not right in awarding the compensation at a flat rate to the entire land.

The counsel for the claimants contended that when the evidence shows that the value of different lands are available and the lands are contiguous and situated in a developing area, application of the principle of belting is illegal. We find it difficult to accept the broad contention. The principle of average will not be applied in the case to determine the compensation. The Division Bench did not look into the intrinsic evidence on record. On the other hand, as a general proposition of law, the principle of flat rate was adopted which is clearly illegal. As stated earlier, when the transactions and the sale deeds relating to the land abutting the road and the land situated interior, effected on the same day, shows, the difference in the price, the former fetched higher value and the latter securing lesser value, it itself would lead to an irresistible conclusion that the application of the principle of flat rate is clearly erroneous, arbitrary and capricious.

The question thus is, what would be the reasonable price that the lands would be capable to fetch. We have seen that the learned single Judge and the Division Bench had awarded Rs. 1,50,000 to the lands. The learned single Judge had applied the belting while the Division Bench without the application of the belting awarded a flat rate. We hold that the compensation of Rs. 1,50,000 per acre of the land upto a depth of 100 yards is clearly legal and just and fair. For the rest of the land we think that a sum of Rs. 80,000 per acre would be just and appropriate compensation since the lands situated interior fetched lesser prices as evidence by the sale deed on record.

The appeal is accordingly allowed to the above extent. The claimants are not entitled to the payment of additional amount under s.23(1-A) of the Land Acquisition Act, but they are entitled to the enhanced solatium at the rate of 30% and interest on enhanced market value, at the rate of

- A** 9% from the date of taking possession for one year and 15% thereafter till the date of the payment or deposit in the Court whichever is earlier.

The appeals are allowed accordingly but in the circumstances the parties are directed to bear their own costs. In working out of the decree, if the total amount has not already been paid by now, the appellant is

- B** directed to pay the amount within 8 months from the date of the receipt of the order. The cross appeals are dismissed.

G.N.

Appeals allowed and cross appeals dismissed.