IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No. 330 of 2007 (O&M)
Date of decision: 29.1.2016

Tarsem Lal Saini

.. Appellant

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Naresh Kaushal, Advocate
for the appellants in
RFA No. 3336, 3421, 3422, 3497, 3564 of 2006.
RFA No. 330, 1707, 2884 of 2007 and
for cross objectors in XOBJR-34-CI-2007

Mr. Amit Chaudhary, Additional A.G. Punjab
for the appellants in RFA No. 3787,3789 to
3792, 3794, 3795, 3803, 3804, 3807 of 2006 .

None for the cross objectors in XOBJR-90-CI-2009.

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

These 18 regular first appeals and two cross objections, out of which 8 have been filed by the landowners bearing RFA No. 3336, 3421, 3422, 3497, 3564 of 2006, 330, 1707, 2884 of 2007 alongwith Cross objections No. 90-CI-2009 and 34-CI-2007 and 10 appeals have been filed by the State of Punjab bearing RFA No. 3787, 3789 to 3792, 3794, 3795, 3803, 3804, 3807 of 2006, 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. 330 of 2007 (Tarsem Lal Saini VS. State of Punjab).

Briefly put, facts necessary for disposal of these cases are that State of Punjab sought to acquire land measuring 61 kanals 7 marlas out of the revenue estate of Balongi, Tehsil Kharar, District Ropar (Now District Mohali), at public expenses for public purpose, i.e. for construction of road. Accordingly, notification dated 31.12.1993, amended by corrigendum dated 25.4.1994, was issued under Section 4 of the Land Acquisition Act, 1894 ('the Act' for short), which was followed by notification dated 28.7.1994 under Section 6 of the Act. Vide his award No. 469 dated 16.8.1996, the Land Acquisition Collector awarded the compensation @ ₹5,46,238/- per acre up to the depth of 2 acres from the road. Beyond the depth of 2 acres, compensation @ ₹4,36,000/- per acre was granted, whereas an amount of ₹2,35,000/- per acre was granted for the land which was situated in river bed (Nadi). 25% of the abovesaid market value was granted to the landowners who had to shift their residences.

Dissatisfied, landowners filed their petitions under Section 18 of the Act and as a consequence thereof, as many as 26 land references were forwarded to the learned reference court, who decided all the land references vide common award dated 20.1.2006. 7 land references were dismissed by the learned reference court as time barred but none of those landowners have approached this

Court. The learned reference court granted ₹7,80,000/- per acre up to the depth of 2 acres, ₹6,24,000/- per acre was granted for the land beyond the depth of 2 acres, whereas ₹3,90,000/- per acre was granted for the land situated in the river bed. Both the parties felt aggrieved against the impugned award passed by the learned reference court. State has filed 10 appeals whereas 8 appeals alongwith 2 cross objections have been filed by the landowners.

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, so far as appeals filed by the State of Punjab are concerned, the same are bereft of merit and liable to be dismissed, whereas appeals as well as cross objections filed by the landowners deserve to be partly allowed. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record that no sale instances were produced by the State of Punjab before the learned reference court, whereas the landowners produced as many as 6 sale instances, referred to in para 19 of the award passed by the learned reference court. Since the sale deeds Ex.P10 and P-11 were pertaining to constructed houses, the same were rightly ignored by the learned reference court. Thereafter, only three sale deeds in the form of Ex.P-1, Ex.P-2 and Ex.P-13 were left for consideration. In the absence of any other better piece of evidence, learned reference court was well justified in taking the average market value of these three sale deeds which comes to ₹7308.33 per marla. At this market value, rate per acre would come to ₹11,69,332.80/- which is rounded of to ₹11,69,333/-. There seems to be a minor miscalculation regarding this figure at the hands of learned reference court.

The learned reference court has committed serious error of law, while applying 1/3rd cut on the abovesaid market value of the acquired land. It is so said because in view of the urban nature of the land and its location, no cut was warranted. It is not the absolute rule that cut has to be applied in every case and in every given situation. Each case is to be decided in view of its own peculiar facts and circumstances. Neither it is desirable nor possible to lay down any straightjacket formula which can be made applicable in every given situation.

The abovesaid view taken by this Court also finds support from the Division Bench judgment of this Court in **Harbans Singh and others Vs. State of Punjab through the Land Acquisition Collector, Patiala, 2006 (1) RCR (civil) 634,** which was in turn, based on the law laid down by the Hon'ble Supreme Court. The relevant observations made in para 12 and 13 by the Division Bench 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 the law laid down by the Hon'ble Supreme Court and followed by a Division Bench of this Court in the cases referred to hereinabove, this Court feels no hesitation to conclude that the learned reference court has illegally applied 1/3rd cut which was not at all warranted.

Coming to the belting system adopted by the Land Acquisition Collector and illegally upheld by the learned reference court, this Court is of the view that since the land acquired was going to be utilised for one and the same purpose, belting system cannot be upheld, except for the land which was situated in the river bed. It is so said because for bringing the land situated in the river bed up to the level of other adjoining land, with a view to construct road thereon, the State would have undertaken the job of putting huge quantity of earth.

So far as other land was concerned, except the land situated in the river bed, the landowners would be entitled to receive the compensation at uniform rate for their acquired land. It is also pertinent to note here that since out of the above three sale deeds, two were executed in the months of October and November, 1993, whereas notification under Section 4 of the Act was issued on 31.12.1993, there was hardly any time gap between sale instances and date of notification. Because of this reason, the landowners would not be entitled for any annual increase.

So far as granting of 25% of the market value by the learned reference court to the landowners who had to shift their residences, is concerned, the same has been found on very lower side. Further, the learned reference court has miserably failed to apply its judicious mind in this regard because no increase at all was ordered. As far as location and nature of the land acquired is concerned, it has been duly proved on record that the acquired land was abutting industrial area Phase-I, Mohali and it was also surrounded by already existing establishments, including the commercial establishments like shops, factories of Swaraj tractor, Godrej and semi conductors as well as residential houses.

The acquired land was also situated very close to Chandigarh and it was abutting the National Highway. In this view of the matter, it can be safely concluded that the acquired land was having positive determinative factors, being land of very good potentiality. In fact, the Land Acquisition Collector, in his award, also stated that the acquired land was of urban nature. Thus, keeping in view the location and potentiality of the acquired land, this Court is of the view that it would be just and reasonable to grant at least 50% of the abovesaid market value to the landowners who had superstructures on their acquired land and had to shift their residences. Ordered accordingly.

Coming to the market value of the land which was situated in the river bed, the Land Acquisition Collector as well as the learned reference court granted about 50% lesser market value to those landowners whose land was situated in the river bed. However, taking a holistic and pragmatic view of the matter, with a view to do complete and substantial justice between the parties, it is deemed appropriate that the landowners, whose land was situated in the river bed, would be entitled to receive the compensation for the acquired land @ ₹6,50,000/- per acre. It is so said because granting of any lesser amount would be wholly inadequate and unjustified.

A bare perusal of the observations made by the learned reference court in para 22 and 23 of the impugned award would show that in the land references No. 153 of 2000 and 156 of 2000, assessment reports had been placed on record but the learned reference court illegally reduced the amount therefrom without there being any justified reason. In such a situation, whenever there is no clinching evidence, some guess work is always involved in assessing the market value of the land as well as that of super structure. In this view of the matter, it can be safely concluded that the landowners in land reference No. 156 of 2000 would be entitled to receive compensation @ ₹3,40,000/- for their superstructure, whereas landowners in land reference No. 153/2000 would be entitled to receive compensation of ₹2,60,000/- for their superstructure. It is further held that every landowner in these cases would be entitled for an amount of ₹1,20,000/- for each tubewell existing in their acquired land.

Similarly, in two land references bearing No. 150 dated 4.8.2000 (Tarsem Lal Saini Vs. State of Punjab) and land reference No. 160/2000 (Nachhater Singh Vs. State of Punjab), although claimants produced evidence in support of their claims but the learned reference court failed to take the same into consideration, while passing the impugned award. In this view of the matter, landowners in these two land references are also held entitled to receive the same amount of compensation which has been granted to the landowners in the land references Nos. 153 and 156 of 2000. Accordingly, the landowners in land reference No. 150 dated 4.8.2000 are held entitled to receive the compensation of ₹3,40,000/- for their superstructure, whereas landowners in land reference No. 160 of 2000 are held entitled to receive the compensation of ₹2,60,000/- for their superstructure. It is also held that the landowners would be entitled to receive the compensation of ₹1,20,000/- for each tubewell.

Neither any evidence or judicial precedent was referred to, nor any other argument was pressed into service by learned counsel for either of the parties.

Considering the peculiar facts and circumstances of the case, coupled with the reasons aforementioned, this Court is of the considered view that appeals filed by the State of Punjab have since been found wholly misconceived, bereft of any merit and without any substance, these must fail and the same are hereby dismissed. Appeals as well as cross objections filed by the landowners deserve to be partly accepted and the same are hereby allowed to the extent indicative above. 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 appeals stand disposed of in the abovesaid terms, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

29.1.2016
AK Sharma