

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RFA No. 1643 of 1994 (O&M)

Date of decision : 19.8.2015

Sarwan Singh

..... Appellant

vs

State of Haryana and another

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Ompal Singh, Advocate, for the appellants.

 Mr. Abhinash Jain, Assistant Advocate General, Haryana.

Rajesh Bindal J.

This order will dispose of appeals bearing RFA Nos. 1643, and 1645 to 1647 of 1994, as common questions of law and facts are involved therein.

The appeals have been filed by the landowners seeking further enhancement of compensation on account of acquisition of land.

Briefly, the facts of the case are that vide notification dated 6.2.1980, published on 19.2.1980, issued under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act'), State of Haryana sought to acquire land situated in the revenue estate of village Brahan, Hadbast No. 82, Tehsil Thanesar, District Kurukshetra, for construction of S.D. Road to village Gadli. Notification under Section 6 of the Act, issued on 15.5.1980, was published on 22.7.1980. The Land Acquisition Collector (for short, 'the Collector') vide award dated 26.7.1985 assessed the compensation for the acquired land @ ₹ 25,000/- per acre for gair mumkin abadi, ₹ 15,000/- per acre for chahi/ gair mumkin bara/ mandir/ Gora Deh and ₹ 8,000/- per acre for banjar kadeem kinds of land. Dissatisfied with the award of the Collector, the land owners filed objections. On reference under Section 18 of the Act, the learned court below vide award dated 8.3.1994, dismissed the reference petitions filed

by the appellants. It is this award which has been impugned in the present appeals.

Learned counsel for the appellants submitted that the Court below has gone wrong in dismissing the reference petitions filed by the landowners. The Court below had also ignored the location and potential value of the land acquired considering the fact that it was acquired for construction of link road. The sale-deed dated 31.5.1980, Ex. P1, has been totally ignored. Even if the same was registered after the issuance of notification under Section 4 of the Act, a reasonable cut could be applied. He prays for enhancement of compensation for the land acquired.

Another contention raised by learned counsel for the landowners is that in fact the land was acquired vide notification 6.2.1980, published in the Haryana Government Gazette on 19.2.1980. However, the possession was taken by the State way back in the year 1971 when the road was constructed. They were deprived of use and occupation of their land. It was only when the landowners raised hue and cry that the State Government issued notification under Section 4 of the Act on 6.2.1980 starting acquisition proceedings.

Learned counsel for the landowners claimed interest for the period they were dispossessed. The possession of the land was taken from the landowners way back in the year 1971-72. RW3 Ram Kumar, Forestor, office of Kurukshetra Territorial (Forest) Division, admitted in his cross-examination that PWD Department was given the acquired land for plantation in the year 1973 probably. A specific issue no. 3 was framed regarding the entitlement of interest, however, the learned court below has wrongly declined the benefit to them. It was prayed that for the period the State remained in unauthorised occupation of the land of the landowners, they deserve to be compensated.

On the other hand, learned counsel for the State submitted that in the absence of relevant evidence, the learned Reference Court has rightly dismissed the claim made by the appellants. The onus to prove that the value of the acquired land as was assessed by the Collector is not fair, is on the landowners, which can be discharged by producing

relevant evidence in the form of sale-deeds. However, in the present case, no sale-deed for the period prior to the issuance of notification under Section 4 of the Act has been produced. Sale-deed, Ex. P1, is not relevant, the same being 3½ months later. It was further submitted that there is no site plan produced on record showing the location of the land pertaining to the aforesaid sale-deed viz-a-viz the acquired land.

It was further submitted that nothing could be paid to the landowners for any period prior to the date of notification under Section 4 of the Act. All what they could claim are the damages, that too, in case they are able to prove that the possession was taken prior to the issuance of notification under Section 4 of the Act.

Heard learned counsel for the parties and perused the relevant referred record.

It is not in dispute that the onus to prove that the value of the acquired land as assessed by the Collector is not fair, is on the landowners. Notification in the present case under Section 4 of the Act was issued on 6.2.1980. The only sale-deed referred to by the learned counsel for the landowners is dated 31.5.1980 (Ex. P1), which was registered on 3.6.1980, vide which 8 kanals land was sold for a consideration of ₹ 24,500/-. The same was registered more than 3½ months after the date of publication of the notification under Section 4 of the Act, which cannot be said to be relevant piece of evidence for assessment of compensation for the acquired land. There is no site plan produced on record showing the location of the land pertaining to the aforesaid sale-deed viz-a-vis the acquired land.

Considering the aforesaid facts, the sale-deed, Ex. P1 cannot be said to be relevant piece of evidence for the purpose of determination of compensation for the acquired land and to opine that the value of the land as assessed by the Collector was not fair. There is no other evidence produced on record by the landowners. Mere location of the land will not determine the compensation.

As far as claim of the landowners for damages on account of use and occupation of the land on the plea that possession thereof was taken prior to issuance of notification under Section 4 of the Act in the

present case is concerned, the appellants have led some evidence to prove that possession of the land was taken prior to issuance of notification under Section 4 of the Act. It has been held by Hon'ble the Supreme Court in Special Land Acquisition Officer vs Karigowda and others, (2010) 5 SCC 708, that interest for any period prior to the issuance of notification under Section 4 of the Act, cannot be awarded as the same has to be in the form of damages for use and occupation of land.

The issue regarding entitlement of compensation for any period, if the possession of the land was taken prior to the issuance of notification under Section 4 of the Act, was considered by Hon'ble the Supreme Court in Karigowda's case (supra). The relevant part of the said judgment is extracted below:-

“We are bound by the decision of the larger Bench, in R. L. Jain case, which had considered Satinder Singh, on which the reliance has even been placed by the claimants in the present appeal. The larger Bench after detailed discussion on the subject rejected the claim for payment of interest claimed by the respondents in those cases prior to the date of issuance of the notification under Section 4 of the Act.

As is evident from the above dictum of the Court, despite dispossession, the title continues to vest in the landowners and it is open for the land owners to take action in accordance with law. Once notification under Section 4(1) of the Act has been issued and the acquisition proceedings culminated into an award in terms of Section 11, then alone the land vests in the State free of any encumbrance or restriction in terms of provisions of Section 16 of the Act. The court, in situations where possessions have been taken prior to issuance of notification under Section 4 (1) of the

Act, can direct the Collector to examine the extent of rent or damage that the owners of land would be entitled to, the provisions of Section 48 of the Act would come to aid and the court would also be justified in issuing appropriate direction. This was the unequivocal view expressed by the Court in R.L.Jain case as well. This legal question is no more open to controversy and stands settled by this court. We would follow the view taken and accept the contention of the appellant-State that the reference court as well as the High Court could not have granted any interest under the provisions of the Act, for a date anterior to the issuance of notification under Section 4 of the Act. However, following the dictum of the Bench in R.L.Jain case, we direct the Collector to examine the question of payment of rent/damages to the claimants, from the period when their respective lands were submerged under the back water of the river, till the date of issuance of the notification under Section 4(1) of the Act, from which date, they would be entitled to the statutory benefits on the enhanced compensation.”

Reference can also be made to judgments of this Court in RFA No. 4609 of 2006 – State of Haryana and others vs Ram Kumar and others, decided on 11.5.2011 and RFA No. 4612 of 2011 Dayanand and others vs State of Haryana and others, decided on 23.1.2012.

In terms of the aforesaid judgments, the landowners are entitled for compensation for use and occupation of the land from the date of their dispossession till the date of notification under Section 4 of the Act. The land owners shall file application before the Collector concerned to claim damages for their dispossession from the land for the aforesaid period. These applications may be filed upto 30.9.2015. If such

applications are filed then the Collector shall consider the same and shall award such amount to the landowners as may be payable in accordance with law. The applications shall be disposed of finally within four months of filing, after affording personal hearing to the parties.

As far as claim for enhancement of compensation is concerned, the same is declined.

The appeals are disposed of in the manner indicated above.

19.8.2015
vs

(Rajesh Bindal)
Judge