

229

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision : 10.08.2016

1.

FAO-1158-2015 (O&M)

Union of India and another

... Appellant(s)

Versus

M/s Abhinav Cotspin Ltd. and others

... Respondent(s)

2.

FAO-8013-2014 (O&M)

Union of India and another

... Appellant(s)

Versus

M/s R.C. ICE Factory and others

... Respondent(s)

3.

FAO-3746-2015 (O&M)

Union of India and another

... Appellant(s)

Versus

Parshan Kaur and others

... Respondent(s)

4.

FAO-2084-2016 (O&M)

Union of India and another

... Appellant(s)

Versus

Mukhtiar Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Madan, Advocate and
Ms. Jatinder Jit Kaur, Advocate
for the appellant(s)-Union of India.

Mr. Gurpreet Singh Dhillon, Advocate
for respondent No.1.
(in FAO-1158-2015).

Mr. Harsh Bunker, Advocate
for respondent Nos.1 and 2.
(in FAO-8013-2014) and
for respondent Nos.1 to 3 (in FAO-3746-2015).

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

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of four appeals bearing **FAO No.1158 of 2015** titled as **“Union of India and another V/s M/s Abhinav Cotspin Ltd. and others”**, **FAO No.8013 of 2014** titled as **“Union of India and another V/s M/s R.C. ICE Factory and others”**, **FAO No.3746 of 2015** titled as **“Union of India and another V/s Parshan Kaur and others”** and **FAO No.2084 of 2016** titled as **“Union of India and another V/s Mukhtiar Singh and others”**. filed at the instance of the appellant(s)-Union of India as the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 Act (hereinafter called 'the 1996 Act') for setting aside the Award rendered by the Arbitrator have been dismissed.

The notification under Section 3-A of the National Highway Act, 1956 (hereinafter called 'the 1956 Act') for widening of the National Highway (Jalandhar to Pathankot), was issued on 25.09.2006.

Learned counsel appearing on behalf of the appellant(s)-Union of India submits that the competent authority assessed the compensation @ ₹ 30,000/- per marla for irrigated land and ₹ 60,000/- for gair mumkin

factory. Since, the respondent(s)-landowner(s) were aggrieved of the aforementioned amount of the compensation, they preferred a resolution of the dispute through intervention of the Arbitrator. The matter was referred to the Arbitrator and the Arbitrator entered into the reference. The Arbitrator, after taking into consideration post notification sale deeds dated 26.12.2011, 17.12.2007, 17.08.2007, enhanced the amount of compensation @ ₹ 1,50,000/- per marla and also granted solatium @ 30% as per Section 23 (2) of the Land Acquisition Act, 1894 (hereinafter called 'the 1894 Act'), but over and above the same, granted interest @ 9% and 15 % under Section 34 of the 1894 Act, which is not permissible in law as per the judgment rendered by the Division Bench of this Court in **“M/s Golden Iron and Steel Forging V/s Union of India and others” 2011 (4) RCR (Civil) 375.**

On the contrary, learned counsel appearing on behalf of the respondent(s)-landowner(s) submits that the compensation awarded by the Arbitrator is legal, justified and as per the Award passed qua the adjoining villages which is not on the higher side. In few cases, the Arbitrator has not granted solatium, but some land-owner(s) have been granted benefit of solatium @ 30% under Section 23(2) of the 1894 Act. He does not dispute the ratio decidendi culled out by this Court in **“M/s Golden Iron and Steel Forging's case** (supra), thus, urges this Court for dismissal of the appeal(s) by upholding the Award as the objections at the instance of the Union of India were not falling within the realm of Section 34 of the 1996 Act.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the Arbitrator has assessed the market value rate @ ₹ 1,50,000/- per marla for commercial and residential @

₹ 1,30,000/- per marla while taking into consideration the potential of the land in respect of Village Shekhupura, where, the compensation of ₹ 1,50,000/- per marla has been granted to the landowners(s) which is at a distance of 4 kms from Village Said Mubarak. I am of the view that even the site plan shows that the property of the respondent(s)-landowner(s) is on the bye-pass of the National Highway and there were various commercial shops, schools, college, petrol pumps, factories and Bus-stand etc. The Arbitrator ought not to have taken into consideration the post notification sale deeds which are not in consonance with the settled law. A general direction is issued to the Arbitrator not to take into consideration post notification sale deeds except that where the landowner(s) have been able to prove that there was a genuine agreement to sell and the rate specified in the sale deed, therefore, the rate could be given which is related to the sale deed but not on the basis of agreement to sell.

For the foregoing reasons, I am of the view that the assessment done by the Arbitrator @ ₹ 1,50,000/- per marla for commercial and residential @ ₹ 1,30,000/- is perfect, legal and justified, even the grant of solatium @ 30% is in consonance with the provisions of Section 23 (2) of the 1894 Act and as per the ratio decidendi culled out by this Court in “M/s Golden Iron and Steel Forging's case (supra).

However, the Award of the Arbitrator granting the benefits i.e. interest under Section 34 of the 1894 Act which is not valid and against the ratio decidendi aforementioned is not sustainable. In other words, the landowners are not entitled to the benefits of Section 34 of the 1894 Act i.e. interest @ 9%, 12% and 15%, but are entitled for the statutory benefits as

per the Sections 23(2) and 28 of the 1894 Act and in view of the judgment rendered by the Division Bench of this Court in “M/s Golden Iron and Steel Forging's case (supra).

Accordingly, the assessment of compensation with regard to the land aforementioned is modified, in essence, the compensation qua the land aforementioned is upheld.

With the aforesaid modification, the appeals stand disposed of.

The National Highway Authority of India is directed to pay the enhanced amount, if any, including the statutory benefits as awarded by this Court directly in the account of the landowner(s) in order to avoid the agony of seeking the execution of the Award.

10.08.2016
yogesh

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No