In the High Court of Punjab and Haryana at Chandigarh

Regular First Appeal No. 1318 of 2011 (O&M)
Date of Decision: 08.7.2015.

The Estate Officer-cum-Deputy Commissioner and another ....Appellants

Versus

Bhag Singh and another ....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Vinod S. Bhardwaj, Advocate
for the Municipal Committee.

Mr. M.L.Sharma, Advocate,

Mr. S.M. Sharma, Advocate,

Mr. Vineet Chaudhary, Advocate,

Mr. Naveen Gupta, Advocate,

Mr. J.S.Cooner, Advocate,

Mr. Deepak Sharma, Advocate,

Mr. J.S.Khattar, Advocate
for the land owners.

Mr. B.R.Mahajan, Advocate Genera, Haryana with
Ms. Gaganpreet Kaur, AAG, Haryana.

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SABINA, J.

Vide this judgment, above mentioned appeal as well as following appeals filed by the Municipal Council as well as the land owners would be disposed of as they relate to same acquisition.

Appeals filed by the Municipal Council

1. RFA No. 1099 of 2011
2. RFA No. 1100 of 2011
3. RFA No. 1101 of 2011

4. RFA No. 1102 of 2011
5. RFA No. 1103 of 2011
6. RFA No. 1104 of 2011
7. RFA No. 1105 of 2011
8. RFA No. 1106 of 2011
9. RFA No. 1313 of 2011
10. RFA No. 1314 of 2011
11. RFA No. 1315 of 2011
12. RFA No. 1316 of 2011
13. RFA No. 1317 of 2011
14. RFA No. 1319 of 2011
15. RFA No. 1320 of 2011
16. RFA No. 1321 of 2011
17. RFA No. 1322 of 2011
18. RFA No. 1323 of 2011
19. RFA No. 1324 of 2011
20. RFA No. 1325 of 2011
21. RFA No. 1326 of 2011
22. RFA No. 1327 of 2011
23. RFA No. 1328 of 2011
24. RFA No. 1329 of 2011
25. RFA No. 1330 of 2011
26. RFA No. 2075 of 2011
27. RFA No. 2076 of 2011
28. RFA No. 2077 of 2011
29. RFA No. 2078 of 2011
30. RFA No. 2079 of 2011
31. RFA No. 2089 of 2011
32. RFA No. 2090 of 2011

33. RFA No. 2091 of 2011
34. RFA No. 2092 of 2011
35. RFA No. 2093 of 2011

Appeals filed by the land owners

1. RFA No. 5126 of 2010
2. RFA No. 5127 of 2010
3. RFA No. 5128 of 2010
4. RFA No. 5129 of 2010
5. RFA No. 5130 of 2010
6. RFA No. 5131 of 2010
7. RFA No. 662 of 2011
8. RFA No. 663 of 2011
9. RFA No. 1576 of 2011
10. RFA No. 1577 of 2011
11. RFA No. 1578 of 2011
12. RFA No. 2853 of 2011
13. RFA No. 2854 of 2011
14. RFA No. 2855 of 2011
15. RFA No. 2856 of 2011
16. RFA No. 3713 of 2011
17. RFA No. 543 of 2012
18. RFA No. 1197 of 2012
19. RFA No. 5337 of 2012
20. RFA No. 5338 of 2012
21. RFA No. 5339 of 2012
22. RFA No. 5335 of 2012
23. RFA No. 5336 of 2012

Notification under Section 4 of the Land Acquisition Act, 1894 ('Act' for short) was issued on 27.8.1997 for acquisition of land measuring 46 *acres* 6 *kanals* 3 *marlas* situated in revenue limits of village Tundla, land measuring 34 *acres* 5 *kanals* 15 *marlas* situated in village Tundli and land measuring 63 *acres* 4 *kanals 1 marla* situated in village Janetpur qua defence purposes. Declaration under Section 6 of the Act was issued on 17.9.1998. The Land Acquisition Collector vide its award dated 14.9.2000 awarded compensation qua chahi land at the rate of ₹ 2,20,000/- per acre and for other land at the rate of ₹ 1,70,000/- per acre. The land owners were further held entitled to receive the statutory benefits under the Act.

Being dissatisfied with the award, land owners sought references under Section 18 of the Act. The Reference Court has assessed the market value of the acquired land at the rate of ₹ 198/- per square yard for all kinds of land. Hence, the present appeals by the land owners seeking enhancement of compensation and by the Municipal Council for rejection of the references sought by the land owners.

Learned counsel for the land owners have submitted the Reference Court had rightly based reliance on the sale deed Exhibit P-1 while assessing the market value of the land but had failed to grant increase of the value of the land on cumulative basis.

Learned Advocate General as well as learned counsel for Municipal Council, on the other hand, have submitted that the Reference Court had failed to correctly assessed the market value of the land. The sale deed Exhibit P-1 was qua 2 *kanals* of land. Since the said sale deed was qua small piece of land, a cut to the extent of 50% was liable to be imposed qua the sale consideration and thereafter the market value of the acquired land was liable to be assessed.

It has been held in '***Om Parkash (D) by LRs and others versus Union of India and another' The Punjab Law Reporter Vol. CXXXVIII (2004-3), 727***, wherein it was held as under:-

> *"In the circumstances, the High Court was justified in working out the fair market value of the lands in question on the basis of Rs. 16,750/- per bigha as on 30.10.1963. The High Court noticed that in several judgments of this Court escalation at different and varying rates i.e. 6% per annum from 1959 to 1965, @ 10% per annum for every year from 1966 to 1973 and @ 12% per annum from 1975 had been considered to be reasonable increase to arrive at the fair market value, assuming that the pace of escalation during this period was normal for the entire period from 1959 onwards. Since no material was placed on record to show that there was any abnormality during the period, the High Court applied the same principle to the facts and circumstances before it, and accepted increase of 10% every year progressively from 1963 to 1973 and thereafter @ 12% every year progressively upto the date of acquisition. The High Court noticed in the judgment that if escalation is allowed on the basis, the fair market value, would be Rs. 1,28,889/- per bigha. In case progressive increase is allowed @ 10% for the entire period, the amount will work out to Rs. 1,08,397/- per bigha. Allowing appreciation @ 12% per annum from 1963 to 1983, the amount would work out to Rs. 56,11/-*

per bigha. The High Court in its judgment under appeal pointed out that the market value of Rs. 16,750/- per bigha fixed in the case of Dharambir and others v. Union of India was not in respect of commercial land but only of agricultural land. That the market value of agricultural land is much lower than that of land suitable for commercial purposes, is trite. After having worked out the market value of the lands on various bases and keeping in view the fact that between 8.12.1992 and 2.6.1983, the lands in question had at least some commercial potentiality, the High Court decided that the fair market value of all categories of lands situated in the villages in question as on the date of acquisition should be fixed at Rs. 82,225/- per bigha."

In the present case, the land owners had proved on record two sale instances. Sale deed dated 12.10.1992 Exhibit P-1 was made the basis for assessing the market value of the land by the Reference Court. Sale deed Exhibit P-1/A dated 7.10.1999 was not made the basis for assessing the market value of the land by the Reference Court as the same was executed after the notification under Section 4 of the Act. Thus, the Reference Court had correctly not based reliance on sale deed Exhibit P-1/A while assessing the market value of the acquired land.

So far as the sale deed Exhibit P-1 is concerned, as per the said sale deed, the land owners had purchased 02 *kanals* of land for a consideration of ₹ 1,50,000/-. Admittedly, the said value comes to ₹ 124/- per square yard approximately. The respondents had not placed any sale deed on record to rebut the sale deed

Exhibit P-1.

Since the sale deed Exhibit P-1 relates to only 02 *kanals* of land whereas huge chunk of land was acquired for defence purposes, the Reference Court fell in error while not making a deduction while assessing the market value of the land on the basis of Exhibit P-1. In the facts and circumstances of the present case, the learned Reference Court should have applied a cut to the extent of 1/3rd to the sale consideration mentioned in Exhibit P-1 while assessing the market value of the acquired land. Thereafter, the Reference Court should have allowed cumulative increase @ 12% per annum. The sale deed Exhibit P-1 relates to October 1992 whereas notification under Section 4 of the Act was issued on 27.8.1997 and was published in the gazette on 23.9.1997. Thus, by taking the market value of the land at ₹ 83/- per square yard (after deducting 1/3rd from ₹ 124/-), the learned Reference Court should have allowed cumulative increase @ 12% per annum for the intervening five years. By doing so, the market value of the land comes to ₹ 146/- per square yard. The learned Reference Court, thus, fell in error while assessing the market value of the land at the rate of ₹ 198/- per square yard for all kinds of land. The market value of the land is assessed at ₹ 146/- per square yard for *chahi* and other kinds of land. The land owners are further held entitled to receive statutory benefits as admissible under Section 23(1-A), 23(2) and 28 of the Act.

Appeals stand disposed of accordingly.

(SABINA)
JUDGE

July 08, 2015
Gurpreet