

MAJOR PAKHAR SINGH ATWAL AND ORS.

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v.

STATE OF PUNJAB AND ORS.

JANUARY 24, 1995

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

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*Land Acquisition Act, 1894—Sections 4(1) & 18—Punjab Town Improvement Act, 1922—Acquisition of land for expansion of municipal town—Award made by Collector binds Improvement Trust—Claim for enhanced compensation—Claimant to establish that amount awarded by Land Acquisition Officer is inadequate—Mutation entries—Inadmissible evidence—Sale instances referred to in award of Land Acquisition Officer—Not proved—They can neither be relied on nor can be looked into as evidence—Award of Tribunal not made part of evidence before court—Court not to look into that award.*

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*Constitution of India—Article 136—Appeal—Land Acquisition case—Market value determined by Tribunal based on appreciation of evidence—Supreme Court not to interfere with compensation so determined on appeal under Article 136.*

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*Land Acquisition (Amendment) Act 68 of 1984—Additional benefits—Notification published on 1-8-1975—Award of collector dated 27.1.1977—Possession of lands taken in 1977 and 1979—Benefits of enhanced solatium and interest—Allowed—Additional amount u/s 23(1-A)—Disallowed.*

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**Certain Land was acquired for the public purpose of expansion of municipal town under the Punjab Town Improvement Act, 1922 by publication of the Notification dated 1-8-1975. The Land Acquisition Collector by his award dated 27-1-1977 determined the compensation. On reference, the Tribunal by its award dated 2-3-1984 enhanced the compensation. The High Court upheld the award of the Tribunal in the Writ Petition filed by the claimants for further enhancement. Hence this appeal.**

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**The claimant contended that in a subsequent award, the Tribunal had awarded compensation at the rate of Rs. 1000 and Rs. 800 per marla. Both the lands were acquired under the same Notification and therefore, the appellants also were entitled to the same rate. It was contended that the award in that case had since been challenged by the respondent in the High**

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- A** Court, this matter might be remitted to the High Court for reconsideration on the basis of the subsequent award. It was also alleged that even otherwise the sale transactions indicated in the award of the Land Acquisition Officer showed that the lands in the neighbourhood had higher market value than the compensation granted by the Tribunal for the acquired lands and that, therefore, the appellant also was entitled to the higher compensation at the same rates and for additional benefits awardable under the Land Acquisition (Amendment) Act 68 of 1984.
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- The respondent contended that the appellants were not entitled to any further enhancement. The sale instances referred to in the award of the Land Acquisition Officer were not proved by adducing any evidence before the arbitrators and that, therefore, it was not a matter for the Supreme Court to reconsider the evidence. It was alleged that the award of the Tribunal was challenged in the Writ Petition under Article 226 of the Constitution and when the High Court itself was not competent to reappreciate the evidence and had come to a different conclusion than what was held by the Tribunal on fact, this Court also should not embark upon appreciation of evidence and come to a different conclusion. He further contended that the award of the Tribunal was the subject matter of the Writ Petition and since that Writ Petition was pending, it was not open to this Court to reappreciate the evidence and give enhanced compensation on that basis.
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Dismissing the appeal, this Court

- HELD** : 1.1. The award is an offer and whatever amount was determined by the Collector is an offer and binds the Improvement Trust. However, the Collector also is required to collect the relevant material and award compensation on the basis of settled principles of determination of the market value of an acquired land. The Improvement Trust, therefore, cannot go behind the award made by the Collector. Reference is not an appeal. It is an original proceeding. It is for the claimants to seek the determination of proper compensation by producing sale deed and examining the vendors or the vendees as to passing of consideration among them, the nearness of the lands sold to the acquired lands, similarly of the lands sold and acquired and also by adducing other relevant and acceptable evidence. In this case, for the Court under Sec. 18 of the Act, the Tribunal was constituted. Therefore, if the claimants intended to seek higher compensation to the acquired land, the burden was on them to establish by
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proof that the compensation granted by the Land Acquisition Officer was inadequate and they were entitled to higher compensation. That could be established only by adduction of evidence of the comparable sale transactions of the land acquired or the lands in the neighbourhood possessed of similar potentiality or advantages. Unfortunately, in this case, no witness had been examined in proof of the prevailing market value of the lands in the neighbourhood. Only mutation entries were relied upon. They were inadmissible evidence and could not be relied upon. In the award itself, the Land Acquisition Officer referred to the sale transactions. Since the Land Acquisition Officer was an authority under the Act, he collected the evidence to determine the compensation as an offer. Though that award may be a material evidence to be looked into, the sale transactions referred to therein cannot be relied upon implicitly, if the party seeking enhancement resists the claim by adducing evidence independently before the Court or the Tribunal. In this case, since no steps were taken to place the sale transaction referred in the award. So they could neither be relied upon nor could be looked into as evidence. [540-D-H, 541-A-B]

1.2. There was no other evidence except the award dated 5.5.1987 given by the Tribunal. Unfortunately, no application had been filed for receiving it as additional evidence under order 41 Rule 27 CPC. Unless it formed part of evidence on record, it could not be looked into as evidence before Court. Even otherwise, when admittedly, the respondent had already challenged the validity of that award in the High Court, no opinion could be expressed on the correctness of that award. But that was not a ground for this Court to remand the matter to the High Court for reconsideration. [541-C-D]

1.3. Under the Act no right of appeal is provided to the High Court. Therefore, when the High Court is dealing with the matter under Article 226, it is settled law that it cannot reappreciate the evidence and come to its own conclusion. It has to consider whether the conclusion reached by the Tribunal was warranted and justifiable on the evidence placed before it and whether settled legal principles of law in determining compensation were taken into consideration and if the conclusions reached were unsustainable on settled principles of law. The High Court, if it finds the award to be wholly unsustainable, it may be open to it to remit the matter to the Tribunal for reconsideration. The Tribunal also should determine the compensation on legal, valid, reliable and acceptable relevant evidence and

A not based on feats of imagination. The Tribunal, if awards compensation at whim or arbitrarily, apart from it being a misconduct, the award would get vitiated by error apparent on the face of the record. When such is the position, this Court cannot embark upon appreciation of evidence and come to a different conclusion and record a finding whether the market value determined by the Tribunal is just, fair and reasonable. [541-E-H]

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 1.4. The market value determined by the Tribunal was based on appreciation of evidence and it had taken settled legal principles into consideration to determine compensation. This court, therefore, could not interfere with compensation so determined on an appeal under Article 136. C But the Claimants were entitled to the additional benefits of solatium at 30% on the enhanced compensation. Possession was taken of some lands on 17.7.77 and rest of the lands on 31.7.1979. Therefore, the claimants were entitled to interest at 9% from the dates of taking possession for one year and after expiry of one year at 15% per annum till the date of payment or deposit of the additional compensation before the Tribunal, whichever was earlier. [545-B-C]

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 1.5 As regards payment of additional amount at 12% per annum under Section 23(1-A) of the Act, the claimants were not entitled to it since Notification was published on 1.8.1975 and the award of the Collector was made on 27.1.1977. [542-D]

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 CIVIL APPELLATE JURISDICTION : Civil Appeal No. 874 of 1986.

F From the Judgment and Order dated 25.7.84 of the Punjab & Haryana High Court in C.W.P. No. 1727 of 1984.

V.C. Mahajan and P.N. Puri for the Appellants.

Dhruv Mehta and S.K. Mehta for the Respondent.

G H.S. Munjral for G.K. Bansal for the State.

The following Order of the Court was delivered :

H This appeal by special leave, arises from the order of the Division Bench of the High Court of Punjab & Haryana in CWP No. 1727/84, dated 25.7.1984.

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A total extent of 821 kanals (1 kanal equivalent to 500 sq. yds) of land was acquired for the public purpose of expansion of municipal town, Phagwara under the Punjab Town Improvement Act, 1922 by publication of the Notification dated 1.8.1975. The Land Acquisition Collector by his award dated 27.1.1977 determined the compensation at Rs. 313 per marla (one marla is equivalent to 25 sq. yds.) for 'C' class lands, at Rs. 250 per marla for 'D' class lands. On reference, the Tribunal by its award dated 2.3.1984 enhanced the compensation at Rs. 800 per marla for 'A' class lands, at Rs. 750 per marla for 'B' class lands, at Rs. 625 per marla for 'C' class lands and Rs. 500 per marla for 'D' class lands. In the Writ Petition filed by the claimants for further enhancement for 'C' and 'D' class lands the High Court upheld the award of the Tribunal. Thus this appeal, by special leave.

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Shri V.C. Mahajan, the learned senior counsel appearing for the claimant raised three-fold contention. First, he contended that in a subsequent award dated May 5, 1987 for the 'C' class and 'D' class lands the Tribunal has respectively awarded at the rate of Rs. 1,000 and Rs. 800 per marla. Both the lands were acquired under the same Notification and that, therefore, the appellants also is entitled to the same rate. Secondly, it contended that the award in that case had since been challenged by the respondent in the High Court, this matter may be remitted to the High Court for re-consideration on the basis of the subsequent award. Thirdly, he contended that even otherwise the sale transactions indicated in the award of the Land Acquisition Officer do show that the lands in the neighbourhood have higher market value than the compensation granted by the Tribunal for the acquired lands and that, therefore, the appellants also is entitled to the higher compensation at the same rates and for the additional benefits awardable under the Land Acquisition (Amendment) Act 68 of 1984.

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Shri Dhruv Mehta, the learned counsel for the respondent, on the contrary, contended rather vehemently that the appellants are not entitled to any further enhancement. The sale instances referred to in the award of the Land Acquisition Officer were not proved by adducing any evidence before the arbitrators and that, therefore, it is not a matter for this Court to reconsider the evidence. He also contended that the award of the Tribunal was challenged in the Writ Petition under Article 226 of the Constitution. When the High Court itself was not competent to reap-

A appreciate the evidence and come to a different conclusion than that was reached by the Tribunal on fact, this Court also should not embark upon appreciation of evidence and come to a different conclusion. He further contended that the award of the tribunal, dated 5.5.1987 is the subject matter of the Writ Petition, wherein, the Tribunal has taken irrelevant facts into consideration which cannot be sustained. Since that Writ Petition is pending, it is not open to this Court to reappreciate the evidence and give enhanced compensation on that basis. However, he fairly conceded that in view of the Judgment of this Court in *Bhatinda Improvement Trust v. Balwant Singh & Ors.*, A.I.R. (1992) S.C. 2214, the claimants would be entitled to the additional benefits of the Amendment Act to the extent of enhanced solatium and interest but, not to payment of the additional amount under Sec. 23(1-A) of the Act.

D If we have regard to the above rival contentions, the facts and circumstances of this case do not permit our interference with the order under appeal. It is now settled law that the award is an offer and whatever amount was determined by the Collector is an offer and binds the Improvement Trust. However, the Collector also is required to collect the relevant material and award compensation on the basis of settled principles of determination of the market value of an acquired land. The Improvement Trust, therefore, cannot go behind the award made by the Collector.

E Reference is not an appeal. It is an original proceeding. It is for the claimants to seek the determination of proper compensation by producing sale deeds and examining the vendors or the vendees as to passing of consideration among them, the nearness of the lands sold to the acquired lands, similarly of the lands sold and acquired and also by adduction of other relevant and acceptable evidence. In this case, for the Court under Sec. 18 of the Act, the Tribunal is constituted. Therefore, if the claimants intend to seek higher compensation to the acquired land, the burden is on them to establish by proof that the compensation granted by the Land Acquisition Officer is inadequate and they are entitled to higher compensation. That could be established only by adduction of evidence of the comparable sale transactions of the land acquired or the lands in the neighbourhood possessed of similar potentiality or advantages. Unfortunately, in this case, no witness had been examined in proof of the prevailing market value of the lands or in the neighbourhood. Only mutation entries were relied upon. They are inadmissible evidence and cannot be relied upon. No doubt, in the award itself, the Land Acquisition Officer

referred to the sale transactions. Since the Land Acquisition Officer is an authority under the Act, he collected the evidence to determine the compensation as an offer. Though that award may be a material evidence to be looked into, but the sale transactions referred to therein cannot be relied upon implicitly, if the party seeking enhancement resists the claim by adducing evidence independently before the Court or the Tribunal. In this case, since no steps were taken to place the sale transaction referred in the award, they cannot be evidence. So they can neither be relied upon nor can be looked into as evidence.

If we ignore the sale instances, we do not have any other evidence except the award dated 5.5.1987 given by the Tribunal. Unfortunately, no application has been filed for receiving it as additional evidence under Order 41 Rule 27 CPC. Unless it forms part of evidence on record, we cannot look into that award evidence before Court. Event otherwise, when admittedly, the respondent had already challenged the validity of that award in the High Court, we express no opinion on the correctness of that regard. But that is not a ground for this Court to remand the matter to the High Court for reconsideration, as asked for.

We are, therefore, of the view that there is no case made out for increasing the compensation. It is also to be seen that under the Act no right of appeal is provided to the High Court, Therefore, when the High Court is dealing with the matter under Article 226, it is settled law that it cannot reappraise the evidence and come to its own conclusion. It has to consider whether the conclusion reached by the Tribunal was warranted and justifiable on the evidence placed before it and whether settled legal principles of law in determining compensation were taken into consideration and 'if the conclusions reached were unsustainable on settled principles of law. The High Court if finds the award to be wholly unsustainable, it may be open to it to remit the matter to the Tribunal for reconsideration. The Tribunal also should determine the compensation on legal, valid, reliable and acceptable relevant evidence and not based on feats of imagination. The Tribunal, if awards compensation at whim or arbitrarily, apart from it being a misconduct, the award would get vitiated by error apparent on the face of the record. When such is the position, this Court cannot embark upon appreciation of evidence and come to a different conclusion and record a finding whether the market value determined by the Tribunal is just, fair and reasonable.

- A** From the evidence, it is clear and we hold that the market value determined by the Tribunal is based on appreciation of evidence and it has taken settled legal principles into consideration to determine compensation. We therefore, cannot interfere with compensation so determined on an appeal under Article 136. But the claimants are entitled to the additional benefits of solatium at 30% on the enhanced compensation. Possession was taken of some lands on 17.8.77 and rest of the lands on 31.7.1979. Therefore, the claimants are entitled to interest at 9% from the dates of taking possession for one year and after expiry of one year at 15% per annum till the date of payment or deposit of the additional compensation before the Tribunal, whichever is earlier.
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- C** As regards payment of additional amount at 12% per annum under Section 23(1-A) of the Act, the claimants are not entitled since Notification was published on 1.8.1975 and the award of the Collector was made on 27.1.1977.
- D** The appeal is accordingly allowed only to the extent of allowing additional solatium and interest as indicated above. No costs.

A.G.

Appeal allowed.