HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

RFA-4709-2010 & connected matters
Date of decision:29.2.2016

The State of Punjab through the Land Acquisition Collector, PSEB, Patiala

...Appellant

Versus

Bachan Singh and another

...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.Sukhbir Singh, Advocate for the appellants in RFA Nos.4710, 4717 to 4721, 4732, 4709, 4714, 4728, 4734, 4735, 4722, 4725, 4726, 4729, 4730, 4712, 4727, 4711, 4713, 4715, 4716, 4723, 4724, 4731, 4733, 4736, 4737 of 2010, 5206, 5207 and 17 to 20 of 2009.

Mr.Sapan Dhir, Advocate for the appellants in RFA Nos.1704, 1705 of 2011 and for the cross-objectors in RFA Nos.17 to 19 of 2009, 3777 and 3778 of 2011, 4721 of 2010, 3775 of 2011 and for the respondent(s) in RFA Nos. 2095 of 2011 and 20 of 2009.

Mr.Vijay Lath, Advocate and Mr.Naveen Sharma, Advocate for the appellants in 5489 and 5490 of 2010 and RFA Nos. 434 to 438 of 2011 and for the respondents in RFA Nos.4725, 4727, 4736, 4737, 4711, 4723, 4724, 4731, 4713 and 4718 of 2010 and for the cross objectors in RFA Nos. 4711, 4727 and 4736 of 2010.

Ms.Monika Arora, Advocate for
Mr.Pritam Saini, Advocate for appellants in RFA No.5367, 6144 of 2011, 5410 of 2012, 7259 of 2015 and for the cross objector in RFA No.7363 of 2011.

Mr.S.S.Virk, Advocate for the appellants in RFA Nos. 2094, 2095, 3775, 3776, 3777, 3778 and 7363 of 2011.
Mr.S.S.Goraya, Advocate for the cross-objectors in RFA Nos.5206 and 5207 of 2009.

Mr.Naresh Kaushal, Advocate for the respondent(s)/cross objectors in RFA No.4710, 4732, of 2010, 4730 of 2010 and 4726 of 2010.

RAMESHWAR SINGH MALIK, J. (Oral)

This batch of 55 appeals, out of which 42 appeals bearing RFA Nos. 17 to 20, 5206 and 5207 of **2009**, 4709 to 4737 of **2010**, 2094, 2095, 3775 to 3778 and 7363 of **2011** have been filed by the beneficiary department, i.e. Punjab State Electricity Board (`PSEB' for short) and 13 appeals bearing RFA Nos.5489 and 5490 of **2010**, 434 to 438, 1704, 1705, 5367 and 6144 of **2011**, 5410 of **2012** and 7259 of **2015** as well as cross-objections Nos.24-CI to 26-CI of 2009, 157-CI, 158-CI, 225-CI to 229-CI of 2010, 35-CI, 50-CI to 52-CI of 2011, 5-CI of 2012, 36-CI of 2012, 22-CI and 23-CI of 2013 have been filed by the land owners, is being decided vide this common order, as the same arise out of two consecutive acquisitions 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.4709 of 2010** (The State of Punjab through the Land Acquisition Collector v. Bachan Singh and another).

Facts necessary for disposal of instant batch of appeals are that land measuring 187K-16M was sought to be acquired by the State of Punjab for PSEB at public expenses for public purpose; namely for construction of Micro-Hydel Project at Guru Govind Singh Thermal Plant. The land was situated in the revenue estates of more than one villages namely Chak Dher, Asspur, Awankot, Ghanauli, **Tibba Taprian and Tarf.** Notification under Section 4 of the Land Acquisition Act, 1894 (`the Act' for short) came to be issued on 15.11.2000, which was followed by notification dated 18.1.2001 under Section 6 of the Act. Similarly, in the acquisition vide later notification dated 31.10.2002, the land was sought to be acquired for the same purpose as noticed hereinabove. Land acquisition collector, vide his award No.2 dated 18.2.2003, granted the compensation at the flat rate of Rs.3 lacs per acre for the land of all the above-said villages.

Dissatisfied, the land owners filed their objections under Section 18 of the Act and as a consequence thereof, learned reference court decided 29 land references together vide its common award dated 30.5.2008, granting the amount of compensation at the uniform rate of Rs.13,10,800/- per acre. Since there was a time gap of about two years in the second acquisition vide above-said notification dated 31.10.2002, land owners, whose land was acquired vide this later notification dated 31.10.2002, were granted the compensation by the learned reference court at the uniform rate of Rs.14,15,200/- per acre.

Both the parties felt aggrieved against the above-said impugned awards passed by the learned reference court. Beneficiary department, i.e. PSEB through the State of Punjab has filed as many as 42 appeals, whereas remaining 13 appeals as well as cross objections have been filed by the land owners. PSEB is seeking reduction in the compensation awarded by the learned reference court, whereas the land owners are seeking further enhancement in the compensation for their acquired land.

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 these cases, appeals filed by PSEB have been found bereft of merit and the same are liable to be dismissed. However, the appeals as well as cross objections 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.

It is a matter of record and not in dispute that the land owners did not produce any evidence except three earlier judgments rendered either by the learned reference court or this Court. It is also not in dispute that none of the parties before the learned reference court produced any site plan so as to show the exact location of the acquired land. In the absence of any relevant evidence in the form of site plan, it becomes more difficult for the courts to assess the market value of the acquired land because potentiality thereof would be dependent on its location. Whatever site plans have been produced on record by the State, those were produced only for the purpose of showing the sale instances.

In the absence of any site plan of the acquired land, showing the comparable location between the land sold by the sale-deeds and the acquired land, the learned reference court was well within its jurisdiction to place reliance on the judgment dated 26.4.2006 passed by this Court, which was available on record as Ex.P3. This Court in **RFA No. 2748 of 1998 (Surjit Singh and others v. State of Punjab and others)** assessed the market value of the land of one of these villages; namely Chakdhera as on 5.4.1990 at the rate of Rs.5,80,000/- per acre. It is pertinent to note here that land measuring 1593K-8M of this village Chakdhera was earlier acquired, vide notification dated 5.4.1990 under Section 4 of the Act for Stage-III, Ropar Thermal Power Plant, Ropar.

The learned reference court has also been found justified in giving preference to the judicial pronouncement, i.e. Ex.P3 over and above the sale instances, because there was no site plan available on record which might throw some light about the relevance of sale instances sought to be relied upon by the State of Punjab.

The only argument raised by the learned counsel for PSEB, while placing reliance on three judgments of this Court in **RFA No.3673 of 1993 (The State of Punjab through the Land Acquisition Collector, PSEB, Patiala and another v. Harnam Singh (died) through LRs) decided on 26.4.2006, RFA No.3370 of 1999 (Atma Ram and another v. State of Punjab and another) decided on 7.6.1997 and RFA No.2748 of 1998 (Surjit Singh and others v. Punjab State and others),** decided on **26.4.2006,** as well as the judgment of the Hon'ble Supreme Court in **The General Manager, Oil & Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel & another, 2008(14) SCC 745,** was that the land owners in all these cases could have been held entitled only for an increase of Rs.25,000/- per acre per year on the above-said market value of Rs.5,80,000/- assessed on 5.4.1990. He concluded by submitting that since the learned reference court has granted 12% annual increase, which was contrary to the law laid down by the Hon'ble Supreme Court in **Rameshbhai Jivanbhai Patel's case (supra)**, the appeals filed by the PSEB deserve to be allowed, reducing the amount of compensation awarded by the learned reference court.

On the other hand, learned counsel for land owners-appellants as well as cross-objectors have submitted that the learned reference court has rightly placed reliance on the judgment of this Court in the form of Ex.P3 and also rightly granted the benefit of 12% annual increase, on the base market value of Rs.5,80,000/- assessed by this Court as on 5.4.1990. They pray for dismissal of the appeals filed by the PSEB and for allowing the appeals as well as cross objections filed by the land owners.

As noticed hereinabove, in the absence of any other relevant piece of evidence and particularly the site plan, the learned reference court rightly ignored the sale instances produced and relied upon by PSEB or by the State of Punjab. Now, the only question that falls for consideration of this Court is whether the learned reference court was justified in granting the benefit of 12% annual increase on the base market value of Rs.5,80,000/- per acre, which was assessed by this Court as on 5.4.1990 vide its judgment Ex.P3 rendered in **Surjit Singh's** case (supra).

So far as the judgment relied upon by the learned counsel for the PSEB in **Surjit Singh's** case (supra) is concerned, there is no dispute about the observations made therein, particularly regarding enhancement @ Rs.25,000/- per acre per year, following earlier order passed in **Harnam's** case (supra). However, on close perusal of the cited judgment, the same has not been found to be of any help to the beneficiary department, it being distinguishable on facts, in this regard. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

In the absence of any other relevant evidence including the site plan, a reference can be made to the oral evidence given by none else but the Patwari Halqa, who had admitted in his cross-examination that the value of the land acquired from all the above-said villages was the same. It has also gone undisputed on record that the acquired land was situated very close to already developed area and because of this reason, the acquired land cannot be said to be simple agricultural land, as in the cases relied upon by learned counsel for PSEB. Thus, it is the glaring distinguishing feature.

It is so said, because the acquired land was capable of being used for industrial and commercial purposes, as in the close vicinity thereof, many commercial establishments including Ambuja Cement Factory and shops etc. were already existing. The view taken by this Court also finds support from the site plan Ex.P1/B placed on record by the land owners in the cases arising out of later acquisition, wherein notification under Section 4 of the Act was issued on 31.10.2002. This site plan was available at page 23 of the lower court record in the case of Bal Krishan v. State of Punjab (LAC No.4 of 10.2.2006/4.6.2008) decided by the learned reference court vide its later award dated 31.7.2008.

So far as the argument raised by the learned counsel for the PSEB that 12% annual increase should not have been granted by the learned reference court on the base market value of Rs.5,80,000/- as on 5.4.1990, is concerned, the same has been found wholly misplaced and cannot be accepted. 12% annual increase is almost established principle of law and an identical issue fell for consideration before the Hon'ble Supreme Court in **Udho Dass v. State of Haryana, 2010 (12) SCC 51**, whereby the Hon'ble Supreme Court has held that some times the annual increase could be up to 100%. It has further been held by the Hon'ble Supreme Court that the land owner hardly gets the true market value of his acquired land.

The relevant observations made by the Hon'ble Supreme Court in paras 17 and 18 of its judgment in **Udho Dass's case (supra)**, which can be gainfully followed in the present set of cases, 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?"

Further, it is the settled principle of law that the courts must make an endeavour to reach the truth so as to grant a realistic market value to the land owners. Again, it has been held by the Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Registered), Faridkot and others v. State of Punjab and others, (2012) 5 SCC 432** that the land owners are entitled to receive the best price for their acquired land. The underline principle to assess the market value of the acquired land would be, to arrive at such a price at which a prospective buyer would be ready to purchase and a prospective seller would be ready to sell. In the process, many a times, the court has to apply thumb rule and also some amount of guess work, as per the peculiar fact situation of each case.

In view of what has been discussed hereinabove and with a view to do complete and substantial justice between the parties, proceeding on a constructive and pragmatic approach, this Court is of the considered view that it would be just and expedient to uphold the amount awarded by the learned reference court as it is, except granting the benefit of annual increase at 12% for the time gap of 10½ years, on cumulative basis, which has been granted by the learned reference court at flat rate, in para 10 of the impugned award. The impugned award passed by the learned reference court deserves to be modified to this extent. Ordered accordingly.

So far as the other judgments relied upon by the learned counsel for the PSEB in the cases of **Harnam Singh's** case (supra) and **Atma Ram's** case (supra) rendered by this Court are concerned, the same were passed by this Court in the peculiar facts and circumstances obtaining in those cases. Having said that, this Court feels no hesitation to conclude that the learned reference court committed no error of law, while granting 12% annual increase to the land owners in both the above-said acquisitions. The only modification which required to be ordered in the award passed by the learned reference court is granting the benefit of 12% annual increase on cumulative basis instead of flat rate.

The arguments were earlier heard in this case on 10.2.2016 but since some more clarifications were required, the case was listed for rehearing and thereafter the order pronounced today, i.e. 29.2.2016 in the open Court. During the course of hearing, when learned counsel for the beneficiary department-PSEB was confronted with the law laid down by the Hon'ble Supreme Court in **Ashok Kumar and others v. State of Haryana, 2015 (3) Scale 242** as to why the benefit of 12% annual increase be not granted to the land owners on cumulative basis for the undisputed time gap, modifying the impugned award passed by the learned reference court, he had no answer and rightly so, it being a matter of record.

After giving anxious consideration to this important question of law and respectfully following the law laid down by the Hon'ble Supreme Court in **Ashok Kumar's** case (supra), the land owners have been found entitled for the benefit of annual increase on cumulative basis. It is a matter of record that the base market value which has been taken by the learned reference court vide Ex.P3, judgment of this Court in **Surjit Singh's** case (supra), it was Rs.5.80,000/- as on 5.4.1990. It is pertinent to note here that two consecutive acquisitions were there in the present case. In the first acquisition, notification under Section 4 of the Act was issued on 15.11.2000 and in the later acquisition, notification under Section 4 of the Act was issued on 31.10.2002, thus, there was a time gap of more than 10 ½ years in the first acquisition and 12½ years in the second acquisition.

This Court, in its order dated 26.3.2014 passed in **RFA No.5626 of 2010 (State of Haryana and others v. Murti Devi and another),** granted the benefit of 12% annual increase for a period of 10 years and 3 months to the land owners. The relevant observations made by this Court in **Murti Devi's** case **(supra)**, which can be gainfully followed in the present case, read as under:-

> *"It has been held in 'Om Parkash (D) by LRs and others versus Union of India and another' The Punjab Law Reporter Vol. CXXXVIII (2004-3), 727, wherein it was held as under:-*
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> > *"In the circumstances, the High Court was justified in working out the fair market value of the lands in question on the basis of Rs. 16,750/- per bigha as on 30.10.1963. The High Court noticed that in several judgments of this Court escalation at different and varying rates i.e. 6% per annum from 1959 to 1965, @ 10% per annum for every year from 1966 to 1973 and @ 12% per annum from 1975 had been considered to be reasonable increase to arrive at the fair market value, assuming that the pace of escalation during this period was normal for the entire period from 1959 onwards. Since no material was placed on record to show that*

there was any abnormality during the period, the High Court applied the same principle to the facts and circumstances before it, and accepted increase of 10% every year progressively from 1963 to 1973 and thereafter @ 12% every year progressively upto the date of acquisition. The High Court noticed in the judgment that if escalation is allowed on the basis, the fair market value, would be Rs. 1,28,889/- per bigha. In case progressive increase is allowed @ 10% for the entire period, the amount will work out to Rs. 1,08,397/- per bigha. Allowing appreciation @ 12% per annum from 1963 to 1983, the amount would work out to Rs. 56,11/- per bigha. The High Court in its judgment under appeal pointed out that the market value of Rs. 16,750/- per bigha fixed in the case of Dharambir and others v. Union of India was not in respect of commercial land but only of agricultural land. That the market value of agricultural land is much lower than that of land suitable for commercial purposes, is trite. After having worked out the market value of the lands on various bases and keeping in view the fact that between 8.12.1992 and 2.6.1983, the lands in question had at least some commercial potentiality, the High Court decided that the fair market value of all categories of lands situated in the villages in question as on the date of acquisition should be fixed at Rs. 82,225/- per bigha.

Thus, the claimants are entitled to receive market value of the land as assessed by the Apex Court at the rate of Rs.325/- per square yard + 12% increase per year for 10 years and 3 months. The amount of enhancement works out to Rs 325 x 12% x 10¼ years = Rs.399.75 paisa. Therefore, the claimants are entitled to receive compensation at the rate of Rs.325 + Rs.399.75 paisa = Rs. 724.75 paisa."

The above-said order passed by this Court in **Murti Devi's** case (supra) was upheld by the Hon'ble Supreme Court vide its order dated 22.8.2014 passed in **SLP No.20531-20565 of 2014 (Narbadi Devi and others v. State of Haryana and others),** however, the benefit of annual increase of 12% was modified from flat rate to the cumulative basis. The relevant observations made by the Hon'ble Supreme Court in **Narbadi Devi's** case (supra), read as under:-

> *"From the impugned judgment of the High Court, it transpires that the High Court has followed the judgment of this Court in Asharfi and others Vs. State of Haryana and others 2013 (5) SCC 527 and has given increase at the rate of 12%. This was the demand of the petitioners herein which has been accepted following the ratio in Asharfi case (supra). To the extent there is no quarrel. However, it is pointed out by the learned counsel for the petitioner that in Asharfi case (supra), yearly increase of 12% was granted cumulatively and not at flat rate. This position as contained in Ashrfi case (supra) could not be disputed by Mr.Narender Hooda, learned senior counsel for the State. Accordingly, the order of the High Court is modified to the extent that the 12% increase granted by the High Court shall be worked out on cumulative basis."*

Respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court, in the cases referred to hereinabove, it is unhesitatingly held that the land owners, in the instant set of appeals, are entitled for the benefit of 12% annual increase for the above-said undisputed time gap, not at flat rate as granted by the learned reference court but at the cumulative basis as held by the Hon'ble Supreme Court in **Ashok Kumar's** case and **Narbadi Devi's** case (supra).

Accordingly, granting the benefit of annual increase for this time gap of 10½ years to the land owners, whose land was acquired vide notification dated 15.11.2000, the amount comes to Rs.19,09,475.48 paise which is rounded of to Rs.19,09,476/- per acre and they are held entitled to receive this amount for their acquired land, from the date of notification under Section 4 of the Act. Similarly, granting the above-said benefit of 12% annual increase for the undisputed time gap of more than 12½ years to the land owners, whose land was acquired vide notification dated 31.10.2002, the amount comes to Rs.23,95,246/- per acre and they are held entitled to receive this amount of compensation for their acquired land, from the date of notification under Section 4 of the Act.

No better 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 the appeals filed by the PSEB are wholly misconceived, bereft of merit and without any substance, thus, these must fail and the same are hereby dismissed. However, the appeals as well as cross objections filed by the land owners deserve to be partly accepted and the same are allowed to the extent indicated above.

Consequently, the land owners, whose land was acquired vide notification dated 15.11.2000 are held entitled to receive the amount of compensation for their acquired land at the uniform rate of Rs.19,09,476/- per acre from the date of notification under Section 4 of the Act. The land owners, whose land was acquired vide notification dated 31.10.2002 are held entitled to receive the amount of compensation for their acquired land at the uniform rate of Rs.23,95,246/- per acre from the date of notification under Section 4 of the Act. 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 afore-said appeals and cross objections stand disposed of, in the afore-said terms, however, with no order as to costs.

29.2.2016 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**