

FAO No. 8650 and 8090 of 2014(O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 8650 of 2014(O&M)
Date of decision : May 19, 2016

Tejpal Singh and others

..... Appellants

Versus

National Highway Authority of India

..... Respondent

FAO No. 8090 of 2014

Nirmal Kumar and others

..... Appellants

Versus

NHAI

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:-

Mr.Prateek Mahajan , Advocate
for the appellant in FAO No. 8650 of 2014.

Mr. Naresh Kaushal , Advocate
for the appellant in FAO No. 8650 of 2014.

Mr. D. K. Prajapati, Advocate
for NHAI in both the appeals.

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

Amit Rawal, J.

This order of mine shall dispose of two appeals bearing FAO No. 8090 & 8650 of 2014. For the sake of convenience the facts are being derived from FAO No. 8650 of 2014.

The appellants-land owners are aggrieved of the order dated 21.3.2014 whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act')

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seeking setting aside of the award dated 15.11.2011 has been dismissed.

Learned counsel appearing on behalf of the appellants submits that the land of the appellants situated in village Verka on the National Highway measuring 4840 sq.yards, Tehsil and District Amritsar was acquired vide notification issued under Section 3-A of the National Highways Act dated 23.5.2008 and thereafter notification under Section 3-D (1) was issued on 13.5.2009. The competent authority i.e. Land Acquisition Amritsar-I delivered Award No. 18 of N.H.15 of 2010 dated 31.5.2010 regarding the compensation for acquisition of the land situated in Village Verka which was highly inadequate. Accordingly the matter was referred to Deputy Commissioner, Amritsar who appointed an arbitrator to decide the matter with regard to enhancement. The arbitrator vide order dated 15.11.2011 dismissed the claim.

He further submits that it is in these circumstances the objections were filed under Section 34 of the Act. He further submits that the competent authority i.e. SDM-cum-Land Acquisition Collector, Amritsar-I vide Award No.1 of 2009 dated 17.2.2009 had awarded the compensation of the earlier land acquired in Village Verka @ ₹20,000/- per sq.yard (9.6 crore per acre) but in the present case assessed the compensation @ ₹6,000/- per sq.yard whereas as per the award No.1 dated 17.2.2009 for the same very land assessed compensation @ ₹20,000/- per sq.yard and therefore this fact has not been taken into consideration neither by the Government authority nor by the arbitrator. In this regard, copy of the said award has been annexed and on perusal it fortifies plea of Mr. Prateek Mahajan, learned counsel appearing on behalf of the appellant.

Learned counsel appearing on behalf of the respondent

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submits that the Collector rate of the acquired land in question is 2.88 crore per acre whereas the compensation awarded to the applicants is ₹5.76 crore per acre along with 10% increase under Section 3 (G) (2) of National Highway Act, 1956, thus it is a reasoned and proper compensation and the compensation regarding the acquired land has been awarded in category 'A' as per revenue record. The objections, were not falling within the parameters of Section 34 of the Act. One of the witnesses of the land owners admitted that the SDM has visited the spot prior to the fixation of compensation amount, thus urges this Court for affirming the finding.

I have heard learned counsel for the parties, appraised the paper book and of the view that neither the arbitrator nor the objecting court has taken into consideration a very vital fact that for the same very land the competent authority, as noticed above, vide Award No.1 dated 17.2.2009 assessed the compensation @ ₹20,000/- per sq.yard. This fact is not disputed by the learned counsel appearing on behalf of the Natinal Highway, but submits that such evidence is not record of the arbitrator. The court can always take cognizance of the award passed by the same very competent authority in order to prevent miscarriage of justice and to avoid passing of contradictory awards as there has to be some consistency, thus, in my view the award of the arbitrator did not contemplate the dispute. The arbitrator did not ponder upon this aspect of the matter, therefore the objections in my view were falling within the parameters of Section 34 of the Act. Adoption of different yard stick for arriving at a compensation is not permissible as valuable rights of land owners for the purpose of widening of the Highway which is for development of the country had been taken away. The land owners have not

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objected to the acquisition, equally so they cannot be deprived of the compensation.

In my view the land owners in the present case have been discriminated viz-a-viz land in respect of similarly situated acquisition of land and compensation awarded at a higher rate i.e. to the tune of ₹20,000/- per sq.yard against ₹6,000/- thus, of the view that the award of the arbitrator is hereby set aside. The order of the objecting court is modified and it is held that the land owners shall be entitled to compensation in FAO No. 8650 of 2014 @ ₹20,000/- per sq.yard and they shall also be entitled to all the statutory benefits as per provisions of Section 23 (2) and 28-A of the Land Acquisition Act, 1984 and in FAO No. 8090 of 2014 the land owners shall be entitled to compensation @ ₹30,000/- per sq.yard with all statutory benefits as per the ratio decidendi culled out in M/s **Golden Iron and Steel Forging Vs. Union of India 2011 (4) RCR Civil 375.**

Accordingly the appeals stand allowed.

(AMIT RAWAL)
JUDGE

May 19 , 2016
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