IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.5519 of 2009 and other connected matters
Date of decision: 17.02.2016

Union Territory, Chandigarh

... Appellant

Vs.

Mohinder Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Deepak Sharma, Advocate
for Union Territory, Chandigarh (in RFA Nos.5519 to 5525 of 2009) and for the respondent(s)
(in RFA Nos.3283, 3891, 3892 & 4086 of 2010)

Mr. P.C. Dhiman, Advocate
for the appellant(s) (in RFA Nos.3283, 3891, 3892 & 4086 of 2010) and for the respondent(s)
(in RFA Nos.5519 to 5525 of 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.</u>

This bunch of 11 appeals, out of which 07 appeals bearing Regular First Appeal Nos.5519 to 5525 of 2009 filed by the Union Territory, Chandigarh and the remaining 04 appeals bearing Regular First Appeal Nos.3283, 3891, 3892 & 4086 of 2010, filed by the land owners, is being decided together 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.5519 of 2009 (Union Territory, Chandigarh and Mohinder Singh).

Undisputed facts, which are necessary for disposal of these appeals, are that Union Territory, Chandigarh sought to acquire 2.50 acres of land at public expense for public purpose namely; “for construction of alternative route No.3 to Panchkula”. Accordingly, notification under Sections 4 & 6 read with Section 17 of the Land Acquisition Act, 1894 (for short 'the Act') came to be issued on 14.02.2001, invoking the urgency clause. The abovesaid land was situated within the revenue estate of Mani Majra. Land Acquisition Collector, vide his award No.553 dated 02.12.2002, granted compensation to the land owners at the uniform rate of Rs.9,20,120/- per acre. Dissatisfied, the land owners filed their objections under Section 18 of the Act and as a consequence thereof, as many as 07 land references were forwarded, which came to be decided together by the learned reference Court vide its common award dated 16.07.2009, granting the compensation to the land owners at the uniform rate of Rs.18,07,000/- per acre.

Both the parties felt aggrieved against the abovesaid impugned award passed by the learned reference Court. Union Territory, Chandigarh has filed 07 appeals, seeking reduction in the amount of compensation awarded by the learned reference Court, whereas remaining 04 appeals have been filed by the land owners, seeking further enhancement in the compensation for their acquired land.

The only argument raised by learned counsel for Union Territory, Chandigarh is that once the land owners have produced their evidence including some sale instances before the learned reference Court, the award Ex.P40 could not have been made the basis for assessing the market value of the acquired land and the learned reference Court exceeded its jurisdiction, while doing so, because earlier award Ex.P40 dated 22.08.2007 pertains to a different village i.e. Kaimbwala. He prays for setting aside the impugned award passed by the learned reference Court, by allowing the appeals filed by the Union Territory, Chandigarh.

Per contra, learned counsel for the land owners would contend that since the award Ex.P40 was pertaining to the land situated in the adjoining revenue estate, the learned reference Court was well-justified in placing reliance thereon, for the purpose of assessing the market value of the acquired land. He further submits that a judicial precedent has been rightly given preference over and above the sale instances. He also submits that since this Court has partly allowed the bunch of cases, including **RFA No.4349 of 2007 decided on 02.02.2016** in the case of **Sohan Lal and others Vs. UT Chandigarh along with case of Harmohan Dhawan** against the award Ex.P40, enhancing the compensation to Rs.25,87,150/- per acre, instant set of appeals is squarely covered by the said order dated 02.02.2016 passed by this Court. Learned counsel for the land owners concluded by submitting that the land owners in the present set of cases may be granted the benefit of annual increase for the time gap between instant acquisition and the acquisition in **Sohan Lal's** case (supra), by allowing these appeals.

After hearing the learned counsel for the parties at considerable length, 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 peculiar facts and circumstances of these cases, appeals filed by the Union Territory, Chandigarh are bereft of merit and liable to be dismissed. The appeals filed by the land owners deserve to be partly accepted, suitably enhancing the amount of compensation for their acquired land, for the following more than one reasons.

A bare perusal of the impugned award dated 16.07.2009 passed by the learned reference Court and particularly the findings recorded in paras 21 & 22 thereof, it is clear that applicability of earlier award Ex.P40 passed by the learned reference Court in the case of **Harmohan Dhawan and another Vs. UT Chandigarh (RFA No.356 of 2008),** was not disputed by either of the parties before the learned reference Court. Once that is so, learned counsel for Union Territory, Chandigarh cannot be permitted to take the complete somersault and dispute the applicability of said award Ex.P40 now, for the purpose of deciding instant bunch of appeals. That was the only argument, which has been found wholly misplaced and cannot be accepted. It is so said because parties to the litigation cannot be permitted to blow hot and cold in the same breath, allowing them to change their stand at different stages of the litigation as per their suitability. Further, when the acquired land in both the cases is compared, the land acquired in instant set of appeals was situated at a much better location and would be having far greater potentiality than the land in Ex.P40.

On the other hand, stand taken by the land owners is the same, which was taken by them before the learned reference Court. It is a matter of record that this Court has already decided bunch of RFAs filed by Sohan Lal etc. along with the case of Harmohan Dhawan and others, including RFA No.4349 of 2007. Compensation for the acquired land in Sohan Lal's case (supra) has been enhanced to Rs.25,87,150/- per acre. Since the parties to the instant litigation agreed on the issue of applicability of award Ex.P40 in Sohan Lal's case (supra), before the learned reference Court, present set of appeals deserves to be decided on the basis of order dated 02.02.2016 passed by this Court in RFA No.4349 of 2007 (Sohan Lal and others Vs. UT Chandigarh). It is so said because any deviation from the abovesaid analogy would lay down a wrong precedent and there might be contradictory orders, which would not be in the interest of justice as well.

It is also a matter of record that notification under Section 4 of the Act was issued in Sohan Lal's case (supra) on 24.10.2000, which is so recorded in para 2 of award Ex.P40 at page 377 of the LCR. Date of notification under Section 4 of the Act in the present case is 14.02.2001, thus, there was a time gap of 03 months and 15 days. Since the acquired land was situated at a prime location having great potentiality, the land owners would be entitled for the annual increase @ 15% per annum, in view of the law laid down by the Hon'ble Supreme Court in **General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and another, 2008 (4) SCC 745.** It is so said because the acquired land in the present set of cases was undisputedly situated within the urban area. Thus, granting the benefit of annual increase of 15% for this time gap of three and half months on the abovesaid market value of Rs.25,87,150/- per acre, the total amount would come to Rs.27,00,337/- per acre, which is rounded off to Rs.27,00,340/- per acre. Accordingly, the land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.27,00,340/- per acre, from the date of notification under Section 4 of the Act.

It is also pertinent to note here that the Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Regd.), Faridkot and others Vs. State of Punjab and others, 2012 (5) SCC 432** held that the land owners are entitled to receive the best price for their acquired land. Again, the observations made by the

Hon'ble Supreme Court in paras 17 & 18 of its judgment in **Udho Dass Vs. State of Haryana, 2010 (12) SCC 51,** which can be gainfully followed in the present case, read as under: -

> *"Although, in the present matter, sale instances around or near abouts the date of Notification of the present acquisition are available yet these cannot justify or explain the potential of a particular piece of land on the date of acquisition as the potential can be recognized only some time in the future and it is open to a landowner claimant to contend that the potential can be examined first at the time of the Section 18 Reference, the first Appeal in the High Court or in the Supreme Court in appeal as well. We must also highlight that Collectors, as agents of the State Government, are extraordinarily chary in awarding compensation and the land owners have to fight for decades before they are able to get their due. We take the present case as an example. The land was notified for acquisition in May 1990. The collector rendered his award in May 1990 awarding a sum of Rs. 2,00,000/- per acre. The Reference Court by its award dated January 2001 increased the compensation to Rs. 125 per square yard for the land of the road behind the ECE factory and Rs. 150 per square yard for the land abutting the road which would come to Rs. 6,05,000/- and Rs. 7,26,000/- respectively for the two pieces of land. This itself is a huge increase vis-a-vis the Collector's award. The High Court in First Appeal by its judgment of 24th September 2007 enhanced the compensation for the two categories to Rs. 135 and 160 respectively making it Rs. 6,53,400/- and Rs. 7,74,400/-. In other*

words, this is the compensation which ought to have been awarded by the Collector at the time of his award on 12th May 1993. This has, however, come to the land owner for the first time as a result of the judgment of the High Court which is under challenge in this appeal; in other words, a full 17 years from the date of Notification under Section 4 and 14 years from the date of the award of the Collector on which date the possession of the land must have been taken from the landowner. Concededly, the Act also provides for the payment of the solatium, interest and an additional amount but we are of the opinion, and it is common knowledge, that even these payments do not keep pace with the astronomical rise in prices in many parts of India, and most certainly in North India, in the land price and cannot fully compensate for the acquisition of the land and the payment of the compensation in driblets. The 12% per annum increase which Courts have often found to be adequate in compensation matters hardly does justice to those land owners whose land have been acquired as judicial notice can be taken of the fact that the increase is not 10 or 12 or 15% per year but is often upto 100% a year for land which has the potential of being urbanized and commercialized such as in the present case. Be that as it may, we must assume that the landowners were entitled to the compensation fixed by the High Court on the date of the award of the Collector and had this amount been made available to the landowners on that date, it would have been possible for them to rehabilitate their holdings in some other place. This exercise has *been defeated for the simple reason that the payment of compensation has been spread over almost two decades. In this view of the matter, we are of the opinion that a landowner is entitled to say that if the compensation proceedings continued over a period of almost 20 years as in the present case, the potential of the land acquired from him must also be adjudged keeping in view the development in the area spread over the period of 20 years if the evidence so permits and cannot be limited to the near future alone. We, therefore, feel that in the circumstances, the appellants herein were fully entitled to say that the potential of the acquired land had not been fully recognized by the High Court or by the Reference Court. We must add a word of caution here and emphasize that this broad principle would be applicable where the possession of the land has been taken pursuant to proceedings under an acquiring Act and not to those cases where land is already in possession of the Government and is subsequently acquired.*

There is another unfortunate aspect which is for all to see and to which the Courts turn a Nelson's eye and pretend as if the problem does not exist. This is a factor which creates an extremely grim situation in a case of compensation based exclusively on sale instances. This is the wide spread tendency to under value sale prices. The provision of Collector's rates has only marginally corrected the anomaly, as these rates are also abnormally low and do not reflect the true value. Where does all this leave a landowner whose land is being compulsorily acquired as he has *no control over the price on which some other landowner sells his property which is often the basis for compensation?"*

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 cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that the appeals filed by the Union Territory, Chandigarh are wholly 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 deserve to be partly accepted and the same are hereby allowed to the extent indicated above. The land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.27,00,340/- per acre, 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 relevant provisions of the Act.

Resultantly, with the observations made above, all these 11 appeals stand disposed of, in the abovesaid terms, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

17.02.2016
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