HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

RFA-3496-2010 & connected matters
Date of decision:4.3.2016

Punjab Small Industries and Export Corporation Ltd. through its Manager (Legal)

...Appellant

Versus

Kartar Singh and others ...Respondents

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.Ashok Jindal, Advocate for the appellants in RFA Nos.4093 to 4097 of 2010
Ms.Rita Kohli, Sr. Advocate with Mr.Guneet Babbar, Advocate for the appellants in RFA Nos.3496 to 3502 of 2010.
Mr.Sanjeev Sharma, Advocate for respondent (PSI) Punjab Small Industries in RFA Nos.4094 to 4097 of 2010.

RAMESHWAR SINGH MALIK, J. (Oral)

This batch of 12 Regular First Appeals, out of which 7 appeals bearing RFA Nos.3496 to 3502 of 2010 filed by the beneficiary department, i.e. Punjab State Industrial and Export Corporation Limited ('PSIEC' for short) and 5 appeals bearing RFA Nos.4093 to 4097 of 2010 filed by the land owners, is being decided vide this common order, as all these appeals arise out of 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, the facts are being culled out from RFA No.3496 of 2010 (Punjab Small Industries and Export Corporation Ltd. v. Kartar Singh and others).

Brief facts of the case are that State of Punjab sought to acquire a big chunk of land for PSIEC in the year 1989 and declaration under Section 6 of the Land Acquisition Act, 1894 (`the Act' for short) was issued by the State Government on 16.6.1989. Possession of the land, including the land acquired by way of instant acquisition, was taken on 6.8.1990. However, khasra numbers or field numbers of the land measuring 29K-7M, which is the subject matter of instant set of appeals, were not included in the above-said declaration dated 16.6.1989 issued by the State Government under Section 6 of the Act.

Notification dated 28.12.1994 under Section 4 of the Act came to be issued for acquiring the land under these appeals. However, this notification lapsed, because no final declaration under Section 6 of the Act was issued. Notification dated 1.2.1995 was again issued under Section 4 of the Act, however, it came to be quashed by this Court, having been found a defective notification. Again, notification dated 19.12.1996 was issued under Section 4 of the Act but this was also allowed to lapse.

Finally, notification dated 18.12.2003 under Section 4 of the Act was issued for acquiring the land measuring 29K-7M, out of Revenue Estate No.307/5 of Jalandhar, which was followed by notification dated 9.1.2004 under Section 6 of the Act. Land acquisition collector, vide his award dated 17.2.2005 assessed the market value of the acquired land at the uniform rate of Rs.5,79,480/- per acre. Land owners were not satisfied with the award announced by the Collector and they filed their objections under Section 18 of the Act. Consequently, as many as 8 land references came to be decided by the learned Reference Court vide common impugned award dated 22.2.2010, enhancing the amount of compensation to Rs.2 lacs per marla.

Both the parties felt aggrieved against this impugned award passed by the learned reference court. Beneficiary department, i.e. PSIEC has filed its appeals, seeking reduction in the amount of compensation awarded to the land owners by the learned reference court, whereas land owners are seeking further enhancement in the amount of compensation for their acquired land. That is how, all these 12 appeals are being decided together.

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 in the given fact situation obtaining in the cases in hand, the appeals filed by both the parties, so far as the amount of compensation based on the market value assessed for the acquired land, have been found bereft of merit and the same are liable to be dismissed, for the following more than one reasons.

Before proceeding further on merits of the case, it is pertinent to note here that, when after taking the possession on 6.8.1990, land was not being acquired, the land owners filed a civil suit for mesne profits before the learned civil court, which came to be decreed vide judgment dated 16.11.2002 Ex.PW11/A25. As per this civil court decree dated 16.11.2002, the learned civil court directed the respondents to pay an amount of Rs.4,90,000/- per month to the land owners w.e.f. 4.1.1994 as mesne profits. This litigation attained finality between the parties before the Hon'ble Supreme Court, when Civil Appeal No.7158 of 2005 filed by PSIEC came to be dismissed vide order dated 22.3.2013. The observations made by this Court in paras 5 and 6 of its order dated 30.7.2004, reported as **Punjab Small Scale Inds. Corpn. Vs. Kartar Singh and others, 2004 (4) RCR (Civil) 392**, which deserve to be noticed here, read as:-

> *"It is an admitted fact that the suit land measuring 31 kanals 3 marlas belonging to the respondents had been taken possession of by State Government despite the fact it had not been acquired. The only dispute is with regard to the determination of quantum of mesne profits to be paid to the plaintiff- respondents. The trial Court, as already mentioned above, placed reliance on the agreement dated 20.6.1990 (Ex. PW1/1) regarding leasing out of the land measuring 10 marlas, which was adjacent to the land in question and fixed the rate of mesne profits to be paid to the respondents on that basis. The objection raised by Mr. Govind Goel, learned counsel for the appellants, with regard to the determination of quantum of mesne profits despite the fact there being no issue with respect thereto has no relevance at all keeping in view the facts and circumstances of the present case. In Lucky Kochuvareed's case (supra) it has been held by their Lordships of the Supreme Court that a person in wrongful possession of land is liable to pay mesne profits to the owner thereof. In Narayanarao's case (supra) it was held by Hon'ble Supreme Court that in order to do justice between the parties the High Court had rightly invoked the provisions of Order 41 Rule 33, C.P.C., and granted mesne profits to the aggrieved party in spite of the fact no issue with regard thereto had been framed by the trial Court.*
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> *The primary question that survives for consideration is*

the quantum of mesne profits. Mr. Govind Goel, learned counsel for the appellant, has contended that the agreement dated 20.6.1990 (Ex. PW1/1) ought not be relied upon owing to its smallness in comparison to the suit land. The said agreement is for 10 marlas of land, whereas the suit land measures 31 kanals 3 marlas. Though the agreement dated 20.6.1990 is much smaller as compared to the suit land, but this evidence cannot be completely ignored keeping in view the fact the State had failed to adduce any sale instance or lease deed in order to assist the Court in determining the quantum of mesne profits. As already said above, the said area measuring 10 marlas had been leased out in the year 1990 i.e. when the suit land had been illegally occupied by the State. This land is contiguous to the suit land. There is no dispute with regard to these facts. This fact also cannot be ignored that suit land, which remained in unauthorised possession of the defendants, has got a great potential for setting up industry. Keeping in view the said fact, the trial Court determined the quantum of mesne profits to be paid to the respondents on the basis of the agreement dated 20.6.1990 (Ex. PW1/1). However, the objection of Mr. Govind Goel with regard to its smallness as compared to the suit land as well as the fact that it was a developed site, are the points which are worth consideration. Mr. Goel has suggested that one-half cut on the quantum determined by the trial Court should be applied. I do not agree to his suggestion. For doing justice to both the parties, I am of the considered opinion that one-third cut in the quantum of mesne profits determined by the trial Court would be a fair decision. By applying one-third cut, the respondents would be entitled to get mesne profits at the rate of Rs. 3,27,000/- per month."

The abovesaid order passed by this Court in **Kartar Singh's** case (supra), reducing the abovesaid amount from Rs.4,90,000/- to

Rs.3,27,000/- per month, was upheld by the Hon'ble Supreme Court.

Some of the relevant observations made by the Hon'ble Supreme Court in paras 3 to 8 of its order dated 22.3.2013, read as under:-

> *"Shri Govind Goel, learned counsel appearing for the appellant has submitted that the courts below have awarded excessive amount as mesne profit relying upon a document relating to a smaller piece of land which had been given on rent. The said small piece of land could not be treated as an exampler and therefore, the appeal deserves to be allowed.*
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> *Learned counsel appearing for the contesting respondents has opposed the appeal contending that the appellant itself could not produce any document to rebut the claim of the respondent. The High Court has substantially reduced the amount of mesne profit taking into consideration all the facts and circumstances of the case. Thus, no interference is called for.*
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> *It is most unfortunate that after several decades of independence, the innocent citizens are being deprived of their constitutional and legal rights by the State authorities. No explanation could be furnished by learned counsel for the appellant as under what circumstances the possession of such a huge area could be taken without resorting to any procedure prescribed by law. The evidence on record clearly reveals that the appellant, for the reasons best known to it, failed to produce any evidence whatsoever to show that the claim made by the respondent was excessive or the mesne profit determined by the High Court is not a reasonable amount.*
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> *As the appellant failed to produce any material to prove to the contrary, we fail to understand on what basis the appeal has been preferred except for wasting the public money and public time. The land though had been labeled as*

> *agricultural but had been surrounded by developed industrial area and the contiguous land had also been notified and acquired for establishing industrial area. More so, the suit land had also been acquired for the same purpose.*
>
> *The High Court considering the fact that the exemplar relied upon by the Trial Court was of small area thus, deducted 1/3 amount for determining the mesne profit. In absence of any evidence adduced by the appellant, we do not see any cogent reason to interfere with the guess work made by the High Court.*
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> *The appeal lacks merit and is accordingly dismissed. Any amount which has been deposited by the appellant before this Court shall be remitted to the respondents Kartar Singh and others to satisfy the decree forthwith. If there remains any balance amount that shall be paid by the appellant, within a period of three months from today.*

Further, a bare reading of the impugned award passed by the learned reference court would show that the land-owners produced voluminous evidence, oral as well as documentary, before the learned reference court, with a view to substantiate their stand. As many as 77 sale examplers were produced on record, besides other numerous documents. The land acquired from different khasra numbers was in marlas, as depicted from site plan Ex. PD/9, available on the lower court record (`LCR' for short). Land measuring 3 marla, 4 marla, 7 marla, 8, marla, 9 marla, 11 marla, 12 marla, 13 marla and so on and so forth, has been acquired from different khasra numbers and biggest chunk of land was only 6K-7M, out of 3-4 khasra numbers put together.

In this view of the matter, sale-deeds relied upon by the land-owners, whereby land was sold in marlas, could have also been taken into consideration, yet since there are other more relevant pieces of evidence available on record, the sale instances pertaining to small pieces of land are not being considered for assessing the market value of the acquired land. It is a matter of record that vide Ex.PW11/A/49, available at page 1035 of LCR, Collector, Jalandhar has fixed the rate of commercial land in Industrial Focal Point, Jalandhar @Rs.2,25,000/- per marla for the year 2003, whereas notification under Section 4 of the Act, in the instant acquisition, was issued on 18.12.2003.

Similarly, vide Ex.PW11/A/51, available at page 1039 of LCR, Collector, Jalandhar fixed the rate of commercial land in the Industrial Focal Point, Jalandhar @ Rs.2,50,000/- per marla for the year 2004. It shows the potentiality of acquired land and also the increasing trend in the market value prevailing at the relevant time. It is also pertinent to note here that the land acquired by way of instant acquisition was also acquired for Industrial Focal Point, Jalandhar. Again, vide Ex.PW5/A/3, available at page 573 of LCR, Sub-Divisional Officer (Civil) vide his letter dated 13.2.1996, informed the Deputy Commissioner, Jalandhar that the land sold in the area of Focal Point, Jalandhar between 2.3.1993 to 2.3.1995 was at the rate of Rs.50,000/- per marla.

Again, vide Ex.PW5/A/5, available at page 577 of LCR, which was another official communication and it shows that the land in the area of Industrial Focal Point, Jalandhar was sold on 19.4.1996 @ Rs.62,000/- per marla. There cannot be any better piece of evidence than the above-said exhibited documents, veracity and genuineness of which has never been controverted and rightly so, it being a matter of record. These documents are based on the official record of the State Government itself.

So far as the location and potentiality of the acquired land is concerned, a bare perusal of more than one site plans, available on record, would show that it was located in fully developed area. It was within the urban area of Jalandhar City. State of Punjab had set up the Industrial Focal Point at Jalandhar, which was surrounding the acquired land. There is another very important piece of evidence available on record in the form of Ex.PW9/A/1 at page 767 of LCR, whereby beneficiary department, i.e. PSIEC itself sold 6½ marla of land on 24.3.2006 for Rs.30,15,000/- at the rate of about Rs.5 lacs per marla. These startling and undisputed facts go a long way to show that the observations made by the Hon'ble Supreme Court in **Udho Dass v. State of Haryana, 2010 (12) SCC 51** come true in the present case.

The Hon'ble Supreme Court in **Udho Dass's** case (supra) has held that some times annual increase could be 100%. Further, if the law laid down by the Hon'ble Supreme Court in its judgment in **Udho Dass's** case (supra) is to be followed in the true sense of the term, the market value of the acquired land would be manifold higher than what has been granted by the learned reference court. It is also pertinent to note here that although possession was taken on 6.8.1990 but the litigation is still going on, despite lapse of a long time of more than 25 years and for this reason also the judgment of the Hon'ble Supreme Court in **Udho Dass's** case (supra) aptly applies to the facts of the present case. Having said that, this Court feels no hesitation to conclude that the acquired land was having immense potentiality.

In view of what has been discussed hereinabove, the safest course for assessing the market value is to take the base market value from the official record of the Government in the form of Ex.PW5/A/5, disclosing the market value at the rate of Rs.62,000/- per marla, as on 19.4.1996. In view of the law laid down by the Hon'ble Supreme Court in its judgments rendered in **The General Manager, Oil & Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel & another, 2008(14) SCC 745 and Ashok Kumar and others v. State of Haryana, 2015 (3) Scale 242**, the land owners would be entitled to 15% annual increase on cumulative basis, on the above-said market value of Rs.62,000/- per marla, for the time gap between 19.4.1996 till 18.12.2003, when notification under Section 4 of the Act came to be issued in the present case.

Undisputedly, the acquired land was situated within the urban area. Granting the benefit of 15% annual increase on cumulative basis, for this time gap of 7 years and 8 months, market value comes to Rs.1,81,413.10 paise which is rounded of to Rs.1,81,414/- per marla. Further, considering all the positive as well as negative determinative factors, in view of the law laid down by the Hon’ble Supreme Court in **Viluben Jhalejar Contractor (D) by LRs v. State of Gujarat 2005 (4) SCC 789,** the findings recorded by the learned reference court, assessing the market value of Rs.2 lacs per marla, cannot be said to be without jurisdiction or beyond the evidence available on record.

It is so said, because the Collector Jalandhar, himself has fixed the market value at the rate of Rs.2,25,000/- for the year 2003 itself, which was the year of acquisition in the present case. Although the Collector has further enhanced the market value for the year 2004 at the rate of Rs.2,50,000/- per marla and the acquisition in the present case was 18.12.2003, there could have been a reasonable increase even beyond Rs.2 lacs per marla on 18.12.2003 but since there is no clinching evidence in the form of other sale examplers, this Court is of the considered view that it would be just and expedient to uphold the market value assessed by the learned reference court as it is, without ordering either any reduction or any enhancement therein. Ordered accordingly.

The next important issue that falls for consideration of this Court is as to for what amount of compensation the land owners would be entitled, from the date of taking over the possession of their land, i.e. 6.8.1990 to the date of notification under Section 4 of the Act, i.e. 18.12.2003. If the above-said market value is taken on the date of notification under Section 4 of the Act and compensation of the acquired land is assessed after applying a reverse cut of annual increase thereon for the time gap, the land owners would be entitled for much higher compensation. However, keeping in view the totality of facts and circumstances of the case, including highhandedness of the State authorities for remaining in possession of the acquired land illegally for such a long period, which amounts to forcible encroachment and also the amount of harassment caused to the land-owners, this Court is of the considered view that granting the same amount of compensation which was finally granted by the Hon'ble Supreme Court in a civil suit for mesne profits filed by the land owners, would meet the ends of justice.

As noticed hereinabove, Hon'ble the Supreme Court upheld the order dated 30.7.2004 passed by this Court in RFA No.4545 of 2003, reducing the amount from Rs.4,90,000/- to Rs.3,27,000/- per month, vide its order dated 22.3.2013, relevant part of which has been reproduced in the foregoing paragraphs of this order. Thus, the order passed by the Hon'ble Supreme Court can be safely followed in this regard. Accordingly, the land owners are held entitled to receive the amount of compensation of Rs.3,27,000/- per month from 6.8.1990 to 17.12.2003, during which the State authorities remained in unauthorised possession of the acquired land. Granting any lesser amount will be wholly inadequate. However, this Court would hasten to add that whatever amount the land owners have already received for a particular period at the rate of Rs.3,27,000/- per month, the same shall be adjusted, in accordance with law. It is so said, because land owners would not be entitled for the said amount for the same period twice over.

To be fair to the learned senior counsel for the beneficiary department, although she made her best efforts to dislodge the claim of the land owners, yet she failed primarily for the reason that the State as well as beneficiary department miserably failed to produce any evidence before the learned reference court. When confronted with this undisputed material fact, coupled with the above-said order dated 30.7.2014 passed by this

Court in RFA No.4545 of 2003 as well as the order dated 22.3.2013 passed by the Hon'ble Supreme Court, learned senior counsel for the beneficiary department, i.e. PSIEC had no answer and rightly so, it being a matter of record.

In fact, so far as market value of the acquired land assessed by the learned reference court and upheld by this Court is concerned, the same is based on the official record of the Government itself. Similarly, the amount of compensation in the form of mesne profits for the period, during which State authorities remained in unauthorised possession of the acquired land, is based on the above-said order dated 22.3.2013 passed by the Hon'ble Supreme Court. In fact, if one goes by the conduct of the State authorities, which has already been adversely commented upon by this Court vide its order dated 30.7.2004 and also by the Hon'ble Supreme Court vide its order dated 22.3.2013, reproduced hereinabove, the land owners might have been entitled for much more amount of compensation. However, striking a balance between the parties, this Court is of the considered view that it would be in the fitness of things and also in consonance with the above-said orders passed by the Hon'ble Supreme Court to grant the above-said amount to the land owners.

Let it be specifically recorded here that no other evidence or judicial precedents were 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 so far as the appeals filed by the PSIEC are concerned, the same have been found 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 qua the amount of compensation on the basis of market value of their acquired land, as assessed by the learned reference court, meet the same fate and the impugned award passed by the learned reference court is upheld.

However, as per the above-said order dated 22.3.2013 passed by the Hon'ble Supreme Court, the land owners are held entitled to receive the amount of Rs.3,27,000/- per month w.e.f. 6.8.1990 to 17.12.2003, minus the amount already received by them for a period of about three years. Besides this, the land owners 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 aforementioned appeals stand disposed of, in the abovesaid terms, however, with no order as to costs.

4.3.2016 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**