HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.266 of 2012 & connected matters
Date of decision:4.2.2016

Joginder Singh Tokash

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.S.K.Sharma, Advocate for
Mr.M.L.Sharma, Advocate for the appellants in
RFA Nos. 33 to 36 of 2012.
Mr.Harkesh Manuja, Advocate for the appellants in
RFA Nos. 266 and 4719 of 2012, 5844 of 2013, 6506 to 6511 of 2013, 6872 and 6873 of 2013, 206, 533, 534 of 2014 and 7287 to 7291 of 2014.
Mr.B.K.Bagri, Advocate for the appellants in
RFA Nos.7216 to 7220 of 2013, 366, 2283, 2307 and 4991 of 2014.
Mr.S.K.Nehra, Advocate for Mr.Sanjeev Kodan, Advocate for the appellants in RFA Nos.2877 to 2881 of 2014.
Mr.T.C.Dhanwal, Advocate for the appellants in
RFA Nos.4220 to 4227 of 2014.
Mr.Rajeev Anand, Advocate for the appellants in
RFA No.9809 of 2014.
Mr.Yogesh Chaudhary, Advocate for the appellants in
RFA Nos. 2059 and 2060 of 2014.
None for the appellants in RFA No.5215 of 2014.
Mr.Arun Beniwal, DAG, Haryana.
Mr.Shekhar Gupta, Advocate for Mr.Sanjiv Gupta, Advocate for cross-objector/respondents No. 1 and 2 in RFA No.2059 of 2014.

RAMESHWAR SINGH MALIK, J. (Oral)

This batch of 49 appeals, out of which 47 have been filed by the land owners bearing RFA Nos.33 to 36, 266 and 4719 of 2012, 5844, 6506 to 6511, 6872, 6873 and 7216 to 7220 of 2013, 206, 366, 533, 534, 2283, 2307, 2877 to 2881, 4220 to 4227, 4991, 5215, 7287 to 7291 and 9809 of 2014 and 2 appeals have been filed by the beneficiary department, i.e. Aravali Power Company Private Limited bearing RFA Nos.2059 and 2060 of 2014 and one Cross Objection No.15-CI of 2014 in RFA No.2059 of 2014 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.266 of 2012 (Joginder Singh Tokash v. State of Haryana and others).

Briefly put, facts necessary for disposal of these appeals are that the State of Haryana sought to acquire the land measuring 267 acres, 4 kanals and 4 marlas out of revenue estate of village Jharli; 575 acres, 7 kanals and 1 marla from village Khanpur Khurd; 492 acres, 7 kanals and 2 marlas from village Goriya and land measuring 712 acres, 6 kanals and 3 marlas from the revenue estate of village Mohanbari. The land from the revenue estates of abovesaid four villages of District Jhajjar was acquired at public expenses for public purpose; namely for setting up of Thermal Power Project by Aravali Power Company Private Limited.

Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 (`the Act' for short) was issued on dated 16.1.2007, which came to be followed by notification dated 12.4.2007 under Section 6 of the Act. Land acquisition collector announced four different awards, one each for all the above-said villages. Award No.46 dated 12.7.2007 was regarding village Khanpur Khurd; Award No. 45 dated 4.6.2007 was regarding village Goriya; Award No. 37 dated 8.5.2007 was regarding village Jharli and Award No. 36 dated 7.5.2007 was regarding village Mohanbari. Collector granted the compensation to the land owners of these four villages, at the uniform rate of Rs.16 lacs per acre, for their acquired land.

Dissatisfied, the land owners filed their objections under Section 18 of the Act and as a consequence thereof, separate set of land references from each village was forwarded to the learned reference court. The learned reference court decided 60 land references of village Goriya vide its common award dated 1.10.2011. 13 land references of village Jharli were decided vide its common award dated 24.9.2011. Likewise, 75 land references of village Khanpur Khurd were decided by the learned reference court vide its common award dated 11.11.2011. Similarly, 43 land references were decided by the learned reference court vide its common award dated 21.9.2011, pertaining to village Mohanbari. The learned reference court, after discussing the evidence brought on record by both the parties, did not enhance any compensation over and above granted by the land acquisition collector.

Feeling aggrieved against the above-said impugned awards passed by the learned reference court, the land owners as well as beneficiary department have approached this Court by way of instant set of appeals.

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 the cases in hand, the appeals filed by the beneficiary department, i.e. Aravali Power Company Private Limited have been found bereft of merit and are liable to be dismissed, whereas appeals and cross objection filed by the land owners deserve to be partly allowed, for the following more than one reasons.

Placing heavy reliance on the judgment of the Hon'ble Supreme Court in ***A.Natesam Pillai v. Spl Tahsildar, Land Acquisition, Tiruchy,***

2010(9) SCC 118, Mr.Harkesh Manuja, Advocate, learned counsel for the land owners submitted that the sale-deeds Ex.P4 dated 27.7.2010 at page 91 of the lower court record ('LCR' for short), Ex.P5 dated 27.7.2010 at page 103 of LCR and Ex.P6 dated 29.7.2010 at page 113 of LCR ought not have been outrightly ignored by the learned reference court, because these were worth taking into consideration for assessing the market value, despite being post acquisition sale instances, as sufficient evidence had been produced by the land owners to show that there was no increase in the price despite the acquisition in question. In support of his contentions that the above-said three post acquisition sale instances deserve to be taken into consideration for assessing the market value, he also places reliance on another sale-deed dated 16.5.2007 Ex.P4 available on record in one of the cases pertaining to village Jharli, to show that there was no increase in the price despite the acquisition in question, because the market price disclosed in all these above-said four sale deeds would be more or less the same. Since there are two sale deeds exhibited as Ex.P4, let these be called as Ex. P4(1) dated 23.11.2006 and Ex.P4(2) dated 16.5.2007 so as to avoid any confusion.

Market price disclosed in the above-said three sale-deeds, which were post acquisition, was as follows:-(i) Vide Ex.P4 (1) dated 27.7.2010 land measuring 43K-2M was sold for an amount of Rs.2,73,06,875/- @Rs.50,44,148.32 paise per acre. Exactly the same quantity of land was sold vide Ex.P5 dated 27.7.2010 for the same amount. However, vide Ex.P6 dated 29.7.2010 land measuring 3K-3M was sold for Rs.19,88,438/- @Rs.50,49,925/- per acre. There was hardly any increase in the price of the acquired land, during these three years, despite its acquisition, as depicted in the sale-deed Ex.P4 (2) dated 16.5.2007 which pertains to village Jharli itself. Vide this sale-deed Ex. P4(2) dated 16.5.2007, land measuring one marla was sold for Rs.1,07,500/- @Rs.1.72 crore per acre.

As rightly suggested by the learned counsel for the State as well as by the learned counsel for the private respondent-beneficiary company that keeping in view the small size of plot sold vide this sale-deed, a cut of 70% would be just and reasonable. After applying 70% cut on the above-said market value disclosed in this sale-deed Ex. P4 (2) dated 16.5.2007, whereby the land of village Jharli itself was sold, the amount comes to Rs.51,20,000/- per acre, which is almost at par with the market value disclosed in the above-said three post acquisition sale-deeds Ex.P4 (1) dated 23.11.2006, Ex.P5 dated 27.11.2006 and Ex.P6 dated 27.11.2006. Thus, it has been duly established on record that the law laid down by the Hon'ble Supreme Court in **A.Natesam Pillai's case (supra)** would be squarely applying to the facts of the present case.

The relevant observations made by the Hon'ble Supreme Court in paras 12, 13 and 16 of its judgment in **A.Natesam Pillai's** case (supra), which can be gainfully followed in the present case, read as under:-

> *"It is important to note that Ex. A1 and Ex. A4 are sale deeds executed subsequent to the date of notification under Section 4(1) and for this reason, the High Court held these to be irrelevant for the purpose of determining compensation. The first clause of Section 23 of the Act clearly provides that the amount of compensation awarded for the land acquired is required to be determined on the basis of market value of the land at the time of publication of the notification under Section 4 of the Act. Therefore, it is the duty of both of the Land Acquisition Officer as also of the Court to determine the actual*

compensation payable for the land acquired by referring to evidence regarding fair and just compensation near about the proximate date or on the date itself of the publication of the notification under Section 4. At times, in order to prove the actual, fair and just compensation for the land acquired, sale deeds of the adjacent land or near about adjacent land are produced to indicate the trend of the value of the land within the near vicinity of the acquired land. Such sale deeds are taken notice of generally when they are prior in point of time to the date of notification, and any sale deed which is post notification dated is generally ignored, unless evidence is led to show that there was no increase in price despite such acquisition.

This Court in ***Administrator General of W.B. v. Collector, Varanasi, reported at 1988(1) R.R.R. 480 : (1988) 2 SCC 150,*** *has held :*

> *"Such subsequent transactions which are not proximate in point of time to the acquisition can be taken into account for purposes of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further under certain circumstances where it is shown that the market was stable and there were no fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value. This Court in* ***State of U.P. v. Jitendra Kumar, reported at (1982) 2 SCC 382*** *observed: (SCC p. 383, para 3)*
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> *"It is true that the sale deed Ex. 21 upon which the High Court has relied is of a date three years later than the notification under Section 4 but no material was produced before the court to suggest that there was any fluctuation in the market rate at Meerut from 1948 onwards till 1951 and if so to what extent. In the absence*

of any material showing any fluctuation in the market rate the High Court thought it fit to rely upon Ex. 21 under which the Housing Society itself had purchased land in the neighbourhood of the land in dispute. On the whole we are not satisfied that any error was committed by the High Court in relying upon the sale deed Ex. 21." But this principle could be applied to only where there is evidence to the effect that there was no upward surge in the prices in the interregnum. The burden of establishing this would be squarely on the party relying on such subsequent transaction."

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In ***Rishi Pal Singh and Others v. Meerut Development Authority and Anr. reported in 2006(2) RCR(Civil) 558 : (2006) 3 SCC 205*** *this Court while dealing with the issue relating to a large tract of land held as follows :-*

"5.......With respect to the first reason, that is, exemplars of small plots have been taken into consideration by the Reference Court, in the first instance our attention was invited to some judgments of this Court to urge that there is no absolute bar to exemplars of small plots being considered provided adequate discount is given in this behalf. Thus there is no bar in law to exemplars of small plots being considered. In an appropriate case, specially when other relevant or material evidence is not available, such exemplars can be considered after making adequate discount. This is a case in which appropriate exemplars are not available. The Reference Court has made adequate discount for taking the exemplars of small plots into consideration..........."

It seems that learned reference court could not follow the law laid down by Hon'ble the Supreme Court in **A.Natesam Pillai's** case (supra) in the correct perspective. Further, the abovesaid sale deeds Ex.P4 to Ex.P6 pertaining to village Jharli itself were not at all taken into consideration, which again seems to be because of oversight or inadvertence.

Learned counsel for the State has been found well justified in contending that the sale-deeds Ex.R1 and R2 available at pages 227 and 233 of LCR deserve to be taken into consideration for the purpose of assessing the market value. In this regard, he places reliance on the judgment of the Hon'ble Supreme Court in **Lal Chand v. Union of India and another, 2009(1) SCC 769.**

The relevant observations made by the Hon'ble Supreme Court in para 23 of its judgment in **Lal Chand's** case (supra), which aptly apply to the facts of the case, read as under:-

> *"The High Court also rejected Ex.R3 to R7 relied upon by the respondents, solely on the ground that the prices therein were lower than the market value offered by Land Acquisition Collector and therefore, they had to be excluded under section 25 of the LA Act. Section 25 provides that the amount of compensation awarded by a reference court shall not be less than the amount awarded by the Collector under section 11. We fail to see how the said section has any relevance in regard to determination of market value as contrasted from award of compensation. If the sale deeds relied on by the respondents showed a particular market value, they cannot be ignored merely because the Collector had awarded compensation at a higher rate in regard to the acquired land. All that section 25 requires is that courts should not award an amount which is less than what is awarded by the Land Acquisition Collector, even if the evidence may show a lesser market value. So, the bar under section 25 of the LA Act is not in regard to determination of a market value, which is less than what was awarded by the LAO. The bar is only upon the reference court (or any higher court) reducing the compensation awarded by*

> *the Land Acquisition Collector. The fact that the Land Acquisition Collector has awarded compensation at a particular rate does not mean that the sale deeds which are otherwise reliable, cannot be relied upon to find out what was the real market value..."*

Respectfully following the law laid down by the Hon'ble Supreme Court in its above-said two judgments, it would be just and expedient to take average of the market value, disclosed in the above-said sale-deeds relied upon by the learned counsel for the land owners as well as in the sale-deeds relied upon by the learned counsel for the State. The average market value of the above-said sale-deeds relied upon by the learned counsel for both the parties would come to Rs.50,44,148/-. Since there was a time gap of about 3 ½ years, the above-said market value is to be reduced applying 12% per annum decrease on the basis of cumulative effect and thereafter, the amount comes to Rs.32,31,200/- per acre. The method of above-said calculation as well as the amount arrived at has not been disputed by the learned counsel for both the parties.

Should there be any ambiguity, it is also clarified that the above-said figure has been arrived at after taking the average of the sale-deeds relied upon by both the parties and thereafter reduction at 12% per annum has been made on the sale-deeds of year 2010. As noticed hereinabove, 70% cut was applied on the market value disclosed in the sale-deed Ex.P4(2) dated 16.5.2007 pertaining to smaller piece of land, relied upon by the learned counsel for the land-owners. Thus, in view of the peculiar fact situation obtaining in these cases, it is just and reasonable to grant the amount of compensation @Rs.29,00,400/- to the land owners for their acquired land. Ordered accordingly.

In view of what has been discussed hereinabove and taking a holistic view of the matter to do complete and substantial justice between the parties, in consonance with the law laid down by the Hon'ble Supreme Court in the cases referred to hereinabove, this Court is of the considered view that the land owners in all these cases would be entitled to receive the compensation for their acquired land @ Rs.29,00,400/- per acre from the date of notification under Section 4 of the Act.

No contrary evidence or judicial precedent was 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 two appeals filed by the beneficiary department, i.e. Aravali Power Company Private Limited have been found wholly misconceived, bereft of merit and without any substance, thus, these these must fail and the same are hereby dismissed. The appeals and cross objection filed by the land owners deserve to be partly accepted and the same are hereby allowed to the extent indicated above. The land owners in these appeals are held entitled to receive the compensation for their acquired land @ Rs.29,00,400/- per acre from the date of notification under Section 4 of the Act. Besides this, the land owners shall also be entitled to all the statutory benefits available to them, under the relevant provisions of the Act.

Resultantly, with the observations made above, all the afore-said appeals stand disposed of, in the afore-said terms, however, with no order as to costs.

4.2.2016 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**