IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No. 3331 of 2002 (O&M)
Date of decision: 20.1.2016

Vijay Kumar and others

.. Appellants

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Pardeep Singh Poonia, Advocate
for the appellants in RFA No. 3331 of 2002.

Mr. C.B. Goel, Advocate
for the appellants in RFA No. 1814 to 1819,
1871 to 1873 and 2457 of 2002.

Mr. Rajiv Kataria, Advocate
for the appellants
in RFA No. 3325 to 3330, 3332, 3604 of 2002.

Mr. Ashish Gupta, Advocate
for the appellant in RFA No. 2945 of 2002.

Mr. Vinod Kumar, Advocate for
Mr. Harkesh Manuja, Advocate
for the appellant in RFA No. 3775 of 2002.

Mr. Pritam Singh Saini, Advocate
for the appellant-Market Committee, Gohana
in RFA No. 854 to 874 and 882 of 2002.

Mr. Arun Beniwal, DAG, Haryana.

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

*****

<u>RAMESHWAR SINGH MALIK, J. (Oral)</u>

These 43 regular first appeals, out of which 22 have been filed by the Market Committee, Gohana, bearing RFA Nos. 854 to

874 and 882 of 2002 and 21 have been filed by the landowners bearing RFA Nos. 1814 to 1819, 1871 to 1873, 2457, 2945, 3325 to 3332, 3604 and 3775 of 2002, are being decided together vide this common order, as this batch of appeals raises identical questions of law and facts. However, for the facility of reference, facts are being culled out from RFA No. 3331 of 2002 (Vijay Kumar Vs. State of Haryana and others).

Briefly put, facts necessary for disposal of these cases, are that State of Haryana sought to acquire 42 acres 14 marlas of land from the revenue estate of Gohana, at public expenses for public purpose, i.e. for construction of New Grain Market, Office Building, Staff Quarters and Rest House etc., at Gohana-Jind Road. Notification dated 6.12.1989 under Section 4 of the Land Acquisition Act, 1894 ('the Act' for short) came to be issued which was followed by notification dated 27.11.1990 under Section 6 of the Act. Vide his award No. 13 dated 25.1.1991, the Land Acquisition Collector granted the compensation @ ₹2,50,000/- per acre for the land up to the depth of 110 feet from the road and ₹1,50,000/- per acre for the land beyond the depth of 110 feet from the road.

Dissatisfied, landowners filed their petitions under Section 18 of the Act and as a consequence thereof, as many as 22 land references were forwarded to the learned reference court. The learned reference court, vide its impugned award dated 4.12.2001, granted the compensation @ ₹3 lacs per acre up to depth of 110 feet from the main road and ₹2 lacs per acre beyond the depth of 110 feet from the road.

Both the parties felt aggrieved. 22 appeals have been filed by the beneficiary department-Market Committee, Gohana, seeking reduction in the compensation granted to the landowners by the learned reference court, whereas 21 appeals have been filed by the landowners seeking further enhancement in the compensation for their acquired land. That is how, all these 43 appeals are being decided together.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the cases and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in view of the peculiar facts and circumstances of the cases, appeals filed by the Market Committee, Gohana, are liable to be dismissed, whereas the appeals filed by the landowners deserve to be partly allowed. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the record would make it crystal clear that both the parties produced voluminous evidence with a view to substantiate their respective stands taken before the learned reference court. After careful perusal of the lower court record ('LCR' for short), with the able assistance of learned counsel for the parties, it has transpired that the best evidence available in favour of the landowners is in the form of Ex.P-4 and PW5/A which have been duly proved by PW-5. The land measuring 514 sq. Yards (17 marlas) was sold by the Haryana Financial Corporation on 30.3.1988 @ ₹233 per square yard.

Similarly, best piece of evidence in favour of the beneficiary-department or the State of Haryana, available on record, is the sale deed dated 5.10.1989 (Ex.R-5), whereby land measuring 200 sq. yards was sold @ ₹200 per sq. yard. Other sale deeds produced by both the parties have not been found relevant for the purpose of assessing the market value of the acquired land for the twin reasons. Firstly, all those sale deeds were pertaining to very small pieces of land and secondly, the area of the land acquired/sold was situated at far away places from the acquired land. Sale deeds Ex.R-2, Ex.R-8 and Ex.R-9 have also not been found relevant for the reason that the same were pertaining to the area beyond the municipal limits and the land sold was abutting a water distributory without any access to the land sold.

So far as location of the acquired land is concerned, it was situated at a prime location, as it was abutting the State Highway, i.e. Sonepat-Gohana-Jind road. The land sold vide Ex.P4 was part of the acquired land itself. Location of the land is clearly depicted from the site plan (PW1/A) which is available at page No. 399 of the LCR. There is another relevant piece of evidence in favour of the landowners and that is in the form of PW16/A which was a rate list showing the market value of the area, including the acquired land. These rates were finalised pursuant to the deliberations by a Committee constituted for the said purpose. This document Ex. PW16/A dated 15.2.1988 is available at page 408 of the LCR.

Further, the sale deed Ex.R-5 has been taken into consideration for assessing the market value of the land because the respondent-State and the beneficiary department themselves relied upon the said document.

Taking a holistic and pragmatic view of the matter, with a view to do complete and substantial justice between the parties, this Court is of the considered opinion that it would be just and expedient to take average of both these sale instances contained in Ex.P-4, coupled with ExPW5/A, and Ex.R-5. As noticed hereinabove, vide sale instances, Ex.PW5/A read with Ex.P4, land measuring 514 sq. yards (17 marlas) was sold at ₹1,22,000/- @ ₹223 per square yard, excluding the construction cost. Vide Ex.R-5, land measuring 200 sq. yards was sold for ₹40,000/- @ ₹200/- per square yard. Average of both these sale deeds comes to ₹211.5 which is rounded of to ₹212 per sq. yard.

Admittedly, there was a time gap of 21 months between the sale instance Ex.PW5/A dated 30.3.1988 and the date of notification under Section 4 of the Act, i.e. 6.12.1989. However, when average of both the abovesaid sale deeds is taken, the time gap comes to 19 months instead of 21 months. Thus, adopting the cumulative method for granting the benefit of annual increase in the abovesaid market value, for a time gap of 19 months, in view of the judgment of the Hon'ble Supreme Court in **Ashok Kumar and others Vs. State of Haryana and others, 2015 (3) Scale 242**, the market value come to ₹263.52 per sq. yard which is rounded of to ₹264 per sq. yards. In this view of the matter, landowners are held entitled to receive compensation for their acquired land @ ₹264 per sq. yard from the date of notification under Section 4 of the Act.

Since the entire acquired land was going to be put for the same purpose, learned reference court fell in serious error of law, while adopting the belting system and the same has to be ignored. Learned counsel for the respondents also could not justify the belting system in these cases and rightly so, it being an established principle of law. Thus, ignoring the belting system adopted by the learned reference court, the landowners in all these cases are held entitled to receive compensation for their acquired land at uniform rate of ₹264 per sq. yards.

To be fair to the learned counsel for the beneficiary department and State, the argument raised by them for applying a cut on the average market value of ₹212 per sq. yard, is to be noted to be rejected, because the same has not been found worth acceptance. It is so said because owing to the nature and location of the acquired land, applying of any cut is not warranted in the present set of cases. Admittedly, the land was within the municipal area and that too since 1974.

The acquired land could have been easily utilised for residential as well as commercial purpose. It was abutting the State Highway, i.e. Sonipat-Gohana-Jind road. Very many other establishments were already located nearby, including banks, schools, industrial units, residential colonies, commercial establishments like shops, therefore, there was no doubt about the prime location and potentiality of the land, which has been duly proved on record vide site plan Ex.PW1/A.

The view taken by this Court in this regard also finds support from the judgment rendered by a Division Bench of this Court in **Harbans Singh and others Vs. State of Punjab through the Land Acquisition, 2006 (1) RCR (civil) 634**. The Division Bench in **Harbans Singh's case** (supra), placed reliance on the law laid down by the Hon'ble Supreme Court. The relevant observations made by the Division Bench in para 12 and 13 of its judgment in Harbans Singh's (supra), which can be gainfully followed in these cases, 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. Vs. 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 Vs. Special Tehsildar and Land Acquisition Officer, 1992 (1) RRR 257 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 that 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) Vs. Abdul Reguman, 1996 LA.C.C. 394 held as follows:

" In our view the observations made by the Supreme Court is squarely applicable to the case in hand developed. 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."

No other argument was raised.

Considering the peculiar facts and circumstances of the case, coupled with the reasons aforementioned, this Court is of the considered view that the appeals filed by the Market Committee, Gohana are wholly misconceived, bereft of merit and without any substance, thus, these must fail and the same are hereby dismissed. Appeals filed by the landowners are allowed and they are held entitled to receive the compensation at uniform rate of ₹264 per sq. yard from the date of notification under Section 4 of the Act. Besides this, the land owners shall also be entitled for all other statutory benefits available to them under the Act.

Resultantly, with the observations made above, all these 43 appeals stand disposed of in the abovesaid terms, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

20.1.2016
AK Sharma