HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.4140 of 2002 & connected matters
Date of decision:25.1.2016

Border Security Force Battalion through Commandant
...Appellant

Versus

Daulat Ram and others
...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Vivek Singla, Sr. Panel Counsel with
Mr.Vikas Thakur, Advocate for BSF-Union of India.

Mr.R.S.Chauhan, Advocate for the appellants in 145 to 149 of 2003 and for the respondents in RFA Nos. 610, 598, 586, 590, 588 and 605 of 2003.

Mr.A.K.Khunger, Advocate for the appellants in RFA Nos.55 to 58 of 2003 and RFA Nos. 1042 to 1044 of 2003 and for the respondents in RFA Nos. 582, 589, 596, 597, 606, 607, 609 and 701 of 2003.

Mr.N.S.Sodhi, Advocate for the appellants in RFA Nos.1037, 1038, 1965, 2023, 2024, 2515 to 2517, 2659 of 2003 and for the respondents in RFA Nos.581, 583 to 585, 591 to 595, 602 and 604 of 2003.
Mr.Yatinder Sharma, Addl.A.G., Punjab.

RAMESHWAR SINGH MALIK, J. (Oral)

This batch of 54 appeals, out of which 33 have been filed by the Border Security Force-beneficiary department bearing RFA No.4140 of 2002, RFA Nos. 580 to 610 of 2003 and 701 of 2003 and 21 have been filed by the land owners bearing RFA Nos. 55 to 58, 145 to 149, 1037, 1038, 1042, 1043, 1044, 1965, 2023, 2024, 2515 to 2517 and 2659 of 2003, is being decided vide this common order, as all these appeals arise out of the same acquisition and raise identical questions of law and facts. However, for the facility of reference, facts are being culled out from RFA No.4140 of 2002 (Border Security Force Battalion through Commandant v. Daulat Ram and others).

Facts necessary for disposal of instant batch of appeals are that the State of Punjab sought to acquire land measuring 1193K-14M, out of the revenue estate of village Azimgarh, Tehsil Abohar, District Ferozepur (now Fazilka) for setting up of Force Headquarters of the Border Security Force ('BSF' for short). Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 (`the Act' for short) came to be issued on 3.4.1991, which was followed by notification dated 27.4.1991 under Section 6 of the Act. Land Acquisition Collector, vide his award dated 14.10.1994, granted compensation @ Rs.36,000/- per acre for Nehri land and Rs.22,500/- per acre for Barani land.

Dissatisfied, the land owners filed their objections under Section 18 of the Act and as a consequence thereof, as many as 33 land references were forwarded, which came to be decided by the learned reference court vide its common award dated 31.8.2002. The learned reference court granted the compensation @ Rs.92,000/- per acre for Nehri land and Rs.51,500/- per acre for Barani land. Both the parties felt aggrieved against this impugned award passed by the learned reference court. 33 appeals have been filed by the beneficiary department, i.e. BSF and 21 appeals have been filed by the land owners. That is how, this batch of 54 appeals is being decided vide this common order.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the 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 totality of facts and circumstances of the cases in hand, particularly these being the cases of no evidence so far as BSF is concerned, the appeals filed by it, having been found bereft of merit, are liable to be dismissed. The appeals filed by the land owners deserve to be partly allowed, for the following more than one reasons.

So far as the sale instances produced by the land owners in the form of Ex.A5 dated 11.10.1993 and Ex.A6 dated 8.10.1993 were concerned, the learned reference court was justified in discarding these two sale instances, both these being post acquisition. Thus, the findings recorded by the learned reference court in para 18 of the impugned award deserve to be upheld. Similarly, the findings recorded by the learned reference court in para 19 of the impugned award, discarding another sale instance in the form of Ex.A3 also deserve to be upheld, because this sale instance was pertaining to a small size of plot.

However, the findings recorded by the learned reference court in para 20 of the impugned award, whereby a wholly unwarranted cut of 60% was imposed on the market value disclosed in sale-deed Ex.A4 dated 26.12.1989, cannot be upheld. It is so said, because the land sold vide this sale-deed Ex.A4 was not only much before the date of acquisition, as there was a time gap of more than 16 months, but also an area of land measuring 7K-8M was sold by way of this sale-deed. Having said that, this Court feels no hesitation to conclude that in view of the Division Bench judgment of this Court rendered in **Harbans Singh and others v. State of Punjab**

through the Land Acquisition Collector, 2006(1) RCR (Civil) 634, which is, in turn, based on the law laid down by the Hon'ble Supreme Court, no cut was warranted to be applied in the present case.

The relevant observations made in paras 12 and 13 by the Division Bench of this Court in **Harbans Singh's** case (supra), which can be gainfully followed in the present case, read as under:-

> *"12. There is no quarrel with the proposition, as has been laid down by the Hon'ble Apex Court in* ***Administrator General of West Bengal v. Collector's case*** *(supra), that where the sale instance relied upon by the claimants comprised of small plot of land, then a cut has to be applied while evaluating a large tract of land. However, in our considered view, the aforesaid proposition of law would not be attracted to the present case. As has been noticed by the learned reference court as well as by the learned Single Judge, it is clear that the acquired land was situated within the municipal limits. G.T. Road was situated on one side of the acquired land whereas on the other side of the acquired land a by-pass road connecting Sirhind town with the G.T. Road was situated. There were certain shops, workshops, and petrol-pumps near the acquired land. In this view of the matter, certain observations made by the Hon'ble Apex Court in****Bhagwathula Samanna and others v. Special Tehsildar and Land Acquisition Officer, 1992(1) RRR 257 : 1992 L.A.C.C. 314*** *may be noticed :*
>
> > *"The proposition that large area of land cannot possibly fetch a price at the same rate at which shall 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. With regard to the nature of the plots involved in these two cases, it has been satisfactorily shown on the evidence on record that the land has facilities of road and other amenities and is adjacent to a developed colony and in such circumstances it is possible to utilise the entire area in question as house sites. In respect of the land acquired for the road, the same advantages are available and it did not require any further development. We are, therefore, of the view that the High Court has erred in applying the principle of deduction and reducing the fair market value of land from Rs. 10/- per sq. yard to Rs. 6.50 per sq. yard. In our opinion, no such deduction is justified in the facts and circumstances of these cases."

13. Following the aforesaid dictum laid down by the Hon'ble Supreme Court of India, a Division Bench of Madras High Court in ***Special Tehsildar (Adi Dravidar Welfare) v. Abdul Reguman, 1996 L.A.C.C. 394*** *held as follows :*

"In our view the observation made by the Supreme Court is squarely applicable to the case in hand. Admittedly, the land in question is already in a developed area and situated in an advantageous position and quite suitable for building purpose. It is also proved in evidence that the land in question has all the amenities such as roads, drainage, electricity, communications etc. Therefore, we are of the view that the learned Subordinate Judge is not justified in deducting 20% from the market value. We, therefore, set aside that part of the order of the learned

> *Subordinate Judge, fixing the market value at Rs. 1325/- less 20%. The cross-objection is, therefore, allowed and the order of the Subordinate Judge is modified to this extent."*

In view of what has been discussed hereinabove, no cut was warranted to be applied in the present case. It is also a matter of record that land measuring 7K-8M which was sold vide this sale-deed Ex.A4 dated 26.12.1989, fetched market value of Rs.1,85,000/- @ Rs.2 lacs per acre. This relevant piece of evidence is available at page 215 of the lower court record.

So far as the location of the acquired land is concerned, it was situated at a prime location. The acquired land was within the municipal limits of Abohar. Site plan Ex.A1, which has gone undisputed on record, clearly makes out that the acquired land was abutting the national highway which goes from Abohar to Hanumangarh. Further, the land sold vide sale-deed Ex.A4 dated 26.12.1989 was from the revenue estate of village Azimgarh itself. Site plan Ex.A1 further goes to show that the acquired land was surrounded by already existing establishments, including the commercial as well as industrial establishments in the form of Madan Foundries, Petrol pump, Aalishan Marbles etc.

Just in front of the acquired land, a Homeopathy College was already working just across the road. In this view of the matter, it can be safely concluded that the acquired land could have been put to commercial, residential as well as industrial use. The learned reference court has failed to take into consideration all these positive determinative factors of the acquired land, while assessing the market value at a very lower side and the impugned award cannot be sustained.

So far as the belting system adopted by the Collector and illegally upheld by the learned reference court is concerned, it was not warranted in the present case, because the entire land was acquired for one and the same purpose. Since every inch of the acquired land was going to put to the same use, quality thereof would be hardly of any consequence and all the land owners would be entitled for the market value of their acquired land at a uniform rate.

Learned counsel for the beneficiary department, i.e. BSF, has been found justified in contending that the findings recorded by the learned reference court in para 21 of the impugned award was correct and deserve to be upheld. Ex.A14 was an award dated 25.1.1995 announced by the Land Acquisition Collector, which was pertaining to a much later acquisition and could not have been made the basis for assessing the market value of the acquired land in these appeals. Thus, no fault can be found with the findings recorded by the learned reference court in para 21 of the impugned award and the same also deserve to be upheld.

Taking a holistic and pragmatic view of the matter, to do complete and substantial justice between the parties, this Court is of the considered opinion that keeping in view all the relevant and positive determinative factors of the acquired land, including its location, no cut was warranted to be applied in the present cases, on the market value of acquired land disclosed in sale instance Ex.A4. In the absence of any evidence led by the beneficiary department, i.e. BSF, this was the most relevant piece of evidence available on record, because other sale-deeds have been ignored either because those were post acquisition or were pertaining to very small piece of land in comparison to acquired land.

It is also the settled principle of law that the land owners are entitled for receiving the best price for their acquired land, as held by the Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Registered), Faridkot and others v. State of Punjab and others, (2012) 5 SCC 432.** The Hon'ble Supreme Court has also held in **General Manager, Oil & Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel & another, 2008(14) SCC 745** that for the purpose of granting annual increase to the land owners, for time gap between sale-deed and acquisition, a cumulative increase method is to be adopted. Since the acquired land was situated within the municipal limits, the land owners would be entitled for 15% annual increase on the market value disclosed in the sale instance Ex.A4 which was Rs.2 lacs per acre.

Adopting the cumulative increase method for the purpose of granting benefit of annual increase to the land owners for the time gap of 14 months between this sale instance Ex.A4 dated 26.12.1989 and date of notification under Section 4 of the Act, i.e. 3.4.1991, the total amount comes to Rs.2,41,500/- per acre. The land owners in all these appeals are held entitled to receive the compensation for their acquired land at a uniform rate of Rs.2,41,500/- per acre from the date of notification under Section 4 of the Act. The benefit of 15% annual increase has been granted in view of the law laid down by the Hon'ble Supreme Court in **Rameshbhai Jivanbhai Patel's** case (supra).

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the appeals filed by the BSF are misconceived, bereft of merit and without any substance, thus, these must fail and the same are hereby dismissed.

The appeals filed by the land owners are partly allowed to the extent indicated above. Consequently, the land owners are held entitled to receive the compensation for their acquired land at a uniform rate of Rs.2,41,500/- per acre from the date of notification under Section 4 of the Act. Besides this, the land owners are also held entitled for receiving all other statutory benefits, available to them under the relevant provisions of the Act.

Resultantly, with the observations made above, all the afore-said appeals stand disposed of, in the afore-said terms, however, with no order as to costs.

25.1.2016 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**