IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No. 435 of 1978 (O&M)
Date of decision: 01.06.2016

Ashwani Kumar and another

.. Appellants

Vs.

Punjab State through the Collector, Ferozepur

... Respondent

CORAM:HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Raj Karan Singh Brar, Advocate
for the appellants.

Mr. Yatinder Sharma, Additional A.G. Punjab.

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1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

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RAMESHWAR SINGH MALIK, J. (Oral)

Present appeal, at the instance of the landowners, is directed against the impugned award dated 22.12.1977 passed by the learned reference court.

Briefly put, facts of the case are that State of Punjab sought to acquire land measuring 35 acres 1 kanal 9 marla, at public expenses for public purpose namely; for setting up New Grain Market at Fazilka. Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 ('the Act' for short), came to be issued on 3.8.1973 which was followed by notification dated 6.8.1973 under Section 6 of the Act. Land Acquisition Collector ('LAC' for short), vide award dated 11.12.1973, assessed the market value of the acquired land @ ₹ 20,000/- per acre for Block A, which was up to 20 karam from Fazilka-Abohar Road. Land falling in Block-B was assessed @ ₹10,000/- per acre and the land falling in Block-C was assessed @ ₹7,000/- per acre. However, learned counsel for the parties are ad idem that so far as present appeal is concerned, it pertains only to the land falling in Block-A.

Feeling aggrieved against the abovesaid assessment of market value of the acquired land at the hands of LAC, landowners filed their objections under Section 18 of the Act and as a consequence thereof, land references were forwarded to the learned reference court for its decision. Parties led their respective evidence. After hearing learned counsel for the parties and going through the evidence available on record, learned reference court, vide its impugned award dated 22.12.1977, further bifurcated the land falling in Block-A in two categories. The land up to 40 feet from the Fazilka-Abohar Road was assessed @ ₹30,000/- per acre and land falling beyond 40 feet was assessed @ ₹20,000/- per acre.

Dissatisfied, landowners-appellants have approached this Court by way of present regular first appeal. They are seeking further enhancement in the amount of compensation awarded to them by the learned reference court.

Having heard learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, present appeal deserves to be partly allowed, suitably enhancing the amount of compensation. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the impugned award would show that so far as sale instances produced by the State of Punjab were concerned, all were disclosing much lesser market price than what had been awarded by LAC. Since the sale deeds relied upon by State were either undervalued transactions or were the result of distress sale, learned reference court rightly excluded the same from consideration.

The landowners placed reliance on very many sale deeds but most of them were found post acquisition. However, only two sale deeds Ex.P8 and Ex.P18, registered on same date, i.e. 27.7.1973, were the relevant sale instances. Even these sale deeds were ignored by the learned reference court saying that these were pertaining to small pieces of land, as per its findings recorded in para 19 of the impugned award. This approach adopted by the learned reference court has been found unsustainable in law for the reason that, in the absence of any other relevant evidence, even the sale deeds pertaining to small pieces of land could have been made the basis for assessing the market value of the acquired land. It is was so held by the Hon'ble Supreme Court in **Special Land Acquisition Officer and another Vs. M.K. Rafiq Saheb, 2011 (7) SCC 714**.

As noticed hereinabove, facts in the case before the Hon'ble Supreme Court in **M.K. Rafiq Saheb's case** (supra) were very close to the facts of the present case. Relevant observations made by the Hon'ble Supreme Court in **M.K. Rafiq Saheb's case** (supra), which can be gainfully followed in the present case, read as under:-

"17. We find that the High Court relied on Ex. P5 to determine the market value of compensation. It appears that the said sale instance relates to a small residential site measuring 30' X 43' (125.309 sq. mts). The acquired land in question measures 34 guntas. The Reference Court rejected Ex. P5 in determining market value of land since it found that the land covered by Ex. P5 was at a distance of 2 kms from the acquired land. We are of the opinion that the Reference Court erred in rejecting Ex. P-5 in determining compensation for the acquired land.

18. The judgment of the High Court is well reasoned and well considered. We find no perversity in its reasoning. The only issue is that Ex. P-5, which was relied upon by the High Court, relates to a small piece of land, whereas the acquisition is of a larger piece of land. It is not an absolute rule that when the acquired land is a large tract of land, sale instance relating to smaller pieces of land cannot be considered. There are certain circumstances when sale deeds of small pieces of land can be used to determine the value of acquired land which is comparatively large in area , as can be seen from the judicial pronouncements mentioned hereunder.

19. It has been held in the case of ***Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh v. Nookala Rajamallu and Ors., reported in 2004(1) R.C.R. (Civil) 293 : (2003)12 SCC 334*** *that :*

"6. Where large area is the subject-matter of acquisition, rate

at which small plots are sold cannot be said to be a safe criterion. Reference in this context may be made to few decisions of this Court in ***Collector of Lakhimour v. Bhuban Chandra Dutta, AIR 1971 SC 2015, Prithvi Raj Taneja v. State of M.P., AIR 1977 SC 1560*** *and* ***Kausalya Devi Bogra v. Land Acquisition Officer AIR 1984 SC 892.***

7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices."

20. In the case of ***Bhagwathula Samanna and Ors. v. Special Tahsildar and Land Acquisition Officer, reported in 1992(1) R.R.R. 257 : (1991)4 SCC 506,*** *it was held :*

"13. The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for

purpose of comparison is not warranted..."

*21. In **Land Acquisition Officer, Revenue Divisional Officer, Chittoor v. Smt. L. Kamalamma (dead) by Lrs. and others, AIR 1998 SC 781,** this Court held as under :-*

"...when no sales of comparable land was available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a lay out, lump sum payment as also the waiting period required for selling the sites that would be formed."

Accordingly, findings recorded by the learned reference court in this regard cannot be sustained and the same are hereby set aside. Since both these sale deeds Ex. P8 and Ex. P18 were registered on the same date. i.e. 27.7.1973, area sold thereunder can be put together. Vide sale deed Ex. P18, land measuring 300 square feet was sold @ ₹6,40,000/- per acre. Similarly, vide sale deed Ex.P8, land measuring 1200 square feet was sold @ ₹4,53,750/-. Thus, total land sold by way of these two sale deeds was 1500 square feet, which cannot be said to be small piece of land.

In this peculiar situation of non availability of any other better piece of evidence on record, this Court is left with no other option except to make these two sale deeds as the basis for assessing the market value of the acquired land. Again, on the basis of same analogy, average market price of both these sale deeds will have to be taken into consideration for assessing the market value of the acquired land and same comes to ₹5,46,875/- per acre. The view that has taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Maj. Gen. Kapil Mehra and others Vs. Union of India and another, 2015 (2) SCC 262**.

The Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Registered), Faridkot and others Vs. State of Punjab and others, (2012) 5 SCC 432,** has held that the landowners are entitled to receive the best price for their acquired land. Further, in its recent judgment in the case of **Ashok Kumar and another etc. v. State of Haryana, (Civil Appeal No(s). 2714-2721 of 2012),** decided on 18.2.2016, the Hon'ble Supreme Court, while interpreting the scope of Section 25 of the Act and duty cast on the courts to grant just compensation, observed as under:-

> *"Learned counsel appearing for the appellants however points out that in the matter of fixation of just and fair compensation, the Court is not bound by claim made by the owner. It is for the Court, in the facts and circumstances of each case, to award just and fair compensation.*
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> *XXX XXX XXX*
>
> *The pre-amended provision put a cap on the maximum; the compensation by court should not be beyond the amount claimed. The amendment in 1984, on the contrary, put a cap on the minimum; compensation cannot be less than what was awarded by the Land Acquisition Collector. The cap on maximum having been expressly omitted, and the cap that is put is only on minimum, it is clear that the amount of compensation that a court can award is no longer restricted to the amount claimed by the applicant. It is the duty of the Court to award just and fair compensation taking into consideration the true market value and other relevant factors, irrespective of the claim made by the owner.*
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> *Although in the context of the Motor Vehicles Act, 1988, this Court in* ***Sanjay Batham v. Munna Lal Parihar*** *held that,*

"17. It is true that in the petition filed by him under Section 166 of the Act, the Appellant had claimed compensation of Rs. 4,20,000/- only, but as held in Nagappa v. Gurudayal Singh, (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."

*In **Bhag Singh and Others v. Union Territory of Chandigarh**, this Court held that there may be situations where the amount higher than claimed may be awarded to the claimant. The Court observed –*

"3. … It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where, as for instance, under' agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution, be deprived of land which is not being personally cultivated by him or which is in excess of the ceiling area with payment of little

compensation or no compensation at all, but where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms, declares that he shall be paid such market value. …"

*In **Krishi Utpadan Mandi Samiti v. Kanhaiya Lal**, this Court held that under the amended provisions of Section 25 of the Act, the Court can grant a higher compensation than claimed by the applicant in his pleadings –*

"17. Award being in this case between the dates 30th April, 1982 and 24th September, 1984 and as per the Union of India and Anr. v. Raghubir Singh (Dead) by LRs. etc. (Supra), the amended provisions would be applicable under which there is no restriction that award could only be upto the amount claimed by the claimant. Hence High Court order granting compensation more than what is claimed cannot be said to be illegal or contrary to the provisions of the Act. Hence the review itself, as is confined for the aforesaid reasons, has no merit."

*11. Further, in **Bhimasha v. Special Land Acquisition Officer and others**, a three-Judge bench reiterated the principle in **Bhag Singh** (supra) and rejected the contention that a higher compensation than claimed by the owner in his pleadings cannot be awarded by the Court. In that case, the High Court had concluded that although the market price of the land was Rs 66,550/- per acre, since the appellant had only claimed compensation at the rate of Rs. 58,500/- per acre in his pleadings, therefore he could only be awarded compensation limited to his claim. This Court, while reversing the decision of the High Court, awarded the petitioner the market value, i.e., Rs. 66,550/- per acre thereby holding that the award would not be limited to the claim made by him."*

Again, in the case of **Udho Dass Vs. State of Haryana, 2010 (12) SCC 51,** the Hon'ble Supreme Court has held that landowners hardly get compensated in true sense of word in the matters of compulsory acquisition, because they had no role to play either in the price fixation policy adopted by the State or to avoid the acquisition. Relevant observations made by the Hon'ble Supreme Court in paras 17 and 18 of its judgment in **Udho Dass's case** (supra), which deserve to be noticed here, read as under:-

> *"Although, in the present matter, sale instances around or near abouts the date of Notification of the present acquisition are available yet these cannot justify or explain the potential of a particular piece of land on the date of acquisition as the potential can be recognized only some time in the future and it is open to a landowner claimant to contend that the potential can be examined first at the time of the Section 18 Reference, the first Appeal in the High Court or in the Supreme Court in appeal as well. We must also highlight that Collectors, as agents of the State Government, are extraordinarily chary in awarding compensation and the land owners have to fight for decades before they are able to get their due. We take the present case as an example. The land was notified for acquisition in May 1990. The collector rendered his award in May 1990 awarding a sum of Rs. 2,00,000/- per acre. The Reference Court by its award dated January 2001 increased the compensation to Rs. 125 per square yard for the land of the road behind the ECE factory and Rs. 150 per square yard for the land abutting the road which would come to Rs. 6,05,000/- and Rs. 7,26,000/- respectively for the two pieces of land. This itself is a huge increase vis-a-vis the Collector's award. The High Court in First Appeal by its judgment of 24th September 2007 enhanced the compensation for the two categories to Rs. 135 and 160 respectively making it Rs. 6,53,400/- and Rs. 7,74,400/-. In other words, this is the compensation which ought to have been awarded by the Collector at the time of his award on 12th May 1993. This has, however, come to the land owner for the first time as a result of the judgment of the High Court which is under challenge in this appeal; in other words, a full 17 years*

from the date of Notification under Section 4 and 14 years from the date of the award of the Collector on which date the possession of the land must have been taken from the landowner. Concededly, the Act also provides for the payment of the solatium, interest and an additional amount but we are of the opinion, and it is common knowledge, that even these payments do not keep pace with the astronomical rise in prices in many parts of India, and most certainly in North India, in the land price and cannot fully compensate for the acquisition of the land and the payment of the compensation in driblets. The 12% per annum increase which Courts have often found to be adequate in compensation matters hardly does justice to those land owners whose land have been acquired as judicial notice can be taken of the fact that the increase is not 10 or 12 or 15% per year but is often upto 100% a year for land which has the potential of being urbanized and commercialized such as in the present case. Be that as it may, we must assume that the landowners were entitled to the compensation fixed by the High Court on the date of the award of the Collector and had this amount been made available to the landowners on that date, it would have been possible for them to rehabilitate their holdings in some other place. This exercise has been defeated for the simple reason that the payment of compensation has been spread over almost two decades. In this view of the matter, we are of the opinion that a landowner is entitled to say that if the compensation proceedings continued over a period of almost 20 years as in the present case, the potential of the land acquired from him must also be adjudged keeping in view the development in the area spread over the period of 20 years if the evidence so permits and cannot be limited to the near future alone. We, therefore, feel that in the circumstances, the appellants herein were fully entitled to say that the potential of the acquired land had not been fully recognized by the High Court or by the Reference Court. We must add a word of caution here and emphasize that this broad principle would *be applicable where the possession of the land has been taken pursuant to proceedings under an acquiring Act and not to those cases where land is already in possession of the Government and is subsequently acquired.*

There is another unfortunate aspect which is for all to see and to which the Courts turn a Nelson's eye and pretend as if the problem does not exist. This is a factor which creates an extremely grim situation in a case of compensation based exclusively on sale instances. This is the wide spread tendency to under value sale prices. The provision of Collector's rates has only marginally corrected the anomaly, as these rates are also abnormally low and do not reflect the true value. Where does all this leave a landowner whose land is being compulsorily acquired as he has no control over the price on which some other landowner sells his property which is often the basis for compensation?

If the abovesaid observations made by the Hon'ble Supreme Court in **Udho Dass's case** (supra) are strictly followed, the appellants-landowners might have been found entitled for much higher compensation.

The next equally important question that falls for consideration of this Court, is as to what would be the reasonable percentage of cut, which can be applied on the abovesaid market price, on account of smallness of plot sold by way of abovesaid two sale deeds Ex.P8 and Ex.P18, as well as development costs. It has gone undisputed before this Court that land sold by way of abovesaid two sale deeds was part of the acquired land itself. In fact, both the abovesaid sale deeds were executed by one of the co-sharers of the appellants-herein namely Sudhir Kumar. State of Punjab did not raise any objection about the genuineness of these sale deeds.

However, proceeding on a holistic, pragmatic and constructive approach with a view to do complete and substantial justice between the parties, this Court is of the considered opinion that imposition of 60% cut on the abovesaid market price will meet the ends of justice. After applying 60% cut on the market price of ₹5,46,875/- per acre, amount comes to ₹2,18,750/- per acre. Imposition of any higher cut would be wholly unjustified.

Another question that deserves to be considered by this Court is about the patently illegal approach adopted by LAC and erroneously upheld by the learned reference court regarding the belting system. Although LAC has put the land involved in the present case in one category, i.e. Block-A, yet learned reference court has misdirected itself by putting the land of Block A into two categories. Since the total acquired land was going to be utilised for one and the same purpose, exact location of any particular piece of land, out of the acquired land, would be hardly of any consequence. In this view of the matter, findings recorded by the learned reference court maintaining the belting system has been found unsustainable in law and the same are hereby set aside.

Let it be specifically recorded here that no other better evidence or judicial precedents were pressed into service, nor any other argument was raised on behalf of either of the parties.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present appeal deserves to be partly accepted and the same is hereby allowed to the extent indicated above. The impugned award passed by the learned reference court would stand modified, as observed in the foregoing paragraphs.

Consequently, the landowners are held entitled to receive the compensation for their acquired land at the uniform rate of ₹2,18,750/- per acre from the date of notification under Section 4 of the Act. Besides this, the land owners shall be entitled for all the statutory benefits available to them under the relevant provisions of the Act.

Resultantly, with the observations made above, instant appeal stands disposed of in the abovesaid terms, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

01.06.2016
AK Sharma