IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1312 of 2016
Date of decision : 04.05.2016

Union of India and another

...Appellants

Versus

Onkar Singh and others

...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. D.K. Prajapati, Advocate for
Mr. R.S. Madan, Advocate for the appellants.

****

AMIT RAWAL, J. (Oral)

The appellant-Union of India is aggrieved of the impugned order, whereby objection under Section 34 of the 1996 Act seeking setting aside of the award passed by the Arbitrator enhancing the amount of compensation in respect of the land acquired by the National Highway from Jalandhar to Pathankot, has been dismissed. In the instant case, land is situated near Village Pawan, Tehsil Dasuya.

Mr. D.K. Prajapati, learned counsel appearing on behalf of Mr. R.S. Madan, Advocate for the appellants submits that competent authority had assessed the compensation in respect of land acquired measuring 7 kanal 2 sarsai at the rate prevailing at the time of notification under Section

3-A of the Act, whereas Arbitrator has assessed at the rate of ₹1,50,000/- per marla and also awarded benefits under Section 34 of the Land Acquisition Act which is not permissible in law. The basis of the award is on account of compensation arrived at in respect of 629 cases of Dasuya. Post Sale deed notification of 2013 has been taken into consideration as notification aforementioned is 24.12.2004. Present market value of the structure has been taken and, therefore, amount of compensation is enhanced. This fact has been brought to the notice of the Objecting Court.

I have heard learned counsel for the appellants and appraised the paper book.

It would be apt to reproduce operative part of award, which reads thus:-

> *"h) In village Fattu Chak Distt. Kapurthala the land rate which was Rs.10.00 lac per acre as per Collector rate, was given Rs.50.00 lac per acre, as the people represented to the C.M. Pb. and rates were enhanced with the intervention of C.M. Pb. of Vill. Fattu Chak, Mand Dhilwan, Miani Bakapur, Dhiwani. The rate of village land to be acquired was firstly increased from Rs.10.00 lac to Rs.30.00 lac and then from Rs.30.00 lac to Rs.50.00 lac per acre, meaning thereby that the collector rate was much less than that of the market price. The NHAI was paid 5 times higher than the Collector rate in all these cases of village falling in Distt. Kapurthala.*

Sr. No.	***Name of Village***	***Collector Rate***	***Price paid by NHAI***
1	Fattu Chak	10.0 lac/acre	50.0 lac/acre
2	Mand Dhilwan	10.0 lac/acre	50.0 lac/acre
3	Miani Bakapur	10.0 lac/acre	50.0 lac/acre
4	Dhilwan	10.0 lac/acre	50.0 lac/acre

> *j) The site plan and photographs show the land was being*

used for commercial purpose.

k) Dasuya, Tanda and Mukerian are three towns in the same district Hoshiarpur at a distance of 20-25 KM from each other. They have same potential of land. Land rates in three towns in 2004-05 acquisition was paid @ Rs.2.50 lac per marla for commercial land in these three towns.

Village Pawan is within 5 KM from Dasuya Town. Hence, it have a high commercial potential. The land needs to be paid average of Rs.2.50 lac per marla (Urban) and Rs.1.50 lac per marla (Rural) i.e. Rs.2.0 lac per marla. However to be conservative the same land price @ Rs.1.50 lac per marlas as in other cases of 629 cases award dated 28/1/2009 awarded.

Issues No.2 – Reg. Structure on the acquired land:

As per Section 3G(7) of the National Highway Act, 1956 the compensation is worked out as under:-

The superstructure on the land is a proven fact:-

a) In the reply it is admitted by NHAI that there was a super structure on the acquired land and payment for cost of structure has been made.

b) Photographs show that there was residential houses on the acquired land.

c) Valuation reports placed on records proves structure on site.

d) Payment for structure Rs.3,00,756/- is admitted by NHAI.

e) All the above facts are supporting affidavit which are not rebutted by the respondent. The ld. Counsel for NHAI signed a declaration that he have nothing to say/submit in this case. Thereof the claim of the petitioner goes unrebutted.

Thus structure loss stands also proved. The cost of structure these days vary from Rs.2,000/- to Rs.3,000/- per

> *sq. ft. Ten years back the cost is presumed to be 50% of today's value. Thus Rs.1000/- per sq. ft. needs to be awarded."*

The findings rendered by the Arbitrator is on the basis of the compensation granted by the National Highway in respect of Dasuya, Tanda and Mukerian, as all three towns are in the same District Hoshiarpur being at the distance of 20-25 Kms from each other whereas Village Pawan is within 5 KM from Dasuya Town having high commercial potential, therefore, after noticing the aforementioned fact, assessed the compensation at the rate of ₹1.50 lac per marla. Even the structure loss has been assessed to the tune of ₹1000/- per square feet by applying 50% cut on today's value, therefore, enhancement of compensation is perfectly alright and accordingly, upheld. However, while granting solatium on interest, Arbitrator has granted benefit under Section 34 of 1894 Act which is not permissible. In view of the judgment rendered by the Division Bench of this Court in *M/s Golden Iron & Steel Forging Vs. Union of India and ors. 2011 (4) RCR (Civil) 375*, landowners are entitled to benefit of 23(2) and 28 of the Land Acquisition Act.

Accordingly, impugned award of the Arbitrator is modified to the extent of solatium only. Rest of the findings qua enhancement of the compensation/structure is upheld.

Appeal stands disposed of.

04.05.2016 **(AMIT RAWAL)**
pawan **JUDGE**