

Before I. S. Tiwana, J.

MUNICIPAL CORPORATION, LUDHIANA,—Appellant.

versus

NASIB SINGH AND ANOTHER,—Respondents.

Cross Objection No. 80-CI of 1988 in Regular First Appeal No. 1118 of 1984.

November 2, 1988.

Land Acquisition Act (I of 1894)—Ss. 4 and 24—Clause Fifthly—Acquisition of land for extension of rose garden—However, acquired land later used for residential colony by auction of plots—Enhancement claimed on the basis of auction price—Increase in value of land by reason of acquisition—Whether gives rise to a claim for higher compensation.

Held, that according to clause Fifthly of S. 24 of the Land Acquisition Act, 1894 any increase in the value of land acquired likely to accrue from the use to which it will be put when acquired is not to be taken into consideration in determining the compensation. Otherwise, the result would virtually be as if the State Government would be purchasing its own improvements. The use or development of the acquired land subsequent to its acquisition cannot be taken notice of. Hence, it has to be held that the claimants are not entitled to a compensation higher than the one awarded on the basis of market value on the date of notification under S. 4 of the Act.

(Para 3).

Cross Objections on behalf of Respondent No. 1 Under Order 41 Rule 22 of Code of Civil Procedure praying that the Cross Objection may kindly be allowed, the judgment of the learned Additional District Judge, Ludhiana in-so-far-as it awards compensation at Rs. 125 per Sq. yard be set aside, and the compensation be enhanced at the rate of Rs. 500 per Sq. yard.

H. S. Toor, Advocate with D. S. Narula, Advocate, for the Appellant.

U. S. Sahni, Advocate, for the Respondents.

JUDGMENT

I. S. Tiwana, J. (Oral)

(1) The claimant/objector impugns the award of the lower court dated 7th January, 1984, whereby the market value of his

**Municipal Corporation, Ludhiana v. Nasib Singh and another
(I. S. Tiwana, J.)**

acquired land has been determined at Rs. 125 per sq. yard. He clamours for a higher compensation. The following facts are not in dispute.

(2) As a result of the notification published u/s 4 of the Land Acquisition Act (for short, the Act) on 2nd September, 1977, certain area falling within the limits of Municipal Corporation, Ludhiana, including that of the petitioner, was acquired by the Corporation for "extension of the Rose Garden". However, this area was later put to a different use, i.e., a residential colony was carved out of it though initially, the Collector awarded compensation at a rate little higher than Rs. 36 per sq. yard yet as a result of the respective references sought by the owners, including the objector, the amount awarded was increased.

(3) So far as the potentiality of the acquired land by the time it was notified for acquisition is concerned, the learned counsel for the parties are hardly at a variance. Otherwise also, it is firmly established on record in the light of the following finding recorded by the lower court that the land had all the potential for being utilised for residential and commercial purposes :—

"It cannot be disputed that the Rose Garden is the best spot of the town and is the posh area. It is surrounded by residential colonies and commercial buildings. The fact that the land in question has been acquired for the extension of the said garden itself proves the potentiality of this land for the construction of residential houses, shops and other buildings."

The solitary contention raised by Shri Sahni, the learned counsel for the claimants, now is that the lower court would have done well in relying upon the statement of Shadi Lal AW1, Land Superintendent in the office of the Municipal Corporation, Ludhiana, wherein he disclosed that subsequent to the acquisition, the acquired land was developed into a residential colony and the Corporation sold certain plots from 23rd November, 1982 to 4th February, 1983, at rates varying from Rs. 401 to Rs. 542 per sq. yard. The learned counsel is at pains to convince me that in the light of the abovenoted rate of auction, the claimant is entitled to compensation at the rate of 300 per sq. yard atleast, i.e., after deducting the reasonable development charges which the Corporation might have incurred for development of this area into a residential colony. This stand of the

learned counsel, however, appears to be wholly untenable in the light of clause Fifthly of section 24 of the Act, the relevant part of which reads as follows :—

“24. But the Court shall not take into consideration—

.....

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired.”

According to this clause, any increase to the value of land acquired likely to accrue from the use to which it will be put when acquired is not to be taken into consideration in determining the compensation. Otherwise, the result would virtually be as if the State Government would be purchasing its own improvements. It has been ruled by Their Lordships of the Privy Council in *Atmaram Bhagwant Ghadgay v. Collector of Nagpur* (1), that a claimant is entitled to the value of all existing advantages as well as future possibilities pertaining to the land acquired but he can not be entitled to any advantage, particularly by way of increase in the value arising by reason of the very acquisition that gives rise to a claim for compensation. A similar view was later expressed by a Division Bench of the Bombay High Court in *Chhindha Vithal Sonawane v. Special Land Acquisition Officer* (2).

(4) In order to sustain his abovenoted plea, the learned counsel makes a reference to certain observations made in a certain number of judgment wherein the market value of the acquired land had been determined in the light of the subsequent developments effected by the acquiring authorities. He, however, is not in a position to refer to any single judgment where a similar argument was accepted after noting the abovenoted provision of law. It may well be that for determining the market value of a particular piece of acquired land, the claimant may depend upon the sale instances or auctions of plots of similar other adjoining lands yet in view of the abovenoted provision of law, the use or the development of the acquired land subsequent to its acquisition can not be taken notice of. I, therefore, repel the abovenoted stand of the learned counsel. It is the conceded position that in case this evidence of Shadi Lal AW1 is not to be given any weight, the impugned award

(1) A.I.R. 1929 P.C. 92

(2) 1975 (77) Bom. L.R. 181.

Sarwan Singh v. Labh Singh and another (V. Ramaswami, J.)

can not be found to be faulty in any manner. Therefore, I affirm the market value of the acquired land as determined by the lower court. However, for clarity sake it is specified here that besides this market value, the claimant will also be entitled to all the benefits granted by sections 23-1A, 23(2) and 28 of the Act, as these stand after the enforcement of Act No. 68/1984. With the abovenoted observations, the objections are dismissed but with no order as to costs.

R.N.R.

Before V. Ramaswami, C.J. and G. R. Majithia, J.

SARWAN SINGH,—Appellant.

versus

LABH SINGH AND ANOTHER,—Respondents.

Civil Misc. No. 6551-C II of 1988 in L.P.A. No. 1458 of 1988.

December 20, 1988.

Limitation Act (XXXVI of 1963)—S. 5—Delay in filing Letters Patent Appeal—Main judgment in connected case—Time spent in obtaining certified copy of judgment in main case—Such time—Whether to be excluded for the purposes of limitation.

Held, that in all such cases a combined calculation excluding the time taken for each of the certified copies will have to be made for purposes of finding the limitation. The law also does not require that all the applications for supply of certified copies shall be made at the same time. It could be made separately and at different times. Only relevant factor is that the time taken for supply of certified copy alone will be excluded. The appeal in this case was filed on 8th December, 1988 and if the calculation is made with reference to the time spent in obtaining the copy of the main order in C.O.C.P. No. 43 of 1987, then the appeal is within limitation and we are of the view that applying late for the supply of certified copy of short order in C.O.C.P. No. 163 of 1987 is of no consequence. In this view of the matter, the appeal was in time. The law requires that when an appeal is to be filed, a certified copy of the judgment is to be filed with it and if the certified copy is annexed with the appeal, the time taken for supplying the certified copy will have to be excluded in calculating the period of limitation.