

CR No.5472 of 2015

{1}

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5472 of 2015

Date of decision:20.12.2016

Balvinder Uppal

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Pavan Malik, Advocate
for the petitioner.

Mr. Siddharth Sanwaria, DAG, Haryana with
Mr. Manoj Dhankar, AAG Haryana
for the respondents.

AMIT RAWAL J. (Oral)

Petitioner-landowner is aggrieved of the impugned order dated 23.03.2015, whereby, the Executing Court has held the petitioner to be entitled to the compensation for severance of one acre of the un-acquired land only despite order of the Reference Court to grant compensation for the un-acquired land.

Mr. Pavan Malik, learned counsel for the petitioner submits that the Executing Court has gone beyond the decree and exercised the power of an Appellate Court which is not sustainable in the eyes of law. He further submits that in pursuance to the acquisition of land, out of total area, land measuring 31 kanals 19 marlas, 14 kanals 14 marlas, was acquired and petitioner was left with the land measuring 17 kanals 5 marlas. The Reference Court while taking into consideration all the factors, since the acquisition was being done from the center of the entire land awarded 25%

of compensation qua severance and regarding other chunk of land, quantified the compensation in terms of money but the Executing Court exceeded its jurisdiction in reducing the amount of compensation with regard to other chunk of land on the premise that the aforementioned land is cultivable/accessible, thus, can be utilized, therefore, the order under challenge is not sustainable in the eyes of law.

Per contra, Mr. Siddharth Sanwaria, learned Deputy Advocate General Haryana assisted by Mr. Manoj Dhankar, AAG Haryana appearing on behalf of the respondents-State submits that the order under challenge is perfectly legal and justified. It is not a situation or finding where the Executing Court has gone beyond the decree but on interpretation of the order of the Reference Court, thus, the order under challenge is liable to be sustained and prays for dismissal of the present revision petition with exemplary costs.

I have heard learned counsel for the parties and appraised the paper book.

In order to appreciate controversy involved, it would be apt to reproduce the operative part of the order dated 03.02.2014 passed by the Reference Court which reads thus:-

“28. For the reasons recorded on the forgoing issues, the present Reference partition is partly allowed with costs. The petitioner is held entitled to receive enhanced compensation at the rate of Rs.4,424/- per square yard, which has been acquired, as mentioned in statement no.19 filed by the LAC

along with the Reference petition. He shall also be entitled to compensation on account of severance of his land @ 25% of the compensation for his unacquired land, and compensation on account of additional expenses which he shall have to incur due to bifurcation, of his land in two parts, @ 25% of the compensation for the acquired land.

29. Besides the above, the petitioner shall also get solatium at the rate of 30% as envisaged under sub-section 2 of Section 23 of the Act and as per provisions of Section 23(1-A) of the Act, the petitioner shall also be entitled to an amount calculated at the rate of 12% per annum on the above mentioned assessed market value, for the period commencing on and from the date of publication of notification under Section 4 sub-Section (i) till the award of the Collector or the date of taking possession of the acquired land, whichever is earlier. The petitioner shall also be entitled to interest on the enhanced compensation at the rate of 9% per annum from the date of taking possession for a period of one year and at the rate of 15% per annum after the date of expiry of the said period of one year till the payment is made as provided under Section 28 of the Act. The petitioner shall also be entitled to interest on the additional amount and solatium provided under sub-sections (1-A) and (2) of Section 23 of the Act in accordance with law. Counsel fee for Govt. pleader is assessed

at Rs.1100/-.

30. *Before parting, it would be apposite to mention that in view of the observations made in Haryana State Industrial Development Corporation Vs. Pran Sukh & Others. 2011(1) Recent Civil Reports 569 (SC), the respondents are to follow certain directions to ensure that the landowners are not fleeced by the middleman in the process of disbursement of enhanced compensation. The directions are as under:-*

- i) The Land Acquisition Collector shall depute officers subordinate to him not below the rank of Naib Tehsildar, who shall get in touch with all the land owners and/or their legal representatives and inform them about their entitlement and right to receive enhanced compensation.*
- ii) The concerned officers shall also instruct the land owners and/or their legal representatives to open savings bank account in case they already do not have such account.*
- iii) The bank account numbers of the land owners should be given to the Land Acquisition Collector within three months.*
- iv) The Land Acquisition Collector shall deposit the cheques of compensation in the bank accounts of the land owners.”*

However, the Executing Court in execution petition in paragraph 11 gave the following finding:-

“11. Present court which is the executing court cannot go behind the Award dated 3.2.2014. In the instant case the JD

has paid the compensation to the extent of 25% of the unacquired land and 25% of the acquired land whereas DH has claimed that compensation is required to be paid along with statutory benefits. Now it is a matter of a consideration that to what extent of compensation of unacquired land and acquired land is liable to be given to the decree holders. No doubt, decree holders are in possession of 16K 17M of land adjoining to acquired land which is unacquired land. Evidence nowhere speaks that whole of the land of the decree holders have become inaccessible and became un-cultivable. The compensation to the extent of number of acres of unacquired land is not required to be given, moreover, it does not seem justifiable. There should be some parameter to pay the compensation of the unacquired land. Keeping in view of the said situation, this Court is of the view that the compensation to the extent of one acre of the unacquire land of the decree holder seems just and reasonable on account of the severance of the land of the petitioner due to the acquisition which is liable to be payable by the JD to the decree holder in accordance with law. The documents Ex.R1 speaks that the 25% of compensation of unacquired land measuring 16 kanal 17 marla has been paid to the decree holders whereas it should be to the extent of one acre of their un-acquired land along with other statutory benefits. So far as the other contention of

Basic Land Value	Rs.2,16,79,812/-
25% of the acquired land	Rs.54,19,953/-

<i>25% of the unacquired land</i>	<i>Rs.53,53,040/- (one acre)</i>
<i>Land value total</i>	<i>Rs.3,24,52,805/-</i>
<i>30% Solatium</i>	<i>Rs.97,35,841/-</i>
<i>12% interest (13M 17D)</i>	<i>Rs.44,00,245/-</i>
<i>Total</i>	<i>Rs.4,65,88,891/-</i>
<i>Paid by LAC</i>	<i>Rs.70,87,500/-</i>
<i>Amount due</i>	<i>Rs.3,95,01,391/-</i>
<i>9% interest for 1 year</i>	<i>Rs.35, 55,125/-</i>
<i>15% interest for 46M</i>	<i>Rs.2,27,13,300/-</i>
<i>TDS (non deductible)</i>	<i>Rs.13,93,080/-</i>
<i>Total</i>	<i>Rs.6,71,62,896/-</i>
<i>LAC paid on 18.6.2014</i>	<i>Rs.4,84,09,195/-</i>
<i>Total Due Amount</i>	<i>Rs.1,87,53,701/-</i>
<i>Accordingly, the decree holder is entitled for Rs.1,87,53,701/-</i>	
<i>along with interest @ 15% per annum till realization. The</i>	
<i>present execution petition is disposed of with the directions to</i>	
<i>the JDs to make the payment accordingly.”</i>	

On juxtaposition of both the aforesaid findings, I am of the view that the observation of the Executing Court is not only fallacious, perverse, much less preposterous. The Executing Court while dealing the matter of land acquisition, is not below the rank of an officer of Additional District Judge, has more responsibility than the other judicial officers

There is no denial to the fact that the Executing Court cannot go beyond the decree. Once the order of the Reference Court had attained

finality, whereby, the Reference Court assessed the compensation in terms of money, i.e., severance charges to the extent of 25% and with regard to other piece of land, in terms of money. The Executing Court could not have sat on the arm chair of Appellate Court by exercising the powers under Section 54 of the Land Acquisition Act, 1894. Such an approach, in my view, is despicable. The role of the Executing Court is only to ensure that the judgments and decrees of the Courts below are regarded, respected, complied with and implemented. Until and unless, there had been subsequent events or circumstances but it is not a case where such circumstances have pressed into service.

For the reasons aforementioned, the order under challenge is set aside and the matter is remitted back to the Executing Court to decide the execution petition afresh strictly in terms of the observations made herein above, i.e., by implementing the judgment and decree of the Reference Court indicated above.

Parties through their counsels are directed to appear before the Executing Court on 12.01.2017.

This Court is sanguine of the fact that this exercise be done within a period of four months from the date of receipt of a certified copy of this order.

Before I would part with the judgment, Mr. Pavan Malik, Advocate has been very fair enough to point out that out of total land measuring 14 kanals 14 marlas, the land measuring 6 kanals 12 marlas was not in his ownership but on the basis of commercial licence with an

undertaking that he would not claim any compensation. He, thus, submits that he would be foregoing compensation in respect of land measuring 6 kanals 12 marla. This aspect will also be looked by the Executing Court while deciding the aforementioned execution petition.

Liberty is granted to raise all the pleas as to whether the petitioner shall be entitled to severance charges in respect of land measuring 6 kanals 12 marlas.

I cannot remain unmindful of the fact that the factum of undertaking on commercial licence had not been a point of debate or ponderence in the impugned order.

Accordingly, the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

December 20, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No