IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.5752 of 2012 and other connected matters
Date of decision: 11.02.2016

Johar Singh

... Appellant

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rakesh Gupta, Advocate and
Mr. Karan Gupta, Advocate
for the appellant(s) (in RFA Nos.5752 to 5760 of 2012)

Mr. S.S. Rangi, Advocate
for Punjab Mandi Board.

Mr. Yatinder Sharma, Addl. AG, Punjab.

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 batch of 18 appeals, out of which 09 appeals bearing Regular First Appeal Nos.2386 to 2394 of 2013 filed by the beneficiary department i.e. Punjab Mandi Board and remaining 09 appeals filed by the land owners bearing Regular First Appeal Nos.5752 to 5760 of 2012, arising out of the same acquisition, is being decided vide this common order, as these appeals 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.5752 of 2012 (Johar Singh Vs. State of Punjab and others).

Facts are hardly in dispute. Land measuring 16 acres, 04 kanal, 12 marla, out of revenue estate of Lalru, was acquired at public expenses for the public purpose namely; for construction of new Grain Market and office of Market Committee, Lalru, District Patiala. Accordingly, notification dated 25.02.2000 was issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act'), which was followed by notification dated 31.10.2000 under Section 6 of the Act. Land Acquisition Collector, vide his award dated 25.11.2002 granted the compensation at the uniform rate of Rs.6,00,000/- per acre. Dissatisfied, land owners filed their objections under Section 18 of the Act and as a consequence thereof, as many as 09 land references were forwarded to the learned reference Court. All the nine land references were decided together by the learned reference Court vide common award dated 18.05.2012 granting Rs.14,50,000/- per acre at the uniform rate

Both the parties felt aggrieved against the impugned award passed by the learned reference Court. Nine appeals have been filed by the beneficiary department i.e. Punjab Mandi Board, whereas the remaining nine appeals have been filed by the land owners. That is how, these18 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 so far as the appeals filed by the Punjab Mandi Board are concerned, the same have been found bereft of any merit and are liable to be dismissed, whereas the appeals filed by the land owners deserve to be partly allowed, suitably enhancing the compensation for the acquired land, for the following more than one reasons.

So far as the location and potentiality of the acquired land is concerned, it had never been in dispute. The location of the acquired land has been duly established on record by the land owners by producing the site plan Ex.P7 available at page 112 of the lower Court record ('LCR' for short). The acquired land was just about four acres away from the National Highway i.e. Delhi-Ambala-Chandigarh. Further, it was abutting the approach road. The acquired land was surrounded by already developed industrial as well as commercial area. One of the land owners was having six running commercial shops. Another land owner was having seven commercial shops and one residential house, which are part of the acquired land.

The land owners produced as many as 10 sale instances, which have been discussed by the learned reference Court in para 12 of the impugned award. The land sold vide sale deeds Ex.P16, Ex.P20, Ex.P24 and Ex.P25 have been clearly depicted on the site plan Ex.P7. Piece of land measuring 01 bigha sold vide sale deed Ex.P20 was part of the acquired land. Land sold vide sale deed Ex.P16 was just across the road situated in front of the acquired land. Similarly, land sold vide sale deed Ex.P24 and Ex.P25 was just touching the acquired land, thus, these four sale deeds have been found to be very relevant and best pieces of evidence, which can be safe guide for assessing the market value in the instant case.

However, since sale deed Ex.P25 was for a smaller piece of land, the same is not being taken into consideration. Still further, to be fair to all concerned, it would be just and appropriate to take the average market value disclosed in all these three sale deeds i.e. Ex.P16, Ex.P20 & Ex.P24, which comes to Rs.25,88,000/- per acre. From sale deed Ex.P20 till the date of notification under Section 4 of the Act, there was a time gap of one year and 10 months. From the sale deed Ex.P16, the time gap was of 01 year and 03 months. Similarly, from sale deed Ex.P24, the time gap was about 09 months. Thus, even if the average time gap is taken that would come to more than one year. However, to be on safer side, the land owners can be held entitled for the annual increase at the rate of 15% per annum at least for one year. 15% of the abovesaid market value of Rs.25,88,000/- per acre would come to Rs.3,88,200/- and the total thereof would be Rs.29,76,200/- per acre. Accordingly, the land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.29,76,200/- per acre, from the date of notification under Section 4 of the Act.

Although the State of Punjab produced as many as seven sale instances as discussed by the learned reference Court in para 12 of the impugned award, but none of those sale deeds have been found worth consideration, for the reason that the land sold through these sale deeds was nowhere near the acquired land. State of Punjab as well as the beneficiary department i.e. Punjab Mandi Board have failed to produce any relevant site plan on record, so as to show the distance between the acquired land and the land sold through these sale deeds, which might have made these sale deeds worth consideration. In the absence of the relevant evidence, all these sale deeds produced by the State of Punjab cannot be taken into consideration for the purpose of assessing the market value of the acquired land.

Coming to the market value of superstructure, the land owners have produced cogent evidence in the form of valuation reports prepared by expert witness. It is pertinent to note here that the superstructure was existing on the acquired land only in three cases namely in the case of Johar Singh, Smt. Kamlesh Rani & Mamta Rani and Nakli Ram. Taking first the case of Johar Singh in **RFA No.5752 of 2012**, he had six shops and one tubewell on his acquired land. Number of shops and the tubewell is not in dispute. This claimant Johar Singh produced PW4 Gurdeep Singh who visited the site. After following the relevant factors and parameters meticulously, he prepared the report at the site which has been duly proved by him on the record. The report is Ex.P8 available at page 165 of the LCR for six shops and one residential room. Ex.P9 is the site plan in support of the report Ex.P8. The report Ex.P10, available at page 170 of the LCR, is regarding the tubewell and Ex.P11 site plan is in support of report Ex.P10.

So far as the report prepared by the official of beneficiary department i.e. Punjab Mandi Board is concerned, he admitted in his cross-examination that he never visited the site and report was prepared, while sitting in his office. It is interesting to note that none of the reports prepared by this so-called expert was signed by him. It goes without saying that hardly any authenticity or evidentiary value can be attached to the unsigned reports. Having said that, this Court feels no hesitation to conclude that the expert report prepared by PW4 Gurdeep Singh deserve to be preferred over and above the reports prepared by RW1 Nirmal Singh.

Since the expert report prepared by this witness PW4 Gurdeep Singh has gone unrebutted on record, this Court has found no reason to disbelieve the said expert report. Accordingly, it is held that claimant-land owner Johar Singh is entitled to receive the compensation for his shops as well as tubewell as assessed by PW4 Gurdeep Singh vide his valuation reports Ex.P8 and Ex.P10 i.e. Rs.5,01,000/- for the shops and residential room as well as Rs.27,400/- for the tubewell.

Coming to the case of Kamlesh Rani and another in **RFA No.5755 of 2012**, same witness PW4 Gurdeep Singh prepared the valuation report Ex.P12 for seven shops and boundary wall at Rs.6,04,000/-. Since this piece of expert evidence has also gone unrebutted on record, claimants-land owners Smt. Kamlesh Rani and Smt. Mamta Rani are also held entitled to receive the compensation for their superstructure in the form of shops and boundary wall at the rate of Rs.6,04,000/-.

Now, coming to the case of Nakli Singh in **RFA No.5756 of 2012**, he had only one tubewell on his acquired land and as per valuation report Ex.P14 available at page 209 of the LCR, this very witness PW4 Gurdeep Singh has assessed the market value at Rs.33,600/-. As this piece of evidence has also gone unrebutted on record, because the State of Punjab has not produced any contrary evidence, this claimant-land owner is held entitled to receive the compensation for his tubewell at the rate of Rs.33,600/-.

Since the appellants-Johar Singh and Kamlesh Rani/Mamta Rani were having running shops, as noticed hereinabove, in their acquired land, learned counsel for these appellants has been found fully justified in contending that these land owners are also entitled for a reasonable compensation for loss of their earnings. However, since there is no evidence produced by these land owners on the record, so as to prove the exact loss of their earnings, because of the instant acquisition, this Court is left with no other option except to follow the thumb rule on the basis of guess work. Number of shops owned by Johar Singh were six and it was not disputed by the either side. Similarly, Smt. Kamlesh Rani and Mamta Rani were having seven running shops in their acquired land.

Striking a balance and with a view to do complete and substantial justice between the parties, proceeding on a constructive and pragmatic approach, this Court is of the considered view that Rs.20,000/- per shop would be a reasonable amount of compensation. Accordingly, appellant-Johar Singh is held entitled to receive the compensation of Rs.1,20,000/- for his six shops under Section 23(fourthly) & (fifthly) of the Act. Similarly, Smt. Kamlesh Rani and Mamta Rani are held entitled to receive the compensation for their seven shops at Rs.1,40,000/- under Section 23(fourthly) & (fifthly) of the Act.

No contrary evidence or judicial precedents 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 the appeals filed by the Punjab Mandi Board are wholly misconceived, bereft of merit and without any substance, thus, these must fail and the same are accordingly dismissed.

The appeals filed by the land owners deserve to be partly accepted and 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.29,76,000/- per acre, from the date of notification under Section 4 of the Act. They are also held entitled for receiving the compensation for superstructure existing on their acquired land on the date of notification under Section 4 of the Act, in the aforementioned terms. The land owners in two appeals namely Johar Singh in one case and Smt. Kamlesh Rani as well as Mamta Rani in another case, are also entitled for receiving the compensation for the amount indicated above under Section 23(fourthly) & (fifthly) of the Act. 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 these 18 appeals stand disposed of, in the abovesaid terms, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

11.02.2016
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