IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No.1778 of 2014 (O&M)
Date of decision : 27.01.2016

Anil Kumar and ors.

...Appellants

Versus

Government of India and ors.

...Respondents

2. FAO No.8615 of 2014 (O&M)
Date of decision : 27.01.2016

Sumittar Singh @ Saminder Singh and another

...Appellants

Versus

Government of India and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Satbir Rathore, Advocate for appellants in both appeals.

Mr. S.S. Narula, Advocate for respondent Nos.1 and 2 in both appeals.

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AMIT RAWAL, J. (Oral)

The land-owners are aggrieved of the order dated 22.11.2013 vide which the objections filed on behalf of National Highway against the award dated 26.07.2011, has been accepted, in essence, award of competent authority aforementioned, has been set aside.

Mr. Satbir Rathore, learned counsel appearing on behalf of Land owner submits that Objecting Court has committed illegality and perversity in setting aside the award by holding that award of the Arbitrator was against the public policy, therefore, objections squarely fell within the parameters of Section 34 of the Act. In this regard, he has drawn attention of this Court to the award, whereby, Arbitrator before adjudication of the lis between the parties had sought special report of Circle Revenue Officer & the contents of the report was also extracted. The relevant portion of the award, reads thus:-

> *"On 8/11/2010, both Ld. Counsels, argued the case. Mr. Tarlok Singh and appellant also present. A special report of circle revenue officer was obtained and is placed on file. The report read as:-*
>
> 1. *The acquired land is situated on G.T. Road.*
> 2. *As per record mutation in 1999 was entered in the name of Central Govt.*
> 3. *The acquired land is near Sanaura Bus Stop. It is of commercial nature and near Sanaura Market.*
> 4. *The acquired land is 9 Karam x 6 Karam and measuring 0 K-6 Marla. There was a pucker shop over the land which was demolished by deptt.*
> 5. *This land is 1.5 KM away from Bhogpur Town Municipality.*
>
> *Mr. I.S. Bhatia, the Ld. Counsel prays that the matter may be decided as per factual report of the site."*

The Arbitrator on the basis of aforementioned findings awarded a compensation by taking into consideration the award of Bhogpur District, whereby National Highway paid 5 times of collector rates and assessed compensation to the tune of Rs.1,50,000/- per marla & worked out the compensation as under:-

> *"1. The land price enhanced @ Rs.1.50 lac per marla*
> *2. Severance of land compensated @ Rs.1.00 lacs lump sum.*
> *3. The structure compensated @ Rs.600 per sq. ft.*
> *4. Loss of business compensated @ Rs.2.00 lacs lump sum.*
> *5. Shifting of structure compensated @ Rs.20,000/- lump sum."*

by assigning the following reasons:-

> *"The price of land/structure enhanced due to the fact:-*
> *1. The land price is enhanced keeping in view the potential of land along the National Highway and the proximity of land to the Tanda Town.*
> *2. The location of land at corner of G.T. Road and Link Road going to Village Sanaura makes it very valuable from commercial point of view.*
> *3. I have visited the spot along with other Revenue Officers and found land near Major Town of Bhogpur. The land is of commercial nature.*
> *4. Enough proof attached by applicant to justify enhancement as especially two reports from Revenue Officers.*
> *5. No counter affidavit/evidence filed by respondents.*
> *6. This price has been based on Arbitrator's order dated 28/1/09 in Dasuya Tehsil already implemented by the NHA-1 based on the remand order of Supreme Court of India in SLP No.14863-14864/2008, dated 11/8/2008.*

> *7. As the land between Jalandhar and Pathankot along with National Highway have high commercial potential, therefore, the land owners cannot be deprived of his valuable land without adequately compensating him.*
>
> *8. Collector rate is the minimum price below which registration of sale deeds are not permitted by the Revenue Authorities but it is never near the market price. LAC-cum-Competent Authority simply awarded Collector rate to land owners and no effort was made to determine market value of the land. Collector rate is fixed to prevent stamp duty evasion and it is not the market price of the land.*
>
> *9. If the NHAI have paid 5 times than Collector rate in all cases of Kapurthala Distt. and many times (ranging from Rs.62,500/- to Rs.2.5 lac per marla) in 629 cases of Dasuya Sub Division then why not in this case.*
>
> *10. The enhancement is made in spirit of orders of Hon'ble Supreme Court of India in case mentioned above* ***2010(3) Civil Court Cases 673 (S.C.) Special Land Acquisition Officers Vs. Karigowda and ors.***
>
> *11. 35 adjournments were given to NHAI to file reply over a period of more than 3 ½ years. No objection was raised by NHA-1. No documents were asked to cross check. No objection were ever raised by the both Ld. Counsel for procedure adopted by the arbitrator. Enough opportunities were provided to both the parties to lead evidence, submit affidavit, or counter affidavit etc."*

The Objecting Court found that award was contrary to the law as similar award passed regarding adjoining chunk of land in the adjoining District, much less, the sale deeds of irrelevant period and sizes of acquired pieces of land had been taken into consideration. It has been further found that unique procedure had been adopted.

Mr. S.S. Narula, learned counsel appearing on behalf of National Highway submits that there is no illegality and perversity in the order under challenge. The findings rendered by the Objecting Court is perfectly in consonance with the record of the matter as Arbitrator could not have taken into consideration the decision of National Highway in awarding compensation of 5 times more than the collector rates as each and every area of the land has to be seen. The sale deeds are of the lesser area and of post notification which could not be looked into.

I have heard learned counsel for the parties and appraised the paper book and of the view that appeal deserves to be allowed. Order is not sustainable for the following reasons:-

Since operative part of the award reveals that report was sought, and the National Highway represented by counsel had agreed for the compensation in terms of report but yet the Arbitrator had taken into consideration various other factor for determining the amount of compensation, whereas in my view the reasons assigned by the Objecting Court are not comprehensible. According to me, objections were not falling within the parameters of Section 34 of the Act and Objecting Court has assigned no reasons, much less, cogent reasons in setting aside the award. For the sake of brevity, findings rendered by the Objecting Court, reads thus:-

> *"18. Taking into consideration that the Arbitrator has awarded the compensation to the tune of Rs.1,50,000/- per marla, Rs.1,00,000/- lump sum as severance charges of land, compensation for the structure @ Rs.600/- per sq. ft., Rs.2 lac lump sum as compensation for the loss of business*

and Rs.20,000/- as lump sum compensation for the shifting of structure, for which no evidence was obtained as to what was the market value of the land on the date of notification under the Act, what was the collector rate on the said date in the area where land in question was acquired, what was the commercial potential of the area when it was notified u/s 3 of the Act, what was the market rate of the land and what amount of evidence the Arbitrator obtained, despite there being directions in this regard while remanding the matter and as far as interest part is concerned despite there being specific section attributed under the National Highway Act the enhanced rate of interest is awarded, whereas, Section 3H(5) of the National Highway Act of which mandates, "where the amount determined under Section 3-G by the Arbitrator is in excess of the amount determined by the competent authority, the Arbitrator may award interest at nine percent per annum on such excess amount from the date of taking possession under Section 3 D till the date of actual deposit thereof". Thus, the award of interest @ 9%, @ 15% per annum and @ 18% per annum is patently illegal, contravening express provision of law. Thus, this plea carries merit and the award is liable to be set aside as patently illegal and against the public police.

19. Award passed is apparently contrary to law as similar award passed regarding the adjoining chunks of land in the adjoining Districts, sale deeds of irrelevant periods and sizes of acquired pieces of land has been taken into consideration without justifying such reliance on the basis of same situation and potentiality in the adjoining villages. Interestingly for arriving at market value Arbitrator has taken into consideration the rate announced by the Chief Minister of Punjab in Sangat Darshan *programmes. Reliance upon such political doles cannot be legal basis for calculations of market value. The assessment shall be independent reflecting application of own mind by Arbitrator which is missing in this case.*

20. Section 3 G (7) (a) of the National Highway Act mandates that Arbitrator while determining the amount of compensation shall take into consideration the market value of the land on the date of publication of notification under Section 3-A of the National Highway Act (in this case date is 24.12.2004). Award reveals the unique procedure adopted by the Arbitrator. He assessed the current value of acquired land as on the date of award (after about seven years) as around Rs.1,50,000/- per marla, Rs.2,00,000/- lump sum as severance charges of land, compensation for the structure @ Rs.600/- per sq. ft., Rs.2 lac lump sum as compensation for the loss of business and Rs.20,000/- as lump sum compensation for the shifting of structure, to arrive at the current market value existing at the date of notification. This is patently illegal and the method does not carry any sanctity of law or prudence."

The Arbitrator noticed that land owners had attached sufficient evidence to justify the enhancement particularly the report from the revenue officers, much less, keeping in view potentiality of the land along the National Highway and proximity of the land and also took into consideration the decision of the National Highway in awarding compensation five times more than the collector rates in the cases of Kapurthala and as well as judgment rendered by Hon'ble Supreme Court in *Special Land Acquisition Officer Vs. Kari Gowda and others 2010(3) Civil Court Cases (SC) 673*. National Highway did not lead any evidence, in essence, could not corroborate the evidence brought on record by the landowners vis-a-vis potentiality of the land. Awarding of the interest is also as per the judgment rendered by the Division Bench of this Court in *M/s Golden Iron and Steel Forging Vs. UOI and ors. 2011(4) RCR (Civil) 375.*

In FAO No.1778 of 2014, as per the facts and circumstances of the case, the land acquired is within the Municipal area of Bhogpur and the Arbitrator had assessed the compensation at the rate of Rs.2,00,000/- per marla on account of the fact that the landowners have raised three constructions on the National Highway.

Accordingly, order of the objecting Court is set aside and award of the Arbitrator is restored.

It is observed that in case National Highway deem it appropriate to comply with the award of Arbitrator, sincered endeavor be made to comply the same in order to prevent incurring of the interest which is accumulating every day.

Appeals are allowed.

27.01.2016 **(AMIT RAWAL)**
pawan **JUDGE**

PAWAN KUMAR
2016.02.08 11:22
I attest to the accuracy and
authenticity of this document