

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RFA No.1526 of 2012 and other connected matters
Date of decision: 09.02.2016

Dalip Singh and another

... Appellants

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.N. Pillania, Advocate
for the appellant(s)
(in RFA Nos.1526 to 1539, 1720, 1964 of 2012)

Mr. R.N. Lohan, Advocate
for the appellant(s) (in RFA No.1575 of 2012)

Mr. Bhupinder Singh Bairagi, Advocate
for the appellant(s) (in RFA No.6218 of 2012)

Mr. Arun Beniwal, DAG, Haryana and
Ms. Vibha Tewari, AAG, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

These 18 connected appeals bearing Regular First Appeal Nos.1526 to 1539, 1575, 1720, 1964, 6218 of 2012, all filed by the land owners which are directed against the impugned award dated 23.12.2011 passed by the learned reference Court, are being decided together, as all these appeals arise out of the same acquisition and raise identical questions of law and facts. However, for the facility of reference, facts are being culled out from RFA No.1526 of 2012 (Dalip Singh and another Vs. State of Haryana).

Facts are hardly in dispute. Land measuring 31 kanals, 15 marla was sought to be acquired by the State of Haryana for construction of Traffic Police Station, Jind. Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') came to be issued on 27.06.2007, which was followed by notification dated 07.04.2008 under Section 6 of the Act. Land Acquisition Collector, vide his award No.15 dated 18.11.2009 granted the compensation to the land owners at the rate of Rs.15,00,000/- per acre without adopting any belting system. Dissatisfied, land owners filed their objections under Section 18 of the Act and as a consequence thereof, land references were forwarded, which came to be dismissed by the learned reference Court vide its common award dated 23.12.2011. Feeling aggrieved, land owners have approached this Court by this set of 18 appeals seeking 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, the appeals filed by the land owners deserve to be partly accepted, suitably enhancing the amount of compensation for their acquired land. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the impugned award passed by the learned reference Court would show that despite noticing the undisputed location and potentiality of the acquired land, the learned reference Court has committed a serious error of law, while not placing reliance on the relevant sale instances produced by both the parties. It was in evidence that the acquired land was situated within the municipal area. However, this fact has been disputed by

learned counsel for the State contending that the acquired land might be touching the municipal area but it was situated beyond the municipal limits. Be that as it may, the acquired land was situated just on outskirts of Jind city. This was the reason that the land was acquired for the purpose of Traffic Police Station, Jind. So far as the location and potentiality of the acquired land is concerned, it had remained undisputed on record. The only reason seems to have weighed with the learned reference Court for ignoring the sale deed Ex.P1 was that it was post-acquisition by few months. The sale deed is dated 11.10.2007, whereas date of notification under Section 4 of the Act was 27.06.2007. However, this finding recorded by the learned reference Court is patently illegal and the same cannot be sustained for the reason that in the absence of any other reliable piece of evidence, this sale deed Ex.P1 ought to have been relied upon for assessing the market value of the acquired land.

The purpose to rely upon or ignore any particular sale deed is only to assess the market value of the acquired land at the time of its acquisition. It is also an established principle of law that each case is to be decided on the basis of its peculiar facts and circumstances. The object before the Court is to make every possible endeavour to find out the truth with a view to do complete and substantial justice between the parties. As held by the Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Regd.), Faridkot and others Vs. State of Punjab and others, 2012 (5) SCC 432**, the land owners are entitled to receive the best price for their acquired land.

The law laid down by the Hon'ble Supreme Court in para 17 and 18 of its judgment in **Udho Dass Vs. State of Haryana, 2010 (12) SCC 51**, which can be safely followed in the present case, reads 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 dribblets. 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?"

Thus, proceeding on a positive, pragmatic and constructive approach, this Court is of the considered view that sale deed Ex.P1 ought not

have been excluded from the zone of consideration by the learned reference Court. It is also pertinent to note here that a big plot measuring 49 kanal and 2½ marla was sold by way of this sale deed, whereas two sale instances produced on record by the State in the form of Ex.R1 and Ex.R2 were pertaining to very small pieces of land, whereby the land sold was in marlas. However, to be fair to all concerned, the best course of action in such a peculiar situation would be to take the average of both these sale deeds, one produced by the State and another produced by the land owners. Only one sale deed produced by the State is being taken into consideration because in both the sale deeds produced by the State, same market value was disclosed.

Taking the average of both these sale deeds Ex.P1 and Ex.R1, the market value comes to Rs.20,91,0670/- per acre. Further, granting marginal benefit of this time gap between the sale deed Ex.P1 and the date of acquisition, to the State Government, this Court is of the view that it would be just and reasonable to assess the market value of the acquired land at Rs.20,90,000/- per acre, therefore, the land owners in all these cases are held entitled to receive the compensation for the acquired land at the rate of Rs.20,90,000/- per acre, from the date of notification under Section 4 of the Act.

So far as the location of acquired land is concerned, it was situated very close to the already developed area. There is ample and cogent evidence to establish this fact on record and in fact, it has gone undisputed. The acquired land was not only touching the municipal area but there was no open area available between the fully developed market of Jind city and the acquired land which was situated on the Highway. The acquired land was situated at a prime location. Having said that, this Court feels no hesitation to conclude that the learned reference Court committed a serious error of law, while not taking into

consideration the abovesaid relevant piece of evidence and the impugned award cannot be sustained, for this reason also.

No other contrary 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 cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that the appeals filed by the land owners deserve to be partly accepted and the same are hereby allowed to the extent indicated above. The land owners are held entitled to receive the compensation for the acquired land at the rate of Rs.20,90,000/- per acre, from the date of notification under Section 4 of the Act. Besides this, the land owners shall also be entitled for all other statutory benefits available to them, under the relevant provisions of the Act.

Resultantly, with the observations made above, all these 18 appeals stand disposed of, in the abovesaid terms, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

09.02.2016
vishnu