IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 3280 of 2015
Date of decision : April 12, 2016

Sukhdev Singh and others

.... Appellants

Versus

Union of India and others

.... Respondents

FAO No. 3499 of 2015

Puran Singh

.... Appellants

Versus

Union of India and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Naresh Kaushal, Advocate
for the appellants in FAO No. 3280 of 2015.

Mr. Sanjeev Kumar Bawa, Advocate
for the appellants in FAO No. 3499 of 2015.

Mr. B. S. Ichhewal, Advocate
for respondent No.1.

Mr. R. S. Madan, Advocate
for respondent No.2.

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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 two appeals bearing FAO No. 3280 and 3499 of 2015 filed at the instance of the land owners who are aggrieved of the order dated 18.12.2014, whereby the objections filed on behalf of Union of India under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the 1996 Act') seeking setting aside of the award dated 7.6.2013 passed by the Arbitrator awarding the amount of compensation in respect of land acquired for widening of the National Highway from Jalandhar to Pathankot has been accepted and matter has been remitted back to the arbitrator.

Mr. Naresh Kaushal and Mr. Sanjeev Kumar Bawa, learned counsel appearing on behalf of the appellants submits that notification under Section 3 of the National High Way Act, 1956 for widening of the National Highway from Jalandhar to Pathankot was issued on 29.12.2014. The competent authority assessed the compensation @ of ₹12,500/- per marla for village Bidhipur Tehsil and District Gurdaspur and @ ₹27,000/- per marla for village Lafitpur Tehsil Mukerian District Hoshiarpur, which was not accepted by the land owners. Aggrieved against the aforementioned statutory provisions of the National Highway Act, 1956 the matter was sought to be referred to the arbitrator. The arbitrator on the basis of the evidence brought on record, much less taking into consideration the acquisition in respect of the adjoining area, assessed the compensation @ of ₹57,000/- per marla for village Bidhipur and ₹1,66,000/- per marla for residential, ₹1,45,000/-per marla for agricultural land and ₹1,88,000/- per marla for commercial area in village Lafitpur. The said order was assailed by Union of India. However, the objecting court without realizing the scope under

Section 34 of the 1996 Act is limited, set aside the award. It is in these circumstances, the land owners are left in lurch without having any remedy to claim the compensation in respect of acquisition of land, thus urge for setting aside of the order.

Mr. R. S. Madan, learned counsel appearing on behalf of respondent No.2 submits that the arbitrator has committed illegality and perversity, much less mis-conducted in not appreciating the settled proposition of law as the notification relied cannot be taken into consideration for arriving at a compensation. He further submits that there was no occasion for the re-assessment of the compensation. The compensation is based upon surmises and conjectures. The order under challenge is perfectly legal and justified as the objections were falling within the provisions of Section 34 of 1996 Act.

He further submits that the arbitrator should not have awarded solatium @ 30% as per Section 23(2) of the land Acquisition Act, 1894, for, it is a settled law that the land owners are not entitled to solatium in terms of Section 34 and 23 (1-A) of the Land Acquisition Act, 1894, thus, urges for dismissal of the appeals.

I have heard learned counsel for the appellant and appraised the paper book and of the view that the approach of the objecting court, in my view, is totally erroneous and fallacious as it has not applied its mind in setting aside the award and leaving the land owners remedy less. The impugned order is lacking reason is setting aside award, assessing reasonable compensation, whereas on the contrary the view expressed by the arbitrator, is most reasonable and based upon assessment of compensation in respect of land situated just 1-2 K.M away. For the sake of brevity the operative part of the award reads thus:-

> "1. In Mukerian land rate paid by NHAI is Rs.2.50 lacs per marla. Mukerian is at a distance of 2-3 Kms.from Latifpur.
>
> 2. In village Chak Allah Baksh the land price paid by NHAI was Rs.2.3 lacs per marla in 2004 acquisition. Latifpur is hardly 1 to 2 Kras, from Chak Allah Baksh.
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> 3. In 629 cases NHAI paid Rs. 1.5 lacs per Marla for commercial land in villages falling between Dasuya and Tanda towns and Rs. 62,500/- per Marla for agricultural lands.
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> 4. The affidavit of the petitioner is not rebutted by the respondents NHAI.
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> 5. Village Bhgngala which is 4 to 5 Kms. From Mukerian has been awarded Rs. 1.45 lac per Marla for agricultural land whereas village Latifpur is 2 to 3 Km.from Mukerian Town.
>
> 6. Sale deed of 11 Marla land @ Rs.7.70 lacs (No.484 dated 24.5.2006) shows land rate @ Rs. 70,000/- per Marla in 2006. If 10% cut is applied the land rate 3 years back comes out to be Rs. 56,000/- per Marla in 2004-05.
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> 7. 5 times of sale rate (collector rate) would be Rs. 2,80,000/- per Marla.
>
> Average of Mukerian Town rate, Chak Alla Baksh rate and sale deed No. 484 of 2006 will come out to be Rs. 2.53 lac per Marla.
>
> Though Rs. 2.30 lac per marla is awarded in villagge Chak Allah Baksh which is at a distance of 1 to 2 Kms. from village Latifpur; even

then the conservatively land price of Bhangala as determined in other cases is awarded to village Latifpur also. Land on National Highway is always considered highly commercial, therefore the average price of land for village Latifpur for different types of lands is awarded as under:-

1.Land Price for Agricultural land : Rs. 1.45 lac per Marla

2.Land, price for Residential land: Rs. 1.66 lac per Marla

(15% higher than Agricultural land)

3. Land price for Commercial land: Rs.1.88 lac per Marla

(30% higher than Agricultural land)

However, the aforementioned view of the arbitrator, is based upon the decision rendered in **<u>M/s Golden Iron and Steel Forging Vs. Union of India and others 2014 (4) RCR (Civil) 375</u>** in respect of land situated in adjoining villages but awarding of solatium as per provisions of 23 (1) (A) and Section 34 is not permissible.

In view of the ratio decidendi culled out by the Division Bench of this Court in **<u>M/s Golden Iron and Steel Forging's case (supra),</u>** the land owners are entitled to benefits as per provisions of Section 23 (2) and 28 of the Land Acquisition Act.

Accordingly, the impugned order is set aside. The award with regard to assessment of compensation in respect of agricultural, residential and commercial land is upheld, with a modification qua solatium and interest only in essence, the land owners shall be entitled to benefits as per the provisions of Section

23 (2) and 28 of Land Acquisition Act in view of the ratio decidendi culled out in **M/s Golden Iron and Steel Forging's case (supra).**

With the aforementioned modification, the appeals stand allowed.

(AMIT RAWAL)
JUDGE

April 12 , 2016
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