325

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

RFA No. 2033 of 2002 & other connected matters

Date of Decision: 14.03.2016

Mam Raj and others

. . . Appellants

Versus

State of Punjab

. . . Respondent

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. Raj Kumar Rana, Advocate
for the appellant(s).

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

*****

Rameshwar Singh Malik, J. (Oral)

This batch of 53 appeals, bearing RFA Nos. 935, 936, 937, 2033 to 2065 of 2002, 152, 153 of 2003, 3209 to 3212, 3272, 3273 of 2005, 1925, 1926, 2268, 3867 to 3869 of 2006 and 649, 1554 as well as 1620 of 2009, filed by the land owners, 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, with the consent of learned counsel for the parties and for the facility of reference, facts are being culled out from RFA No.2033 of 2002 (Mam Raj and others Vs. State of Punjab).

Brief facts necessary for disposal of instant bunch of appeals are that the State of Punjab sought to acquire 57.43 acres of land out of the revenue estates of four villages; namely Meerpur, Sadey Majra, Bhankarpur and Mubarakpur, at public expenses for public purpose i.e. for setting up an Industrial Focal Point at Dera Bassi, District Patiala. Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 (`the Act' for short) was issued on 14.06.1988 which was followed by notification dated 11.11.1988 under Section 6 of the Act. Land acquisition collector (‘LAC’ for short), vide his award dated 12.09.1989, granted the compensation @ Rs.1,00,000/- per acre for special belt and Rs.75,000/- per acre for simple belt.

Dissatisfied with the award passed by the LAC, landowners filed their objections under Section 18 of the Act. As many as 32 land references of Village Meerpur were forwarded, which came to be decided by the learned reference court, vide its common award dated 02.04.1992, assessing the market value @ Rs.1,25,000/- per acre for the special belt and Rs.1 lac per acre for the simple belt. The land references pertaining to other villages were also decided vide separate, but identical awards passed by the reference Court. Vide order dated 20.01.2000, passed by this Court in RFA No. 3672 of 1993, the case was remanded.

In compliance of the above said remand order passed by this Court, learned reference Court decided the land references afresh vide impugned award dated 16.07.2001, enhancing the amount of compensation only to Rs.1,18,125/- per acre. However, belting system was ignored. Feeling aggrieved against the above-said impugned award dated 16.07.2001 passed by the learned reference court, the land owners have approached this Court by way of present set of appeals, which are being decided together.

Learned counsel for the appellants, referring to the findings recorded by the learned reference Court in paras 37 to 39 of the impugned award, contended that the most relevant evidence relied upon by the land owners was illegally ignored by the learned reference Court. He submits that sale deed dated 05.05.1988 (Ex.A-4) was the most relevant sale instance because the notification under Section 4 of the Act was dated 14.06.1988. He further submits that this sale deed ought to have been considered, while assessing the market value of the acquired land and reasonable cut might have been applied because the sale deed was pertaining to land measuring 10 marlas. He prays for allowing the appeals filed by the land owners by suitably modifying the impugned award.

Per contra, learned counsel for the State submits that the learned reference Court committed no error of law, while determining the market value of the acquired land, therefore, the appeals are liable to be dismissed. However, despite making his best efforts, learned counsel for the State could not substantiate his arguments qua the sale deed Ex.A-4, as to why the said sale deed should not have been taken into consideration, for assessing the market value. He prays for dismissal of the appeals.

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 case noticed hereinabove, appeals filed by the land owners deserve to be partly allowed, suitably enhancing the amount of compensation for their acquired land, for the following more than one reasons.

A bare perusal of the impugned award passed by the learned reference court would show that patently illegal findings have been recorded in paras 38 and 39, whereby sale instances contained in Ex.A1, A2, A4, A6 to A-10 were not considered for the purpose of assessing the market value of the acquired land. As per the law laid down by the Hon'ble Supreme Court in ***Mehrawal Khewaji Trust (Regd.), Faridkot and others Vs. State of Punjab and others, 2012 (5) SCC 432***, the land owners are entitled to receive the best price for their acquired land.

The sale instance disclosing the highest market price deserves to be considered for assessing the market value of the acquired land. Following this principle laid down by the Hon’ble Supreme Court, the sale instance dated 05.05.1988 (Ex.A4) is the most relevant sale deed which deserves to be considered for assessing the market value. The land measuring 10 marlas was sold for Rs.30,000/- @ Rs.4,80,000/- per acre, out of revenue estate of village Meerpur itself. Having said that, this Court feels no hesitation to conclude that the sale deed Ex.A4, is the best piece of evidence for the purpose of assessing the market value of the acquired land.

Now, the next question that falls for consideration of this Court is; what percentage of cut is to be applied towards development charges on the abovesaid market value. The learned reference Court has applied 10% cut in para 39 of the impugned award. However, since the land sold by way of Ex.A-4 was a small piece, learned counsel for the State was found justified in contending that a higher percentage of cut deserves to be applied on the market value disclosed in Ex.A-4.

Considering all the relevant positive as well as negative determinative factors for assessing the market value of the acquired land, in view of the law laid down by the Hon’ble Supreme Court in ***Viluben Jhalejar Contractor (D) By LRs. Versus State of Gujarat, 2005 (4) SCC 789***, this Court is of the considered view that 30% cut would be just and reasonable. After applying 30% cut on the market value of Rs. 4,80,000/- disclosed in sale deed Ex.A-4, the market value comes to Rs.3,36,000/- per acre.

Perusal of the site plan available on the case file would show that the land owners would be in a disadvantageous condition for all times to come, because they would not be in a position to put their unacquired land to its optimum use. There is no easy excess left to approach their unacquired land for the purpose of its cultivation. Taking a judicial notice of this undisputed fact situation and while striking a balance to do complete and substantial justice between the parties, proceeding on a constructive and pragmatic approach for the said purpose, this Court is of the considered view that the landowners, in these cases, would be entitled for reasonable compensation, on account of severance charges, as well.

Keeping in view the totality of facts and circumstances of the case, granting 25% of the abovesaid market value to the landowners, on account of severance charges, would meet the ends of justice. Accordingly, the land owners are held entitled to receive the amount of Rs.3,36,000/- per acre for their acquired land from the date of notification under Section 4 of the Act and they are also held entitled to receive 25% of the market value, on account of severance charges, for their unacquired land.

So far as the belting system is concerned, the learned reference Court has rightly done away with it and the said finding was not even challenged by the State before this Court. Location had never been in doubt as a major chunk of the acquired land was abutting the Ambala-Kalka Highway. It has been proved by PW-11, Halqa Patwari Jagdish Kumar, whose statement is available at page 89 of the LCR, that the acquired land, on one side abuts the

Ambala-Kalka Road (old National Highway) and on the other side it touches abadi of the thickly populated villages. On the third side, it abuts the municipal limits of Dera Bassi. The acquired land was having commercial as well as industrial potentiality on the date of its acquisition. It could have been easily put to residential, industrial as well as commercial use.

It is a matter of record that the landowners-appellants were pursuing this litigation imposed upon them, for the last about 28 years. They would be receiving the amount of compensation in driblets. In such circumstances, Hon'ble Supreme Court in ***Udho Dass Vs. State of Haryana, 2010 (12) SCC 51***, has held that the land owners hardly get due compensation for their acquired land. Keeping in view all these peculiar facts, granting any lesser amount on account of severance charges would be totally inadequate and would not meet the ends of justice.

Let it be specifically recorded here that no other better evidence or any judicial precedent was 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 the impugned award passed by the learned reference court is liable to be modified and the above-said appeals filed by the land owners deserve to be partly accepted, which are hereby allowed to the extent indicated above.

The landowners are held entitled to receive the compensation for their acquired land @ Rs.3,36,000/- per acre from the date of notification under Section 4 of the Act. The landowners are also held entitled to receive 25% of the abovesaid market value on account of severance charges for their unacquired land. Besides this, the landowners shall also be entitled to all the statutory benefits available to them under the relevant provisions of the Act.

Resultantly, with the observations made above, all the aforesaid appeals stand partly allowed, in the abovesaid terms, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

14.03.2016
sachin