

Before S. S. Kang, J.

BIKRAM SINGH AND OTHERS,—*Petitioners*

versus

PUNJAB STATE AND OTHERS,—*Respondents.*

Civil Revision No. 1864 of 1983.

January 13, 1984.

Code of Civil Procedure (V of 1908)—Order 6, Rule 17—Land Acquisition Act (I of 1894)—Sections 9, 18, 23 & 25—Compensation in respect of land acquired—Claimants claiming compensation at a certain rate in the petition filed in response to a notice under section 9—Award of the Collector—Applications filed under section 18 for reference claiming compensation at the same rate—Application for amendment filed during trial of the reference seeking higher rate of compensation—Such amendment—Whether could be allowed—Section 25—Whether attracted.

Held. that the principal and primary question, while ascertaining compensation for land acquired under the Land Acquisition Act, 1894 is the market value of the land. The determination of this question depends upon the nature and potentiality of the land. It is the real question of controversy between the parties. To effectively and finally adjudicate this controversy, the necessary pleadings ought to be available. To highlight this controversy, it may become necessary to amend the pleadings. When an appeal is preferred, the memorandum of appeal has the same position like

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the plaint in a suit, because the plaintiff is held to the case pleaded in the plaint. In the case of memorandum of appeal, the same situation obtains. The appellant is confined to and also would be held to the memorandum of appeal. The position of the claim petition filed in response to the notice under section 9 of the Act from the Collector is the same of a plaint of the suit or the memorandum of appeal. If the latter can be permitted to be amended so as to claim compensation at a rate higher than previously demanded, then on the same principle the claim petition filed before the Collector in reply to a notice under section 9 and the claim in the application under section 18 filed before the Collector for referring the question of determining the market price of the acquired land can be amended. Section 25 of the Act does not enact any bar to the amendment of the claim made in the claim petition. Section 25 only lays down that the Court shall not award compensation at a rate higher than claimed in the claim petition filed in response to a notice under section 9 of the Act. Section 25 is attracted only at the stage when the Court finally determines the compensation. The provisions of section 25 have no bearing on the question whether the claim petition should be allowed to be amended or not. By allowing an amendment of the claim petition with a view to allow the claimant to claim compensation at a higher rate, no new or inconsistent cause of action amounting to the substitution of a new plaint or a new cause of action in place of what was originally there is introduced.

(Paras 7, 8, & 10).

Petition under section 115 C.P.C. for revision of the order of the Court of Shri Sarup Chand Gupta, Additional District Judge, Ludhiana dated the 24th March, 1983, dismissing the applications for amendment.

N. L. Dhingra, Advocate (V. K. Jhanji, Advocate, with him) for the Petitioners.

Anupam Gupta, Advocate, for A.G. (Pb.) for Respondent Nos. 1 and 2.

H. S. Toor, Advocate, for respondent No. 3.

JUDGMENT

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(1) This order will dispose of two revision petitions (CR 1864 and 2070 of 1983) since they raise common questions of law and fact and are directed against a common order of the learned Additional District Judge by which he has rejected the applications

made by the petitioners seeking amendment of the claim petitions and written statements filed by these petitioners.

(2) The factual backdrop shall help delineate the contours of the forensic controversy.

(3) The State Government acquired 9 acres 14 Kanals and 19 Marlas equivalent to 29,486 square yards of land, situated within the municipal limits of Ludhiana City, belonging to the petitioners for the Municipal Corporation of Ludhiana. In reply to the notices issued by the Collector under section 9 of the Act, the petitioners claimed compensation at the rate of Rs. 25 per square yard which comes to Rs. 1,21,000, per acre. The Collector awarded compensation amounting to Rs. 4,37,709.73. The petitioners applied to the Collector for making a reference to the Court for determining the correct market value of the acquired land. Therein also they claimed compensation at the rate of Rs. 25 per square yard.

(4) Incidentally it may be mentioned that the State Government also was not satisfied with the award of the Collector. They thought it to be excessive. Their objections were also referred to the Court by the Collector for determining the correct market value. Both these references were consolidated. During the trial of the references, the petitioners filed two applications for amendment of their claim petitions and the written statements filed in reply to the reference of the State Government. They have pleaded that they should be allowed to substitute the words "Rs. 50 per square yard and the word 2,42,000 per acre" in place of the figures "Rs. 25 and Rs. 1,21,000" wherever they occur in their claim petition and the written statement. It was averred that the petitioners had by inadvertence mentioned in the claim petitions and the written statement that they wanted compensation at the rate of Rs. 25 per square yard which comes to Rs. 1,21,000 per square yard instead of Rs. 50 per square yard and Rs. 2,42,000 per acre respectively.

(5) The State of Punjab and the Municipal Corporation opposed these applications on the ground that these amendments could not be permitted. The claimants, in face of section 25 of the Act, could not ask for a higher compensation from the Court than the one they had claimed in their claim petitions filed before the Collector in reply to the notices issued by him under section 9 of the Act. The amendments were inconsistent with the claim already made by the

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petitioners and if they were allowed, they would change the whole case.

(6) The learned Additional District Judge, Ludhiana accepted the contentions raised by the respondents and held that section 25 of the Act lays down that the Court shall not award compensation for the acquired land at a rate higher than the one claimed in the claim petitions filed in response to the notices issued under section 9 of the Act. So the petitioners could not be awarded compensation at a rate higher than at Rs. 25 per square yard. The learned Judge further held that the amendments sought were not required and were not essential for the effective adjudication of the controversy between the parties regarding the rate of compensation. He rejected both the applications.

(7) Shri N. L. Dhingra, Advocate, learned counsel for the petitioners, has argued that the laws of procedure are enacted to facilitate and not to obstruct the Courts to do substantive justice. The pleadings in civil cases are meant to give the opposite side information of the case to be met by the latter. The Courts are always liberal in allowing amendments of the pleadings, of course, within the well recognised limitations. The amendment sought was necessary for disposing of the real controversy between the parties which was as to what was the market price of the land in dispute. He argued that in proper cases, amendments have been allowed by the Courts even in second appeals. In support of his contention, he has cited before me a recent decision of the Supreme Court *Harcharan v. State of Haryana*, (1). This decision, indeed, supports the contention of Shri Dhingra. In that case, the claimants filed a regular first appeal in this Court against the compensation awarded by the Court on a reference under section 18 of the Act. It is clear from the appeal file (that has been requisitioned from the Record Room) that the appellants in the memorandum of appeal had prayed that they were entitled to claim compensation the rate of Rs. 5,000 per Bigha, measuring 1,008 square yards. They filed an application under Order 6, Rule 17, read with section 151 of the Code, seeking the amendment of the memorandum of appeal with a view to claim compensation at the rate of Rs. 10 per square yard. They further sought permission to pay balance of court-fee on the enhanced claim. This application was declined by a Division Bench of this Court,—*vide* order dated May 4, 1979. The claimants went

(1) A.I.R. 1983 S.C. 43.

up in appeal to the Supreme Court against this order. The appeal was accepted and the amendment application was granted and the case was remitted back to the High Court for a decision. It has been observed therein that the principal and primary question, while ascertaining compensation for land acquired under the Act, is the market value of land. The determination of this question depends upon the nature and potentiality of the land. It is the real question in controversy between the parties. To effectively and finally adjudicate the controversy, the necessary pleadings ought to be available. To highlight this real controversy, it may become necessary to amend the pleadings, when an appeal is preferred, the memorandum of appeal has the same position like the plaint in a suit, because the plaintiff is held to the case pleaded in the plaint. In the case of a memorandum of appeal, the same situation obtains. The appellant is confined to and also would be held to the memorandum of appeal.

(8) It is clear from the observations in this judgment that their Lordships allowed the amendment and permitted the appellant-claimants to claim almost double the amount of compensation which they had initially asked for in the memorandum of appeal. The position of the claim-petition filed in response to the notice under section 9 of the Act from the Collector is the same of a plaint of the suit or the memorandum of appeal. If the latter can be permitted to be amended so as to claim compensation at a rate higher than previously demanded, on the same principle the claim petition filed before the Collector in reply to notice under section 9 and the claim in the application under section 18 filed before the Collector for referring the question of determining the market price of the acquired land, is the same as that of a plaint or the memorandum of appeal. Section 25 of the Act does not enact any bar to the amendment of the claim made in the claim petition. Section 25 of the Act only lays down that the Court shall not award compensation at a rate higher than claimed in the claim petition filed in response to a notice under section 9 of the Act. Section 25 is attracted only at the stage when the Court finally determines the compensation. The provisions of section 25 have no bearing on the question, whether the claim-petition should be allowed to be amended or not. The learned Court has gone wholly wrong in taking into account section 25 of the Act for rejecting the application for amendment.

(9) The second ground for rejection is also equally untenable. As has been noticed earlier, the final Court has held that the principle and primary question while ascertaining compensation for

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the land acquired under the Act is the market value of the land. The real issue is what is the market value of the land in question. For that purpose, the pleadings must contain the claim of compensation for the acquired land. The amendment sought by the petitioners was necessary for the purpose of determining the real questions in controversy between the parties. Reference of Shri H. S. Toor, learned counsel for the respondents, to *Ganesh Trading Co. v. Moji Ram*, (2) is misconceived. In that case, no principles have been laid down for the purpose of deciding the application for amendment of the claim petition filed in reply to notice under section 9 or under section 18 of the Act. Even in that judgment, it has been observed:

“Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.”

(10) By the amendments sought in the present case, no new or inconsistent cause of action amounting to the substitution of a new plaint or a new cause of action in place of what was originally there, has been sought to be introduced. Only permission is sought to claim higher compensation.

(11) Shri H. S. Toor, learned counsel has also argued that the limitation for seeking a reference under section 18 is only six weeks from the date of the award of the Collector. The application for amendment has been made after a long time and valuable rights have accrued to the respondents. The petitioners have made an admission that the market value of the land in dispute was Rs. 25 per square yard and such an admission should not be allowed to be withdrawn. The decision in Harcharan's case (*supra*) is a complete answer to the first contention of Shri Toor. In that case also, the High Court had rejected the application for amendment, because it had been filed after a lapse of six years. Lapse of time is not an absolute bar to the filing of an application for amendment. The question of limitation does not arise in these cases, because a proper application for making a reference under section 18 of the Act had

(2) A.I.R. 1978 S.C. 484.

been filed within time and in fact, a reference had been made and answered. So far as the admission is concerned, its effect shall have to be determined by the Court during adjudication of the main claim on merits. However, there is no absolute bar to the Court to permit an admission made by a party to be withdrawn or explained away. In this connection, a reference may be made to a decision of the final Court in *Panchdeo Narain Srivastava v. Km. Jyoti Sahay and another*, (3) wherein it has been held:

“An admission made by a party may be withdrawn or may be explained away. Therefore, it cannot be said that by amendment an admission of fact cannot be withdrawn.”

(12) For the foregoing reasons, I answer the question posed in the beginning in the affirmative.

(13) These revision petition are allowed and the orders rejecting the applications are set aside and the applications for making the amendments are allowed, on payment of Rs. 300 as costs in each case. There shall be no order as to costs in the revision petitions.

(14) The parties through their counsel are directed to appear before the learned Additional District Judge, Ludhiana, on the 30th day of January, 1984.
