IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.7612 of 2011 and other connected matters
Date of decision: 23.04.2016

Tarlok Singh (deceased) through LRs

... Appellants

Vs.

Collector Land Acquisition and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Naresh Prabhakar, Advocate
for the appellant(s) (in RFA Nos.7612 to 7614, 7991 of 2011, 45 & 47 of 2012).

Mr. J.S. Toor, Advocate
for the appellant(s) (in RFA Nos.7629 to 7634 of 2011)

Mr. Yatinder Sharma, Addl. AG, Punjab.

Mr. Puneet Jindal, Senior Advocate with
Mr. Varun Goyal, Advocate
for Union of India.

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 bunch of 12 appeals, bearing Regular First Appeal Nos.7612 to 7614, 7629 to 7634, 7991 of 2011, 45 and 47 of 2012, filed by the land owners, is being decided vide this common order, as all these appeals are arising out of the same acquisition and raise identical questions of law and

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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.7612 of 2011 (Tarlok Singh (deceased) through LRs Vs. Collector Land Acquisition and others).

Brief facts of the case are that State of Punjab sought to acquire land measuring 81.39 acres, out of the revenue estate of village Hussainpur, Tehsil and District Kapurthala, at public expenses for public purpose namely; for expansion of Rail Coach Factory Complex, Kapurthala. Accordingly, notification dated 11.01.1989 was issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act'), which came to be followed by notification dated 02.06.1989 under Section 6 of the Act. Land Acquisition Collector (for short 'LAC'), vide his award No.1 dated 18.12.1990 assessed the market value of the acquired land @ Rs.91,348.90 per acre for Chahi land, Rs.42,384/- per acre for Barani land and Rs.42,884/- per acre for Gair Mumkin land.

Dissatisfied with the market value assessed by LAC, the land owners filed their objections under Section 18 of the Act. The learned reference Court, vide award dated 11.03.1998, decided the land references assessing the market value of the acquired at the uniform rate of Rs.2,25,000/- per acre. Both the parties came in appeals before this Court and after hearing the learned counsel for the parties, this Court vide its order dated 26.07.2010 passed in RFA No.2253 of 1998 (Punjab State and others Vs. Nirmal Singh and another) and other connected matters, remanded the case back to the learned reference Court for fresh decision, after reconsideration of the entire evidence available on record.

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In compliance of the abovesaid remand order dated 26.07.2010 passed by this Court, learned reference Court decided the land references afresh vide its impugned award dated 30.07.2011 and assessed the market value of the acquired land @ Rs.1,20,000/- per acre. Feeling aggrieved against the impugned award dated 30.07.2011 passed by the learned reference Court, only the land owners have approached this Court by way of instant set of appeals. The land owners are 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, 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.

So far as two sale instances, in the form of Ex.R4 and Ex.R5, produced on record by the beneficiary department are concerned, the same have been found the result of distress sales or undervalued transactions, disclosing even the lesser market price of the acquired land than what was assessed by the LAC. These sale deeds were not only hit by Section 25 of the Act, but even on their invisible merits, the same are liable to be excluded from consideration for the purpose of assessing the market value of the acquired land. It is so said because the Hon'ble Supreme Court in its judgment in **Lal Chand Vs. Union of India and another, 2009 (15) SCC 769,** has held that if the sale instances relied upon by the State or beneficiary department are found as undervalued or

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distress sales, the same have to be ignored in either of these two situations.

The relevant observations made by the Hon'ble Supreme Court in para 32 of its judgment in **Lal Chand**'s case (supra), which can be gainfully followed in the present case, 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."*

A bare perusal of the relevant record, coupled with the statements made by the witnesses particularly PW4, the acquired land has been found to be Chahi in nature. Sale deeds Ex.R4 and Ex.R5 disclosed the price of the land @ Rs.56,000/- per acre and Rs.80,000/- per acre respectively, whereas Chahi land was assessed by LAC himself @ Rs.91,348.90 per acre. Relevant revenue document i.e. Jamabandi (record of rights) also shows that the acquired land was recorded as Chahi land. Thus, in view of the law laid down by the Hon'ble Supreme Court in **Lal Chand**'s case (supra), the abovesaid two sale instances relied upon by learned counsel for the beneficiary department, are being excluded from consideration not simply because they are hit by Section 25 of the Act but also on their invisible merits, as noticed hereinabove.

Coming to the documentary as well as oral evidence produced by the land owners, sale instances which were post-acquisition have rightly been ignored by the learned reference Court and this Court has also not found any reason to disturb the said finding recorded by the learned reference Court.

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However, so far as the other sale instances are concerned, the learned reference Court misdirected itself and did not record any cogent reason for altogether ignoring all the sale exemplars available on the lower Court record, which were supporting the claim of the land owners. These are the sale deeds Ex.A22 to Ex.A28. Although Ex.A22 was a relevant sale deed disclosing highest market value yet it was pertaining to a very small piece of land measuring 07 marla only, out of the revenue estate of village Saido Bhulana, which was an adjoining revenue estate.

Further, since this piece of land was abutting the main road, this sale instance has not been found pertaining to a comparable sale with the acquired land, therefore, cannot be made the basis for assessing the market value of the acquired land. Similarly, Ex.A28 was a sale deed pertaining to 10 marlas of land, out of the revenue estate of village Bahuie, but this village has not been shown on the site plan Ex.PW5/A proved on record by PW6 Balwant Singh, Patwari Halqa Bhulana and relied upon by both the parties. Further, some construction had already been raised on this plot of 10 marla, which was sold by way of Ex.A28. Because of both these two reasons, it would not be safe to place reliance on this sale deed for assessing the market value of the acquired land.

After ignoring the abovesaid two sale instances in the form of Ex.A22 and Ex.A28, for the reasons recorded hereinabove, remaining sale deeds which are left for consideration are Ex.A23 to Ex.A27. 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,** wherein it was held that the land owners are entitled to receive the best

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price for their acquired land and also in view of the peculiar facts and circumstances of the cases in hand, this Court is of the considered opinion that Ex.A23 is the sale deed which can be safely made the basis for assessing the market value of the acquired land.

It is so said because out of these sale deeds Ex.A23 to Ex.A27, this sale deed Ex.A23 discloses the highest market value @ Rs.3,20,000/- per acre. Land measuring 04 kanal, 02 marla out of the revenue estate of adjoining village Ladhewal was sold by way of this sale on 11.02.1987. It is pertinent to note here that no pre-acquisition sale deed out of the revenue estate of village Hussainpur was produced by the land owners. These sale deeds Ex.A23 to Ex.A27 were pertaining to villages Ladhewal, Bahuie, Jalal Bhulana and Saido Bhulana. Since all these revenues estates were adjoining to the revenue estate of village Hussainpur, sale deed Ex.A23 has been found to be the best possible sale deed, which can be made the basis for assessing the market value of the acquired land. Taking the average price disclosed by way of different sale deeds has not been approved by the Hon'ble Supreme Court in **Mehrawal Khewaji Trust**'s case (supra).

The relevant observations made by the Hon'ble Supreme Court in para 13 to 15 of its judgment in **Mehrawal Khewaji Trust**'s case (supra), which aptly apply to the facts of the present case, read as under: -

> *"In **State of Punjab and another Vs. Hansraj (dead) by LRs Sohan Singh and others, 1994 (2) R.R.R. 454: (1994) 5 SCC 734,** this Court has held that method of working out the 'average price' paid under different sale transactions is not proper and that one should not have, ordinarily recourse to such method. This Court*

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further held that the bona fide sale transactions proximate to the point of acquisition of the lands situated in the neighbourhood of the acquired lands are the real basis to determine the market value.

This Court in ***Anjali Molu Dessai Vs. State of Goa and another, 2011 (2) R.A.J. 492: R.C.R. (Civil) 696: (2010) 13 SCC 710,*** *after relying upon the earlier decisions of this Court in M. Vijayalakshmamma Rao Bahadur (supra) and Hansraj (supra) held in para 20 as under:*

> *"20. The legal position is that even where there are several exemplers with reference to similar lands, usually the highest of the exemplers, which is a bona fide transaction, will be considered."*

Again, in para 23, it was held that "the averaging of the prices under the two sale deeds was not justified."

It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if its satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of

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> *the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation."*

Learned senior Counsel for the beneficiary department, while opposing considering of the abovesaid sale deed Ex.A23, submits that it was not relevant because same was pertaining to a different revenue estate. His second argument in this regard was that the land sold by way of this sale deed Ex.A23 was situated at a distance of more than three kilometers and even the post-acquisition sale deeds pertaining to village Hussainpur itself did not disclose this much market value, which has been disclosed in this sale deed Ex.A23. Learned senior Counsel for the beneficiary department would next contend that this Court, on an earlier occasion, on the basis of same very set of evidence, set aside the earlier award dated 11.03.1998, assessing the market value of the acquired land @ Rs.2,25,000/- per acre. However, all these arguments raised by learned Senior Counsel for the beneficiary department are to be noted to be rejected, because despite his best efforts, he could not substantiate any of his abovesaid arguments.

Site plan Ex.PW5/A is not in dispute and the same is available on lower Court record. RW1 Basant Singh, Kanoongo has deposed before the Court in unambiguous terms that after earlier acquisition of the adjoining land for construction of Rail Coach Factory, rates of the acquired land started rising, as people would start their business near the Rail Coach Factory. A bare perusal of the site plan Ex.PW5/A would show that the acquired land was touching

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already existing Rail Coach Factory. This was the reason that the acquired land sought to be used for expansion of Rail Coach Factory Complex. Grain Market has been shown at a distance of 280 karams from the acquired land as per the this site plan Ex.PW5/A. Similarly, Railway Station was at a distance of only 190 karams from the acquired land. Only railway line was in between the acquired land and highway going from Kapurthala to Sultanpur Lodhi.

In view of what has been discussed hereinabove, it can be safely concluded that since the acquired land was situated at a prime location, it was having immense potentiality. It could have been easily put for residential as well as commercial purpose. So far as the abovesaid sale deed Ex.A23 is concerned, the land sold thereunder was situated at a distance of 2550 karams from the acquired land, which would be more than three kilometers. However, in the absence of any other relevant sale instance, this sale deed has been found relevant for the purpose of assessing the market value of the acquired land. So far as the distance is concerned, the law laid down by the Hon'ble Supreme Court in **Ashrafi and others Vs. State of Haryana and others, 2013 (5) SCC 527, Kashmir Singh Vs. State of Haryana and others, 2014(2) SCC 165** and **Thakarsibhai Devjibhai and others Vs. Executive Engineer, Gujarat and another, 2001 (9) SCC 584** supports the claim of the land owners. Further, a bare perusal of the site plan Ex.PW5/A would make it crystal clear that the land sold vide sale deed Ex.A23, out of the revenue estate of village Ladhewal, was situated just on the other side of existing Rail Coach Factory and because of this reason, the acquired land cannot be said to be situated at a far away place from the land sold by way of Ex.A23.

It is equally pertinent to note here that this important piece of

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evidence in the form of Ex.PW5/A-site plan, came to be produced on record on 12.01.2011, after and in compliance of the abovesaid remand order dated 26.07.2010 passed by this Court. Although the abovesaid sale deeds were available on record but in the absence of site plan, it was not found feasible to hold by this Court, while passing the remand order dated 26.07.2010, that these were the comparable sales, which could have been made the basis for assessing the market value of the acquired land. In compliance of the abovesaid remand order passed by this Court, the land owners have proved on record cogent and reliable evidence in the form of site plan Ex.PW5/A, which has gone undisputed on record.

Further, while passing the abovesaid order dated 26.07.2010, this Court made the following observations: -

> *"On the other hand it cannot be disputed that the land is always dear to the farmers. It is their bread and butter. They put hard labour thereon to earn their livelihood. It is with heavy heart that they have to part with the same only on account of the fact that it was a compulsory acquisition. Otherwise one may or may not agree to sell the land. Once some one is being asked to part with his source of livelihood, he deserves to be compensated adequately. In my opinion, merely because of lack on the part of the land owners or their counsel in the Court below in not leading trustworthy and clinching evidence to prove the value of the land on the date of acquisition they should not be made to suffer."*

Respectfully following the law laid down by the Hon'ble Supreme Court in the cases referred to hereinabove and also in **Viluben Jhalejar**

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Contractor (D) By LRs. Vs. State of Gujarat, 2005 (2) RCR (Civil) 492, 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 all the relevant determinative factors warrant modification in the impugned award passed by the learned reference Court, suitably enhancing the amount of compensation for the acquired land. This is the reason that Ex.A23 dated 11.02.1987 has been found to be best piece of evidence, which can be safely made the basis for assessing the market value of the acquired land.

The market value disclosed in the sale deed Ex.A23 was Rs.3,20,000/- per acre. Since the notification under Section 4 of the Act was issued on 11.01.1989 in the present set of cases, there was a time gap of two years between the abovesaid sale deed Ex.A23 and the instant acquisition. 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,** the land owners would be entitled for 12% annual increase on cumulative basis on the abovesaid market value, for this time gap of two years. Granting the benefit of 12% annual increase for a period of two years, on cumulative basis, on the abovesaid market value of Rs.3,20,000/- per acre, the amount comes to Rs.4,01,408/- per acre. Accordingly, the land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.4,01,408/- per acre, from the date of notification under Section 4 of the Act.

Since most of the acquired land was found as Chahi land, the

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learned reference Court was well-justified in ignoring the belting system adopted by LAC and the market value of the acquired land was assessed at the uniform rate. This Court has found no reason to disturb the said finding recorded by the learned reference Court, because the belting system was not at all warranted in the present case. All that is required to be said by this Court, is that since every inch of the acquired land was going to be put to same use, exact location of any piece out of the acquired land, would be hardly of any consequence.

Another important aspect of the matter is that LAC awarded an amount of Rs.2,500/- under Section 23 (1) fourthly and fifthly of the Act. The arguments raised by learned counsel for the appellants were found full of substance in this regard. It was submitted on behalf of the land owners that the total holding of some of the claimants-land owners was acquired, completely uprooting them from the said place, forcing them to change their place of residence as well as place of business, because the acquired land was their only source of livelihood. When confronted with this undisputed fact situation, learned senior Counsel for the beneficiary department had no answer, except to say that there was no clinching evidence on record in support of the arguments raised on behalf of the land owners. In fact, it would be a matter of record and if the total holding of any particular land owner has been acquired, he would not be in a position to manipulate anything in this regard. So far as the correctness of the statement made by learned counsel for the land owners is concerned, neither learned counsel for the State nor learned counsel for the beneficiary department could dispute the same and rightly so, it being a matter of record.

To be specific, learned counsel for the land owners referred only to

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the case of Tarlok Singh son of Atma Singh, Parkash Ram son of Babu Ram and Bhag Singh, Gurbaksh Singh, Harjinder Singh and Malwinder Singh sons of Tarlok Singh, whose total holding has been acquired. That being the undisputed fact situation, granting an amount of Rs.2,500/- to these land owners under Section 23 (1) fourthly and fifthly of the Act, would not be less than any crucial joke. It goes without saying that it would not be so easy for anybody to resettle at a new place, particularly when his only source of livelihood has been taken away, imposing a long drawn litigation on him for claiming due compensation for his acquired land. It is not very difficult to realize the condition of such a land owner who had no role to play in compulsory acquisition. These are some of the reasons which seem to have weighed with the Parliament to bring new piece of legislation replacing the Land Acquisition Act, 1894.

Keeping in view the abovesaid peculiar facts and circumstances, this Court feels no hesitation to conclude that all the land owners, including the abovesaid land owners, whose total holding has been acquired, would be entitled for an amount of Rs.3,00,000/- under Section 23(1) fourthly and fifthly of the Act, so as to enable them, only to a limited extent, to resettle at a new place with a view to start earning their livelihood.

Let it be specifically recorded here that neither any better evidence or other 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

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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.4,01,408/- per acre, from the date of notification under Section 4 of the Act. Further, the land owners whose entire holding has been acquired, would be entitled for an amount of Rs.3,00,000/- under Section 23(1) fourthly and fifthly of the Act. Besides this, the land owners shall also be entitled for all the statutory benefits available to them, under the relevant provisions of the Act.

As prayed by learned counsel for the land owners, this Court deem it appropriate to issue the same directions, which were issued by the Hon'ble Supreme Court in para 22 of its judgment in **Haryana State Industrial Development Corp. Vs. Pran Sukh and others, 2010 (11) SCC 175** and the same read as under: -

> *"With a view to ensure that the land owners are not fleeced by the middleman, we deem it proper to issue following further directions:-*
>
> > *(i) The Land Acquisition Collector shall depute officers subordinate to him not below the rank of Naib Tahsildar, who shall get in touch with all the land owners and/or their legal representatives and inform them about their entitlement and right to receive enhanced compensation.*
> >
> > *(ii) The concerned officers shall also instruct the land owners and/or their legal representatives to open savings bank account in case they already do not have such account.*
> >
> > *(iii) The bank account numbers of the land owners should be*

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given to the Land Acquisition Collector within three months.

(iv) The Land Acquisition Collector shall deposit the cheques of compensation in the bank accounts of the land owners.

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

[RAMESHWAR SINGH MALIK]
JUDGE

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