IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No.8213 of 2014 (O&M)
Date of decision : 27.01.2016

Union of India and another

...Appellants

Versus

Surjit Singh and ors.

...Respondents

2. FAO No.8219 of 2014 (O&M)
Date of decision : 27.01.2016

Union of India and another

...Appellants

Versus

Sarabjit Singh and ors.

...Respondents

3. FAO No.8220 of 2014 (O&M)
Date of decision : 27.01.2016

Union of India and another

...Appellants

Versus

Chand Rani and ors.

...Respondents

4. FAO No.8438 of 2014 (O&M)
Date of decision : 27.01.2016

Union of India and another

...Appellants

Versus

Gurbachan Singh and ors.

...Respondents

5. FAO No.8618 of 2014 (O&M)
Date of decision : 27.01.2016

Union of India and another

...Appellants

Versus

Kulwinder Singh and ors.

...Respondents

6. FAO No.10216 of 2014 (O&M)
Date of decision : 27.01.2016

Union of India and another

...Appellants

Versus

Baldev Singh and ors.

...Respondents

7. FAO No.10460 of 2014 (O&M)
Date of decision : 27.01.2016

Union of India and another

...Appellants

Versus

Rishi Kaushal and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. R.S. Madan, Advocate for appellants in all appeals.

Mr. Sukhdev Singh Kanwal, Advocate for respondent No.1 (In FAO Nos.8219 and 8438 of 2014)
for respondent Nos.1 to 3 (In FAO No. 8220 of 2014)
for respondent No.2 (In FAO No.8213 of 2014)

Mr. Satbir Rathore, Advocate
for respondent No.1 (In FAO No.10460 of 2014)
for respondent Nos.1 to 2 (In FAO No.8618 of 2014)

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AMIT RAWAL, J. (Oral)

This order of mine shall dispose of FAO No.8213 of 2014 titled as Union of India and another Vs. Surjit Singh and ors., FAO No.8219 of 2014 titled as Union of India and another Vs. Sarabjit Singh and ors., FAO No.8220 of 2014 titled as Union of India and another Vs. Chand Rani and ors., FAO No.8438 of 2014 titled as Union of India and another Vs. Gurbachan Singh and ors., FAO No.8618 of 2014 titled as Union of India and another Vs. Kulwinder Singh and ors., FAO No.10216 of 2014 titled as Union of India and another Vs. Baldev Singh and ors., FAO No.10460 of 2014 titled as Union of India and another Vs. Rishi Kaushal and ors., whereby Notification under Section 3A of the National Highway Authority Act (hereinafter referred to as the Act) for widening of the National

Highway NH-1A was issued on 24.12.2004 in respect of Village Khudda and on 11.04.2008 in respect of Village Khokar. The Competent Authority assessed the compensation in respect of various kinds of lands.

The landowners being aggrieved of the aforementioned assessment and sought reference under Section 3G(5) of the Act and accordingly, Arbitrator was appointed. The Arbitrator after taking into consideration the various aspects, awarded the compensation at the following rates:-

For widening of national highway 1-A

jalandhar -pathankot highway
district Hoshiarpur

FAO Nos.	Village	Date of notification	Nature of land	Compensation assessed by the competent authority	Compensation awarded by the arbitrator
FAO No. 10460 of 2014	Khokhar	11/04/08	Chahi land	₹ 70,000/- per marla	₹ 2.3 lacs per marla
FAO No. 8618 of 2014	khokhar	24/12/2004	Gair mumkin shop	₹ 70,000/- per marla	₹ 2.3 lacs per marla
FAO No. 10216 of 2014	Khokhar	24/12/2004	Gair mumkin shop	₹ 70,000/- per marla	₹ 2.3 lacs per marla
FAO No. 8219 of 2014	Khudda	24/12/2004	Gair mumkin abadi land	₹ 60,000/- per marla	(i) ₹ 1.5 lac per marla for commercial and abadi land (ii) for structure at the rate of ₹ 500/- per square feet. (iii) business loss at the rate of ₹ 4.8 lacs per shop

FAO Nos.	Village	Date of notification	Nature of land	Compensation assessed by the competent authority	Compensation awarded by the arbitrator
FAO No. 8220 of 2014	Khudda	24/12/2004	Abadi land	₹ 33,400/- per marla	(i) ₹ 1.5 lac per marla for commercial and abadi land (ii) for structure at the rate of ₹ 500/- per square feet. (iii) business loss at the rate of ₹ 4.8 lacs per shop
FAO No. 8438 of 2014	Munak khurd	19/09/2006	Gair mumkin khatan land of chahi/nursery/abadi	₹ 3077/- per marla for gair mumkin khatan land and ₹ 23400 per marla for chahi/nursery/abadi	(i) ₹ 2 lacs per marla (ii) for structure at the rate of ₹ 500/- per square feet. (iii) business loss at the rate of ₹ 4.8 lacs per shop
FAO No. 8213 of 2014	Khudda	24/12/2004	Chahi land	₹ 5625 /- per marla	₹ 62,500/ per marla

and ₹1 lac lump sum, for the loss of income (i.e. agricultural) and also awarded interest, in view of the judgment rendered by the Division Bench of this Court in *M/s Golden Iron & Steel Forging Vs. UOI and ors. 2011(4) RCR (Civil) 375.*

Union of India is aggrieved of the findings rendered by the Arbitrator by filing aforementioned appeals.

Mr. Madan, learned counsel appearing on behalf of appellants has raised following arguments:-

1. That the sale deeds placed on record are of very smaller area and not proved in accordance with law.

2. Judgment rendered by this Court in M/s Golden Iron & Steel Forging (Supra) only pertains to granting of benefit under Section 23(2) and 28 of the Land Acquisition Act, 1894 and not under Section 34, therefore, it would amount to interest on interest.

3. Since, the last rate of the land providing for highway had been acquired, therefore, cuts system of smaller area ought not to have been applied.

4. In certain cases, even the landowners have failed to lead evidence with regard to loss of business vis-a-vis the letting of the shop on rent and assessed the compensation by taking into consideration for two years and ₹20,000/- for showroom for the same period.

Learned counsel for the landowners submits that there is no illegality and perversity in the aforementioned findings. The award of the Arbitrator is based upon the appreciation of oral and documentary evidence and as well as per stand taken by the National Highway in respect of Village Bhogpur, District Jalandhar, whereby National Highway has given compensation to the landowners five times more than collector rates.

I have heard learned counsel for the parties and appraised the paper book.

The Arbitrator while undergoing the exercise of determination of the amount of compensation also visited spot on many occasions. The aforementioned villages namely Khudda, Munak Khurd and Khokhar are falls within the District Hoshiarpur. The findings rendered by the Arbitrator in my view are based upon the appreciation of the documentary evidence brought on record and as well as the judgment rendered by the Hon'ble Supreme Court. As per the settled law, similar rates can be awarded in the adjoining area acquired for the similar purpose. The operative part of the award, reads thus:-

> *"It is settled principle of law that lands of adjacent villages can be made the basis for determining the fair market value of the acquired land. This principal of law is qualified by clear dictum of this court itself that whenver direct evidence i.e. instance of the same village are available, then it is most desirable that the court should consider that evidence, But where such evidence is not available, court can safely rely upon the sales statistics adjoining lands provided the instances are comparable and the potentiality and location of the land is somewhat similar. The evidence tendered in relation to the land of the adjacent villages would be a relevant price of evidence for such determination. Once it is shown that situation and potential of the land in two different villages are the same then they could be awarded similar compensation or other compensation as would be just and fair. In the present petition a petitioner has placed on record the sale deeds dated 27.5.2004 which pertains to Darapur in M.C. Limit Tanda and land of the petitioner is just five K.M. From M.C. Limits Tanda and land of the above said sale deed is situated just near to the land of the petitioner. It is within the proximity hence can be relied upon while enhancing the price of the land of the petitioner.*
>
> *The cases of acquisition are not unknown to our*

legal system where lands a number of villages are acquired for the same public purpose or different schemes but on a commonality of purpose and unite development. The parties are expected to place documentary evidence on record that price of the land adjoining villages has an increasing trend and the court may adopt such a price as the same is not impermissible. Where there is commonality of purpose and common development, compensation based on statistical date of adjacent villages was help to be proper. Usefully, reference can be made to the judgment of this court to the cases of Kanwar Singh & others Vs. Union of India 1998(2) Apex Court Journal 648 (S.C.) LJT 1998 (7) SC # (& and Union of India V. Bal Ram & Anrthr. AIR 2004 SC 3981.

In this regard, we may also make a reference to the judgment of this Court in the case of Kanwar Singh & other Vs. Union of India 1998 (2) Apex Court Journal 648 (S.C.) AIR 1999 SC 317, where sale instance of the adjacent villages were taken into consideration for the purpose of determining the fair market value of the land in question and their comparability, potential and acquisition for the same purpose was hardly in dispute. It was not only permission but even more practical for the court to take into consideration the sale statistics of the adjacent villages for determining the fair market value of the acquired land.

e) In Village Fattu Chak Distt. Kapurthala the land rate which was Rs.10.00 lac per acre as per Collector rate, was given Rs.50,00 per acre, as the people represented to the C.M. Pb. And rates were enhanced with the intervention of CM Pb. Of Vill. Fattu Chak, Mnad Dhilwan, Miani Bakapur, Dhilwan. The rate of village land *to be acquired was firstly increased from Rs.10.00 lac to Rs.30.00 lac and then from Rs.30.00 lac to Rs.50.00 lac per acre, meaning thereby that the collector rate was much less then that of market price. The NHA1 have paid 5 times higher than the collector rate in all these of village failing in Distt. Kapurthala.*

Sr. No.	***Name of the Village***	***Collector rate***	***Price paid by NHA1***
1.	*Fattu Chak*	*10.0 lac/Acre*	*50.0 lac/acre*
2.	*Mand Dhilwan*	*10.0 lac/acre*	*50.0 lac/acre*
3.	*Miani Bakapur*	*10.0 lac/acre*	*50.0 lac/acre*
4.	*Dhilwan*	*10.0 lac/acre*	*50.0 lac/acre*

g) The affidavit of the appellant S, Surjit Singh is placed on record. The contents of this affidavit goes unrebutted as no counter affidavit have been filed by the respondents.

h) The revenue record jamabandi (2002-2003) placed on record shows the land acquired is Gair Mumkin Abadi amnd Chahi. Which further fortifies the commercial potential of land acquired. Report of Naib Tehsildar Tanda dated 8/5/2012 (Ex.P5) makes it very clear that the land of the petitioner is commercial.

i) In an additional affidavit after remand of case the appellant in para No.8 mentioned supreme court judgment as follows:-

"The supreme Court of India while deciding the case Hon'ble Mr. Justice P. Sathasivam and Justice Chelameswar issued the directive while rising a compensation amount awarded in a case and it has been held that the rate for the land acquired by the land acquisition authority should have the consideration to pay the same rate to the land, which is in the proximity in the

locality is shown to have fetched in bonafide transaction. Copy of the newspaper "The Tribune English" dated 28/4/2012 is attached herewith and the same is Ex.P8." He further on the affidavit referred to award dated 28/1/2009 in which the similar land between Tanda and Dasuya was paid @ Rs.1.50 lac per marla in the rural areas and Rs.2.50 lac per marla in the urban areas.

j) A copy of sale deed No.466 dated 27/5/2005 Ex.P11 is placed on record in which the land of 5.5. Sarsashi was sold @ Rs.2.0 lac i.e. for Rs.3,06,363/- per marla. If we apply yardstick of Kapurthala villages where the land rate was enhanced and paid 5 times collector rate as mentioned in sub para (f) above, the market rate comes out to be 1.81 lac per marla. It justifies the land rate paid in 629 cases by NHA1@ raging from Rs.1.5 lac per marla in rural area and Rs.2.50 lac per marla in urban area. In another sale deed of Village Darapur, a part of the Tanta Town, No.1019, dated 26/7/2004 one marla land was registered @ Rs.2.50 lac. It amply shows that the land is quite costly and market value of the land was raging between 1.50 lac to 2.50 lac in village Khuda. As per Supreme Court judgment similar rate can be awarded in adjoining villages/areas for land acquired for similar purposes.

From the above explanation, it is crystal clear that the land was not paid as per the market value of land rather the price of land paid was highly unjustified. Whereas the land between Tanda and Dasuya have already been paid in 629 cases @ Rs.62,500/- to Rs.2.50 lac per marla, the payment of Rs.30,000/- marla is no where near the market price of land. Keeping in view the fact that NHAI have already paid (Referred para 'c' above) following rates to land between Dasuya and Tanda in 629 *cases, the same rate needs to apply in this case also. The payment is as below:-*

a)	*Commercial land*	*Rs.1.50 lac per marla.*
b)	*Residential Land*	*Rs.1.25 lac per marla.*
c)	*Vacant plot in Abadi*	*Rs.1.00 lac per marla.*
d)	*Agricultural land*	*Rs.62,500/- per marla."*

As regards the granting of relief under Section 23(2) & Section 28 of the Land Acquisition Act, 1894, the Arbitrator relied upon judgment rendered in M/s Golden Iron (Supra), wherein it has been held that land acquired under the National Highway, landowners would be entitled to the benefits. As regards the plea of Mr. Madan, Advocate that the Arbitrator should not have granted the benefits of Section 34 i.e. had awarded solatium at the rate of 30% p.a. and interest at the rate of 9% p.a. interest for the subsequent year. In case enhancement amount is not released, thus, same would tantamounts to interest on interest and granting of such relief is not envisaged under the Arbitration and Conciliation Act. The aforementioned plea is not substantiated for the reasons that provision of Section 31(7) of the Act provides the awarding of the compensation at the rate of 18% p.a. and Arbitrator is empowered to grant interest on interest, in view of the judgment rendered by Hon'ble Supreme Court in *M/s Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa, 2015(1) RCR (Civil) 165*, whereby Hon'ble Supreme Court has in ratio 2:1 held that M/s S.L. Arora is no longer good in law and further held that expression grant of interest on interest while exercising power under Section 31(7) of the Act is within the domain of the Arbitrator, much less, is in power to grant such interest, even in the absence of the law of the contract in this regard.

There is no force in the contention of the learned counsel for the appellant that notarized copy of evidence is not admissible whereas it is admissible in view of ratio decidendi culled out in the judgment of our High Court in *1992(2) RCR (Rent) 215 Banarsi Dass Banarsi Lal Vs. Maman Chand* & *2012(4) RCR (Civil) 229, M/s Racco Enterprises, Ludhiana, Vs. Vivek Kapila and ors.*

I do not find any illegality and perversity in the order as the objections against the award were not falling within the realm of Section 34 of the Act.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been raised in the aforementioned appeal has already been answered by the Hon'ble Supreme Court in catena of judgments, wherein, it has been laid down that until and unless the award suffers from illegality or for want of reasons as statutorily prescribed under Section 31 (3) of the Act, the same cannot be interfered with. In this context I intend to refer the judgments of Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698.** In the aforementioned judgment the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embarked on a path by substitution in its own view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act.

The award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator or Committee is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

Accordingly, appeals are dismissed.

27.01.2016 **(AMIT RAWAL)**
pawan **JUDGE**