IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.2176 of 2012 and other connected matters
Date of decision: 23.04.2016

Rajinder

... Appellant

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Suresh Ahlawat, Advocate for
Mr. Vijay Guleria, Advocate
for the appellant(s) (in RFA Nos.2176 to 2178, 5715 to 5726 of 2012)

Mr. S.K. Bhardwaj, Advocate
for the appellant(s) (in RFA No.4310 of 2014)

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

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RAMESHWAR SINGH MALIK, J.

This batch of 16 appeals, bearing Regular First Appeal Nos.2176 to 2178, 5715 to 5726 of 2012 & 4310 of 2014, filed by the land owners, is being decided vide this common order, as all these appeals arise out of the same acquisition and raise identical questions of law and facts. However, with the consent of learned counsel for the parties and for the facility of reference, facts are being culled out from RFA No.2176 of 2012 (Rajinder Vs. State of Haryana).

Brief facts of case are that State of Haryana sought to acquire land measuring 119 kanals, 12 marla, out of the revenue estate of village Ghaso Kalan, Tehsil and District Jind, at public expense for public purpose namely; for construction of Barsola Feeder. Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') was issued on 21.11.1997, which came to be followed by notification dated 08.12.1997 under Section 6 of the Act. Land Acquisition Collector (for short 'LAC'), vide his award No.4 dated 23.07.1998 assessed the market value of the acquired land at the uniform rate of Rs.1,10,000/- per acre.

Dissatisfied with the market value assessed by LAC, the land owners filed their objections under Section 18 of the Act and as a consequence thereof, the learned reference Court, vide its award dated 24.01.2006, assessed the market value at the uniform rate of Rs.3,00,000/- per acre. However, the matter was remanded back by this Court vide order dated 19.01.2011 passed in RFA No.2564 of 2005 (Kailasho and others Vs. State of Haryana). In compliance of the abovesaid remand order passed by this Court, learned reference Court decided the land references afresh vide impugned award dated 22.12.2011, however, the acquired land was again assessed at the same market value of Rs.3,00,000/- per acre.

Feeling aggrieved against the abovesaid impugned award dated 22.12.2011 passed by the learned reference Court, land owners have approached this Court by way of instant set of appeals, seeking enhancement in the amount of compensation for their acquired land. That is how, all these appeals are being decided together.

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 allowed, suitably enhancing the amount of compensation for their acquired land, for the following more than one reasons.

A bare perusal of the impugned award would show that the learned reference Court misdirected itself, while granting the benefit of 12% annual increase but not on cumulative basis. This illegal approach adopted by the learned reference Court runs counter to the law laid down by the Hon'ble Supreme Court as well as this Court.

So far as the sale deed Ex.RW1/D dated 01.12.1997 produced by the State is concerned, that has been rightly excluded from consideration by the learned reference Court, it being an undervalued sale deed. Learned counsel for the State also seems to be well-justified not to raise this issue, it being a matter of record. So far as the sale deed Ex.P11 produced by the land owners is concerned, it has been duly proved on record, whereby land measuring 01 kanal was sold on 16.04.1990 for an amount of Rs.20,000/- at the rate of Rs.1,60,000/- per acre. Although learned reference Court has rightly placed reliance on this solitary sale instance, yet failed to grant the benefit of 12% annual increase on cumulative basis, as per the law laid down by the Hon'ble

Supreme Court. Thus, the impugned award is liable to be modified, for this reason also.

Similarly, the learned reference Court has failed to assign any reason much less cogent reasons, for awarding only 10% compensation to the land owners on account of severance charges which has been found wholly unjustified and the same also deserves to be suitably enhanced. Again, the learned reference Court has granted an amount of Rs.15,000/- for each of the tubewells installed by the land owners in the acquired land. The amount of Rs.15,000/- for a tubewell is on very lower side and the same also deserves to be suitably enhanced.

As per the site plans Ex.P8 and Ex.P9 available on the lower Court record, it is clearly made out that in the very nature of things, bifurcation of land had to take place. In fact, this material aspect of the matter has gone undisputed on record. Learned reference Court has arrived at a well-justified conclusion that the land owners have duly proved the sale deed Ex.P11 in their favour and they were entitled for the benefit of 12% annual increase on the market value disclosed in this sale deed Ex.P11, for the time gap between this sale deed and the date of acquisition. However, while granting the benefit of annual increase, the learned reference Court has failed to consider the law laid down by the Hon'ble Supreme Court as well as this Court, particularly on the aspect that the benefit of annual increase has to be granted on cumulative basis.

In view of what has been discussed hereinabove, proceeding on a holistic, pragmatic and constructive approach with a view to do complete and substantial justice between the parties, this Court is of the considered opinion that the land owners are entitled for the benefit of 12% annual increase on cumulative basis, on the market value disclosed in the sale deed Ex.P11, for the time gap of 07 years and 07 months, in view of the law laid down by the Hon'ble Supreme Court in **The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and another, 2008 (14) SCC 745** and **Ashok Kumar and others Vs. State of Haryana and others, 2015 (3) Scale 242**. Sale deed Ex.P11 is dated 16.04.1990, whereas the notification under Section 4 of the Act in the instant set of appeals came to be issued on 21.11.1997, thus, there was a time gap of 91 months. Granting the benefit of 12% annual increase, on cumulative basis, on the market value disclosed in the sale deed Ex.P11 i.e. Rs.1,60,000/- per acre, for the abovesaid time gap of 07 years and 07 months, amount comes to Rs.3,78,467/- per acre. Accordingly, the land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.3,78,467/- per acre, from the date of notification under Section 4 of the Act.

In view of the undisputed fact situation regarding bifurcation of the land of the claimants-land owners, learned counsel for the appellants has been found justified in contending that in view of the order dated 12.02.2016 passed by this Court in RFA No.1427 of 2014 (Rajit and another Vs. State of Haryana and others), the land owners in the present set of appeals, are entitled for 40% of the abovesaid market value on account of severance charges. It is so said because a bare perusal of the site plans would show that construction of Barsola Feeder would bifurcate the land in such a manner that the land owners will have to cover long distances to approach their unacquired land for the purpose of its cultivation. Neither it is feasible nor practicably possible for the Irrigation Department to provide culverts at short distances on this Barsola Feeder. Long distances that have to be covered by the land owners would cause not only inconvenience and wastage of time, but would also add transportation charges, substantially reducing the net agricultural income from the unacquired land and that too, for all times to come. Keeping in view all these abovesaid glaring facts, granting 40% of the abovesaid market value on account of severance charges would meet the ends of justice, because any lesser amount would be wholly unjustified.

Coming to the compensation for tubewells, this Court is of the considered view that not even a hand-pump could be installed with this meager amount of Rs.15,000/-, which has been awarded by the learned reference Court for each tubewell. Although there is no definite evidence available on record nor an exact figure can be arrived at for this purpose, yet proceeding on a practical and reasonable approach, this Court is of the considered view that every land owner, whosoever was having the tubewells in his acquired land, would be entitled for the compensation @ Rs.1,50,000/- for each tubewell. All that this Court need to say is that granting any lesser compensation for the tubewell would amount to a crucial joke to the land owners.

The Hon'ble Supreme Court in the case of **Mehrawal Khewaji Trust (Regd.), Faridkot and others Vs. State of Punjab and others, 2012 (5) SCC 432,** has held that the land owners are entitled to receive the best price for their acquired land. Again, in the case of **Udho Dass Vs. State of Haryana,**

2010 (12) SCC 51, the Hon'ble Supreme Court has held that the land owners hardly get duly compensated in the matters of acquisition of land. Similarly, in its very recent judgment dated 18.02.2016 passed in Civil Appeal Nos.2714-2721 of 2012 (**Ashok Kumar and another. etc. Vs. State of Haryana),** the Hon'ble Supreme Court has held that in the peculiar facts and circumstances of the case, and as per the evidence available on record, the Court would be well-justified in granting even the higher amount of compensation than what has been claimed by the land owners.

The relevant observations made by the Hon'ble Supreme Court in paras 5, 7 to 11 in **Ashok Kumar**'s case (supra), which can be gainfully followed in the present case, read as under:-

> *"Learned counsel appearing for the appellants however points out that in the matter of fixation of just and fair compensation, the Court is not bound by claim made by the owner. It is for the Court, in the facts and circumstances of each case, to award just and fair compensation.*
>
> *xxx xxx xxx*
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> *The pre-amended provision put a cap on the maximum; the compensation by court should not be beyond the amount claimed. The amendment in 1984, on the contrary, put a cap on the minimum; compensation cannot be less that what was awarded by the Land Acquisition Collector. The cap on maximum having been expressly omitted, and the cap that is put is only on minimum, it is clear that the amount of compensation that a court can award is*

no longer restricted to the amount claimed by the applicant. It is the duty of the Court to award just and fair compensation taking into consideration the true market value and other relevant factors, irrespective of the claim made by the owner.

*Although in the context of the Motor Vehicles Act, 1988, this Court in **Sanjay Batham v. Munna Lal Parihar** held that -*

> *"17. It is true that in the petition filed by him under Section 166 of the Act, the Appellant had claimed compensation of Rs. 4,20,000/- only, but as held in Nagappa v. Gurudayal Singh, (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."*

*In **Bhag Singh and Others v. Union Territory of Chandigarh**, this Court held that there may be situations where the amount higher than claimed may be awarded to the claimant. The Court observed –*

> *"3. … It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed*

as due at the foot of an account. Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where, as for instance, under' agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution, be deprived of land which is not being personally cultivated by him or which is in excess of the ceiling area with payment of little compensation or no compensation at all, but where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true *market value when the law, in so many terms, declares that he shall be paid such market value. …"*

In ***Krishi Utpadan Mandi Samiti v. Kanhaiya Lal****, this Court held that under the amended provisions of Section 25 of the Act, the Court can grant a higher compensation than claimed by the applicant in his pleadings -*

"17. Award being in this case between the dates 30th April, 1982 and 24th September, 1984 and as per the Union of India and Anr. v. Raghubir Singh (Dead) by LRs. etc. (Supra), the amended provisions would be applicable under which there is no restriction that award could only be upto the amount claimed by the claimant. Hence High Court order granting compensation more than what is claimed cannot be said to be illegal or contrary to the provisions of the Act. Hence the review itself, as is confined for the aforesaid reasons, has no merit."

Further, in ***Bhimasha v. Special Land Acquisition Officer and others****, a three-Judge bench reiterated the principle in* ***Bhag Singh*** *(supra) and rejected the contention that a higher compensation than claimed by the owner in his pleadings cannot be awarded by the Court. In that case, the High Court had concluded that although the market price of the land was Rs 66,550/- per acre, since the appellant had only claimed compensation at the rate of Rs. 58,500/- per acre in his pleadings,* *therefore he could only be awarded compensation limited to his claim. This Court, while reversing the decision of the High Court, awarded the petitioner the market value, i.e., Rs. 66,550/- per acre thereby holding that the award would not be limited to the claim made by him."*

So far as RFA No.4310 of 2014 (Bhag Chand and others Vs. State of Haryana) is concerned, it pertains to the adjoining village Dumerkhan Kalan. It is matter of record that land of this village was also acquired vide same notification and for the same purpose. Same amount of compensation was granted by the learned reference Court qua the land of this village.

It has also gone undisputed before this Court that same set of evidence, including the sale deed Ex.P11 was relied upon in this case as well. Granting the benefit of 12% annual increase, however, without cumulative basis, the learned reference Court assessed the market value at the same rate, for the land of village Dumerkhan Kalan. In view of the abovesaid undisputed fact situation, this Court has found no reason to assess the land of this village Dumerkhan Kalan at a different market value. Accordingly, the land of appellants-land owners in this case is also assessed at the uniform rate of Rs.3,78,467/- per acre. They are also held entitled for the severance charges @ 40% of the abovesaid market value. Similarly, the land owners in this appeal would be entitled for an amount of Rs.1,50,000/- for each tubewell in their acquired land.

Let it be specifically recorded here that neither any other better 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 their acquired land at the uniform rate of Rs.3,78,467/- per acre, from the date of notification under Section 4 of the Act. The land owners shall also be entitled for 40% of the abovesaid market value towards severance charges. They shall be entitled for an amount of Rs.1,50,000/- for each tubewell. Besides this, the land owners shall be entitled for all the statutory benefits available to them, under the relevant provisions of the Act.

Resultantly, with the observations made above, all these 16 appeals stand disposed of, in the abovesaid terms, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

23.04.2016
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