

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RFA No.5655 of 2012 and other connected matters
Date of decision: 06.05.2016

Abha Rathore

... Appellant

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. M.K. Chauhan, Advocate
for the appellant(s).

Mr. Arun Beniwal, DAG, 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

RAMESHWAR SINGH MALIK, J.

These 03 appeals, bearing Regular First Appeal Nos.5654, 5655 and 5656 of 2012, all filed by the land owners, are 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.5655 of 2012 (Abha Rathore Vs. State of Haryana and another).

So far as the market value of the acquired land in all these three cases is concerned, learned counsel for the parties are ad idem that all these appeals would be squarely covered by the order dated 08.04.2016 passed by this Court in **RFA No.1956 of 2010 (State of Haryana Vs. Hans Raj)**.

In addition to the above, learned counsel for the appellants submits

that since the dispute regarding assessment of market value of the trees was neither raised by either of the parties nor it was deliberated upon, while passing the remand order dated 27.10.2006 by this Court in **RFA No.1281 of 1999 (Gurdev Singh and others Vs. State of Haryana)**, there was no scope with the learned reference Court to re-assess the market value of the trees reducing the amount of compensation than what was earlier granted vide award dated 04.01.2001. He also submits that the market value assessed by the learned reference Court regarding superstructure, including tubewell, electricity connection and barbed wire, the learned reference Court has granted the compensation on very lower side. In fact, the learned reference Court did not enhance any amount in this regard, maintaining whatever was granted by the Land Acquisition Collector.

Per contra, learned counsel for the State submits that the learned reference Court committed no error of law, while passing the impugned award assessing the market value of the trees at lesser amount than what was assessed at the time of passing of earlier award. He further submits that once the matter was remanded by this Court, every issue was rightly re-examined and learned reference Court has recorded cogent finding in this regard which deserves to be upheld.

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 the appeals filed by the land owners deserve to be partly allowed, for the following more than one reasons.

A perusal of the remand order dated 27.10.2006 passed by this Court in **Gurdev Singh's** case (supra) would show that learned counsel for the

appellant(s)-land owner(s) has rightly contended that neither this issue was raised before this Court nor it was deliberated upon. Until and unless this Court would have made some observations on this issue, directing the learned reference Court to re-decide the issue of market value of the trees as well, the learned reference Court ought to have maintained the earlier award, whereby market value of the trees has been assessed and reasonable amount had been granted. Even on merits, the findings recorded by the learned reference Court in para 27, 34 and 35 of the impugned award cannot be upheld for the reason that the learned reference Court has failed to appreciate the expert evidence produced by the claimants-land owners in the form of valuation reports Ex.PW6/A and Ex.PW6/B, which were prepared and duly proved by a horticulture expert namely Jasbir Singh PW6.

So far as the authenticity of valuation reports prepared by this witness and his credibility is concerned, that has been tested many a times even by this Court and it came to be upheld. The relevant observations made by this Court in the order dated 18.01.2016 passed in **RFA No.1901 of 2008 (Ashok Kumar Sharma Vs. State of Punjab)**, which can be gainfully followed in the present case, read as under: -

“Coming to the credibility of this witness, he has been found to be a man of integrity at earlier points of time as well. There are judgments of this Court, available on record in the form of Ex.P8 and Ex.P9 from pages 61 to 75 of the LCR, wherein similar reports prepared and proved by this very witness Jasbir Singh PW1 were accepted by this Court, preferring the same over and above the reports furnished by the officers of the department.

Relevant observations made by this Court in its judgment

dated 07.07.2006 in RFA No.114 of 1996 (Gurpal Singh and another Vs. The State of Punjab), which can be gainfully followed in the present case, read as under: -

*“I have heard the counsel for the appellants and counsel for the State. Counsel for the appellants has submitted that the Reference Court was not justified in ignoring the report of Expert Jasbir Singh examined as AWI on behalf of the appellants. As per the counsel, the said witness was required to be believed for the purpose of determining the compensation because he had also been believed by the Court in the case of **Dial Singh Vs. State** decided on 25.1.1994. This judgment was exhibited as Ex.A.7. This judgment was given in a case arising out of the same notification and hence to ensure parity, the similar compensation on the basis of assessment made by Jasbir Singh was required to be awarded. He has also drawn my attention to a judgment passed in R.F.A. No.895 of 1995 decided by this Court on 6.4.2005 wherein the evidence of said Jasbir Singh examined as an Expert in the said case has been relied upon and compensation accordingly enhanced. In this judgment, it is noticed that Jasbir Singh has retired as Deputy Director Horticulture, Punjab. He had carried out the inspection of the trees and then given the valuation statement by applying Dr. Nijjar's formula which was evaluated in the year 1985. In this case, the State had also relied upon the report of the Bhagwant Singh but*

the report of Jasbir Singh was said to be justified for assessment of the compensation by this Court. The relevant observation of this Court in R.F.A. No.895 of 1995 is as follows: -

“With regard to the assessment, it is apparent that there is no justification to disbelieve the report of Jasbir Singh (AW.2) and his statement in the witness-box. The aforesaid valuation report and the statement have given good reasons for assessment on the basis of well recognized formula. The Reference Court should have accepted the aforesaid report.”

*Learned counsel appearing on behalf of the State, however, could not address any meaningful argument and submitted before me that he was handicapped as his brief was not complete. He had sought adjournment on this ground which was declined. It was pointed out to him that the question in this case was only to see if the evidence of Jasbir Singh AW1 had been rightly or wrongly ignored by the Reference Court in view of the fact that the said report has been relied upon by this Court in R.F.A. No.895 of 1995 and also Annexure A.7 in the case of **Dial Singh Vs. State**. The State Counsel still prayed for adjournment, which was declined.*

The Reference Court, in my view, has not given any justifiable reason to ignore the report of Jasbir Singh AW1 specially so when the Court itself found that report of Bhagwant Singh had not taken valid aspects into consideration while rendering his report. Admittedly, the report given by Bhagwant

Singh was found suffering from infirmity of not evaluating the trees having regard to its value as fuel and timber. Though, this drawback was corrected while awarding the compensation but said justification given by the Reference Court for ignoring the report of Jasbir Singh that he was a private expert cannot be said to be legally valid. This is required to be appreciated in the background of another angle that the report of the same very witness in a claim arising out of same very notification was relied upon by the Reference Court. This aspect was brought in evidence by the claimant before the Court. In view of this background, I find that preference given to the report of Bhagwant Singh over the report of Jasbir Singh is not justified. If this report has been taken as valid one for assessing the compensation for trees in a case arising out of the same notification, then ignoring the same for assessment of compensation in the present case may lead to discrimination. Further this Court has also preferred the report of Jasbir Singh as already noted above.”

Further, the learned reference Court at the time of passing of the earlier award dated 04.01.2001 has already taken the average of two reports, one proved by RW3 in the form of Ex.R4 and Ex.R4/A, as well as the abovesaid reports prepared by PW6 Jasbir Singh. Keeping in view the totality of facts and circumstances of the case noticed hereinabove, the abovesaid findings recorded by the learned reference Court in para 27, 34 and 35 of the impugned award have been found misplaced and cannot be upheld. Accordingly, said findings are hereby set aside. Consequently, the impugned award dated 28.02.2011 passed by the learned reference Court would stand

modified to the limited extent that the appellant-land owner would be entitled for the same amount of compensation, on account of value of fruit bearing trees and non fruit bearing trees, which was earlier awarded by the learned reference Court vide its order dated 04.01.2001 i.e. Rs.12,28,963/-.

So far as the other arguments raised on behalf of the appellants for enhancement of compensation for superstructure is concerned, the same could not be substantiated by learned counsel for the appellant. A just and reasonable amount of compensation has already been granted to the appellant-land owner for the superstructure, electricity connection and barbed wire etc.

No other argument was raised.

Considering the peculiar facts and circumstances of the cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that these three identical appeals filed by the land owner(s) deserve to be partly accepted and the same are hereby allowed to the extent indicated above. As noticed above, so far as the market value of the acquired land is concerned, claim of the appellant(s)-land owner(s) in these appeals has been found squarely covered by the order dated 08.04.2016 passed by this Court in **Hans Raj's** case (supra). Besides this, the land owners shall also be entitled for all the statutory benefits on the amount of compensation for land as well as abovesaid amount for trees, as available to them under the relevant provisions of the Act.

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

[**RAMESHWAR SINGH MALIK**]
JUDGE

06.05.2016
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