IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.4223 of 2012 and other connected matters
Date of decision: 12.05.2016

Executive Engineer/Construction, Northern Railway, Rohtak

... Appellant

Vs.

Abhey Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Nitin Kumar, Advocate
for the Northern Railway, Rohtak.

Mr. B.K. Bagri, Advocate
for the appellant(s) (in RFA Nos.2107 to 2110, 3084 of 2012) and for the respondent(s) (in RFA Nos.4226, 4232, 4243, 4248, 4279 of 2012)

Mr. S.S. Khurana, Advocate
for the respondent(s) (in RFA Nos. 4234, 4242, 4252, 4273, 4274 of 2012)

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. (ORAL)

Instant batch of 63 appeals, out of which 58 appeals bearing Regular First Appeal Nos.4223 to 4279 of 2012 and 479 of 2013 filed by the beneficiary department i.e. Northern Railway, Rohtak and remaining 05 appeals bearing Regular First Appeal Nos.2107 to 2110, 3084 of 2012, filed by the land owners and cross-objection No.35-CI 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.4223 of 2012 (Executive Engineer/Construction, Northern Railway, Rohtak Vs. Abhey Singh and others).

Facts are not in dispute. State of Haryana sought to acquire the land measuring 41.238 acres, out of revenue estates of three villages i.e. Gurawara, Gadhla and Prithvipura, District Rewari, at public expenses for public purpose namely; for construction of Rohtak-Jhajjar-Rewari New Railway Line. Accordingly, notification dated 16.03.2007 was issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act'), which came to be followed by notification dated 11.04.2007 under Section 6 of the Act. Land Acquisition Collector ('LAC' for short), vide his award No.5 dated 11.06.2007, assessed the market value at the uniform rate of Rs.16,00,000/- per acre, without resorting to the belting system.

Dissatisfied with the assessment of market value at the hands of LAC, land owners filed their objections under Section 18 of the Act and as a consequence thereof, land references were forwarded to the learned reference Court for its decision. The learned reference Court, vide its award dated 28.02.2012, assessed the market value at the uniform rate of Rs.20,00,000/- per acre.

Both the parties felt aggrieved against the abovesaid impugned award dated 28.02.2012 passed by the learned reference Court. Beneficiary department i.e. Northern Railway, Rohtak is seeking reduction in the amount of compensation awarded to the land owners, whereas the land owners are seeking further enhancement in the amount of compensation for their acquired land. The land owners are also seeking compensation on account of severance charges. 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 the case, the appeals filed by the Railways Department are without any merit and the same are liable to be dismissed, whereas the appeals filed by the land owners deserve to be partly allowed, 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 and particularly para 19, wherein numerous sale deeds produced by the land owners are referred, makes it clear that the learned reference Court has committed a serious error of law, while not considering the best sale deed available on record in the form of Ex.P14. Land measuring 10 kanal, 11 marla was sold for Rs.40,00,000/- at the rate of Rs.30,47,619/- per acre on 15.05.2007 vide sale deed No.1016 Ex.P14, out of the revenue estate of village Gurawara itself. So far as other sale deeds out of the revenue estate of village Gurawara were concerned, those were pertaining to very small pieces of land. This was the only sale deed, whereby largest piece of land was sold just after two months of the date of notification under Section 4 of the Act. However, the learned reference Court has not at all considered this relevant piece of evidence and that too, for no good reasons.

Before assessing the market value of the acquired land, evidence produced by the beneficiary department, which is referred in para 21 of the impugned award, also deserves to be referred and considered. Learned counsel for the beneficiary department i.e. Northern Railway, Rohtak has placed reliance on Ex.R9, Ex.R10, Ex.R16, Ex.R23 and Ex.R27. The market value disclosed in all these five sale deeds was between Rs.5,50,000/- per acre to Rs.6,64,000/- per acre, whereas LAC has assessed the market value at the rate of Rs.16,00,000/- per acre. Thus, all these five sale deeds relied upon by learned counsel for the Railways Department were not only hit by provisions of Section 25 of the Act but were also liable to be excluded from consideration on their individual merits.

It is so said because all these sale deeds were either undervalued transactions or were the result of distress sales. In either of these two situations, these sale deeds have to be kept out of consideration, in view of the law laid down by the Hon'ble Supreme Court in **Lal Chand Vs. Union of India and another, 2009 (15) SCC 769**.

The relevant observations made by the Hon'ble Supreme Court in para 32 of its judgment in **Lal Chand**'s case (supra), read as under: -

> *"The existence of several other sale deeds showing a much higher value and the fact that the Land Acquisition Collector chose to award a higher rate in regard to some of the acquired lands, leads to an inevitable inference that Ex.R3 to R7 were either undervalued or were distress sales. Whatever be the reason, they are liable to be excluded from consideration."*

In view of the law laid down 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. Principle of taking average of the market value of more than one sale deeds was not approved by the Hon'ble Supreme Court in **Mehrawal Khewaji Trust**'s case (supra). As noticed hereinabove, other sale deeds in the form of Ex.P3 to Ex.P24 were either pertaining to different villages or were pertaining to very small pieces of land, out of the revenue estate of village Gurawara. So far as the time gap between this sale deed Ex.P14 dated 15.05.2007 and the date of notification dated 16.03.2007 under Section 4 of the Act is concerned, it was not a substantial time gap, being just of two months.

In the given fact situation, the post-acquisition sale instance can also be taken into consideration, particularly when no other evidence is available. In this regard, the following judgments of the Hon'ble Supreme Court, this Court as well as High Court of Himachal Pradesh, can be safely relied upon: -

1. ***State of U.P. Vs. Major Jitendra Kumar and others, 1982 (2) SCC 382.***
2. ***Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona, 1988 (3) SCC 751.***
3. ***The State of Punjab and others Vs. Gurbax Singh, 2009 (5) RCR (Civil) 432.***
4. ***Chamera Hydro Electric Project Vs. Ganga Ram and others, 2007 (3) SimLC 243.***

In the absence of any other better evidence on record, this sale deed Ex.P14 can be safely made the basis for assessing the market value of the acquired land. It is so said because Court has to take into consideration all the relevant positive as well as negative determinative factors, for assessing the market value with a view to grant just and reasonable compensation to the land owners, as held by the Hon'ble Supreme Court in **Viluben Jhalejar Contractor (Dead) by LRs Vs. State of Gujarat, 2005 (4) SCC 789.**

Further, the law laid down by the Hon'ble Supreme Court in paras 17 and 18 of its judgment in **Udho Dass Vs. State of Haryana, 2010 (12) SCC 51,** aptly applies to the facts of the present case and the observations read 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 driblets. 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?"*

Similarly, in its recent judgment dated 18.02.2016 rendered in the case of **Ashok Kumar & another etc. Vs. State of Haryana** in **Civil Appeal Nos. 2714-2721 of 2012**, the Hon'ble Supreme Court, while referring to the scope of Section 25 of the Act and duty cast on the Courts to grant just compensation, irrespective of claim made by the land owners on lower side, held 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*
>
> *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."*

Reverting to the peculiar fact situation obtaining in the instant set of appeals and respectfully following the law laid down by the Hon'ble Supreme Court in the cases referred to 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 view that sale deed No.1016 dated 15.05.2007 Ex.P14, whereby land measuring 10 kanal, 11 marla was sold, out of revenue estate of village Gurawara itself, would be the best piece of evidence and can be safely made the basis for assessing the market value of the acquired land. The market value disclosed in this sale deed was Rs.30,47,619/- per acre. Accordingly, the land owners-appellants are held entitled to receive the compensation for their acquired land at the rate of Rs.30,47,619/- per acre, from the date of notification under Section 4 of the Act.

The next equally important question of law that falls for consideration of this Court is whether the land owners are entitled to receive the compensation on account of severance charges and if so, to what extent. It is a matter of record that the land was acquired for setting up the railway line. Neither it shall be feasible nor practical for the Railways Department to provide underpasses or over-bridges at short distances on the railway line, so as to enable the land owners to approach their unacquired land for the purpose of its cultivation. Resultantly, the land owners will have to cover long distances to reach their unacquired land with a view to cultivate the same. Covering long distances by the land owners, will add to the expenses incurred by the land owners, including transportation charges, which will substantially reduce the net agricultural income and that too, for all times to come.

Keeping in view the totality of facts and circumstances of the case noticed hereinabove, this Court is of the considered opinion that the land owners are entitled to receive the compensation on account of severance charges, to the extent of 50% of the abovesaid market value. The view taken by this Court also finds support from the following judgments of this Court: -

1. ***Smt. Bindu Garg Vs. State of Haryana, 1999 (2) RCR (Civil) 261***
2. ***State of Haryana Vs. Kartar Singh, 2010 (2) RCR (Civil) 443***
3. ***State of Punjab and another Vs. Ishar Singh, 2010 (5) RCR (Civil) 239.***
4. ***Chanan Singh Vs. State of Punjab, 2010 (5) RCR (Civil) 283.***

The relevant observations made by this Court in paras 14 and 15 in **Chanan Singh**'s case (supra), read as under: -

> *"Reverting back to the second argument of the learned counsel for the appellant that severance charges allowed by the learned Reference Court @ 25% of the market value of the un-acquired land should have been 50%. I am in full agreement with the argument raised by the learned counsel for the appellants that in view of the decision of this Court rendered in the cases of* ***State of Haryana v. Rajinder Kumar, 2000(1) All India Land Acquisition***

& Compensation Cases 360*, *Punjab State v. Gurbachan Singh and others, 1988 PLJ 490*, *Smt. Narinder Kaur v. The State of Punjab and others, 1980 PLR 473*, *State of Punjab through Collector, Hoshiarpur and another v. Gopal Singh, (2002-2) PLR 843 *and* ***State of Punjab through Collector, Hoshiarpur v. Radha Krishan, 1989 All India Land Acquisition and compensation Cases 667*, *Tehal Singh and others v. The State of Punjab and another, 1987 All India Land Acquisition & Compensation Cases 491*** *and* ***Bishan Dass v. State of Punjab, 1997(2) PLJ 416.*** *(supra), severance charges has to be awarded @ 50% of the market value of the unacquired land instead of 25%. In view of above, the finding of the learned Reference Court on issue No. 2 is modified and the appellants are held entitled to the severance charges @ 50% instead of 25% as given by the learned Reference Court.*

With this modification in the judgment of the learned Reference Court, the appeals filed by the landowners/claimants are allowed. They are held entitled to compensation @ Rs. 64,000/- per acres from the date of issuance of notification under Section 4 of the Act, besides all the statutory benefits in terms of the provisions of the Amended Act. They shall also be entitled to severance charges @ 50% instead of 25% of the land which has been severed to due to acquisition. The appellants are also held entitled to the costs of the appeals.

Order accordingly."

Let it be specifically recorded here that no better evidence or any 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 beneficiary department i.e. Northern Railway, Rohtak are wholly misconceived, bereft of merit and without any substance, thus, these must fail and the same are hereby dismissed.

The appeals filed by the land owners deserve to be partly accepted and the same are allowed to the extent indicated above. The land owners are held entitled to receive the compensation for their acquired land at the rate of Rs.30,47,619/- per acre, from the date of notification under Section 4 of the Act. The land owners are also held entitled to receive 50% of the abovesaid market value, on account of severance charges, from the date of acquisition of their land. 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 the abovesaid 63 appeals and cross-objection stand disposed of, in the abovesaid terms, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

12.05.2016
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