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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : 27.01.2016

1. FAO-9108-2014 (O&M)

Union of India and another

...Appellants

Versus

Gurdeep Singh and others

...Respondents

2. FAO-3178-2015 (O&M)

Government of India and another

...Appellants

Versus

Gurdev Singh and others

...Respondents

3. FAO-7535-2015 (O&M)

Union of India and another

...Appellants

Versus

Tara Singh and others

...Respondents

4. FAO-7550-2015 (O&M)

Union of India and another

...Appellants

Versus

Kulwinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Madan, Advocate
for the Union of India
(in all the appeals).

Mr. Naresh Kaushal, Advocate
for the landowners (in all the appeals).

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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. (ORAL)

This order of mine shall dispose of four appeals bearing FAO No.9108 of 2014, FAO No.3178 of 2015, FAO No.7535 of 2015 and FAO No.7550 of 2015 filed at the instance of the Union of India-appellants against the order dated 18.07.2014, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') seeking setting aside of the Award dated 26.06.2013 passed by the Arbitrator awarding the amount of compensation in respect of the land acquired for widening of the National Highway bearing No.1-A, situated at Village Chowdharpur, Teshil and District Gurdaspur, has been dismissed.

Mr. R.S. Madan, learned counsel appearing on behalf of the Union of India-Appellant(s), submits that the Arbitrator has taken into consideration the sale deed of Village Bidhipur which was sold in the year 2008 for the amount @ ₹ 62,500/- per marla and another increase of 10% for one year, whereas vide sale deed dated 28.04.2008, the land had been sold @ ₹ 22,705/- per marla and as regards the other villages adjacent to the Village Chowdharpur, Village Fateh Nangal, Village Lehal and Village Khokhar, the sale deeds are not more than of ₹ 25,000/- per marla with regard to the agriculture land, whereas the Arbitrator has assessed the compensation @ ₹ 57,500/- per marla for agricultural, ₹ 66,125/- per marla for residential and ₹ 74,750/- per marla for commercial. There is no basis or rational in assessing the amount of compensation at such rate, even the benefit of Section 34 of the Land Acquisition Act, 1894 (hereinafter called 'the 1894 Act') has been awarded, which is not permissible in view of the ratio culled out by the Division Bench of this Court in ***'M/s Golden Iron and Steel Forging V/s Union of India and others" 2011(4) RCR (Civil) 375,*** which only permits in granting of interest under Sections 23(2) and 28 of the Land Acquisition Act, 1894. These facts are not noticed by the Objecting Court as the objections squarely fall within the purview and parameters of Section 34 of the 1996 Act and prays for setting aside the Award and as well as the order.

Mr. Naresh Kaushal, learned counsel appearing on behalf of the landowners (in all the appeals), submits that the land has been acquired for the widening of the National Highway bearing No.1-A and the Assessing Authority had not assessed the compensation, even by taking into consideration the collector rate, much less, other alternating circumstances whereas, the Arbitrator while taking into consideration the sale deeds mentioned in the

Award, assessed the amount of compensation by calculating the five times of the sale deed @ ₹ 25,000/- per Marla, which is fair and justified and prays for dismissal of the appeals as the objections were not falling within the realm of Section 34 of the 1996 Act.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the appeals deserve to be dismissed for the following reasons:

The Arbitrator while taking into consideration the sale deeds, as referred above, assessed the compensation by calculating the five times of the sale consideration of the sale deeds @ ₹ 23,703/- per marla in the year 2006, whereas in the instant case, the land has been acquired on 23.05.2008 and adopted the rate of ₹ 57,500/- per marla for agricultural land of village Chowdharpur on the same pattern as for Village Bidhipur. The operative part of the order reads thus:

> *"e) A Sale Deed No.89 dated 28.04.2008 of the Village Bidhipur is placed on record for 10 Kanal-7Marlas for amount of ₹ 47.0 Lac for Chahi and Gair Mumkin land (i.e. ₹ 22,705/- per marla). If 10% increase is made every year then in 2009 amount would be ₹ 24,975/- per Marla i.e. ₹ 25,000/- per Marla (approx.). Village Bidhipur is abutting Village Chowdharpur.*
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> *f) A Sale deed No.314 dated 27.10.2004 of the Village Fateh Nangal is placed on record for 10 Marlas for amount of ₹ 1,70,000/- for Nehri land (i.e. ₹ 17,000/- per Marla). If 10 % increase is made every year then in 2009 amount would be ₹ 25,500/- per marla (approx.). Village Fateh Nangal is 3 Kms from Village Chowdharpur.*

g) A Sale Deed No.856, dated 05.10.2006 of the Village Lehal is placed on record for 1 Kanal-7Marlas @ ₹ 6.40 Lac for Chahi land (i.e. ₹ 23,703/- per Marla). If 10 increase is made every year then in 2009 amount would be ₹ 30,813/- per Marla (approx.). Village Lehal is abutting Village Chowdharpur.

h) A Sale Deed dated 22.12.2006 of the Village Khokhar is placed on record for 01 Kanal-2Marla for amount of ₹ 5,43,000/- (i.e. ₹ 24,681/- per Marla). If 10% increase is made every year then in 2009 amount would be ₹ 32,085/ per Marla (approx.).

i) In Award No.17 of 2009 of Village Chowdharpur by SDM-cum-LAC (Land Acquisition Collector) cum following reasons are recorded for fixing the land rates:

i. The location of the land acquired is a nearer to major industrial and marketing centre of town Dhariwal and its residential zone is being expanded towards this new alignment of NH.

ii. The compensation for the structures, trees etc, existing in the land being acquired shall be paid separately as evaluated by the competent Government Departments.

These factors are quite relevant and important which are kept in mind for fixing land rates in this case.

The Village Chowdharpur is abutting Village Bidhipur (as per site plan). The sale deeds of Vilage Chuhar Chak are showing land sale deeds @ ₹ 62,500/- per Marla in 2008. Increase of 10% for one year will near cost of land @ ₹ 68,750/- per Marla.

As per award of CALA, the land of Village Chowdharpur have high commercial potential bring near to Industrial Town of Dhariwal. The site plan, affidavit of applicant and award of CALA all indicate that the location of the *land acquired is a nearer to major industrial and marketing centre of town Dhariwal and its residential zone is being expanded towards this new alignment of NH. Therefore, the land price for agricultural land which is abutting Link Road to NH-15 as well as proximity of the land to NH-15 (¾ KM) and Industrial Town of Dhariwal makes the land of high commercial potential. The twon of Dhariwal is 4 KM from acquired land as per Tehsildar's letter placed on file.*

If the land is paid @5 times of collector rate as explained in para (c) above, the land price of Village Bidhipur will come out to be ₹ 1.25 Lac per marla {refer sale deed of Village Bidhipur mentioned in para (e)}. Therefore conservatively land price of ₹ 57,500/- per Marla for village Bidhipur land price have been awarded ₹ 57,500/- per Marla for Village Bidhipur land price have been awarded ₹ 57,500/- per Marla which is approximately twice the land price of Sale Deeds. The same may be adopted for Village Chaudharpur also.

In Village Lehal sale deeds are registered @ 23,703/- per Marla in 2006, 5 times of sale deed with 10% increase comes out to be ₹ 1,54,065/- per Marla. Therefore, adopting the rate of ₹ 57,500/- per Marla for Chowdharpur Village on same pattern as for Village Bidhipur is quite rational. Similarly land Sale Deeds of Village Fateh Nangal @ ₹ 25,500/- per Marla also proves that fixation of land price @ ₹ 57,500/- similar to Village Bidhipur is quite rational.

As decided in all cases of arbitration commercial land rate is considered 30% higher and residential land 15% higher than the agricultural land. Thus land price comes out as under:

i) Commercial land rate enhanced to ₹ 74,750/- per

Marla.

ii) Residential land rate comes out to be ₹ 66,125/- per Marla.

iii) Agricultural land rate comes out to be ₹ 57,500/- per Marla."

As regards the granting of relief under Section 23(2) & Section 28 of the Land Acquisition Act, the Arbitrator relied upon judgment rendered in ***M/s Golden Iron's case (supra),*** wherein it has been held that land acquired under the National Highway Act, landowners would be entitled to the benefits as envisaged under Land Acquisition Act. As regards the plea of Mr. R.S. Madan, Advocate that the Arbitrator should not have granted the benefits of Section 34 by awarding 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, the same would tantamounts to interest on interest and granting of such relief 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 interest 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 in ratio 2:1 has held that M/s SL Arora Company, is no longer good in law and 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 and is in power to grant such interest, even in the absence of the law of the contract for interest.

There is no force in the contention of the learned counsel for the appellant that notarized copy of document 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 am in agreement with the finding rendered by the Objecting Court and rightly so, the objections were dismissed as the same were not fallen within the parameters of Section 34 of the 1996 Act and the Award cannot be said to have been passed against public policy.

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 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.***

<u>Combines” (2015) 5 SCC 698</u>. 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. The arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

In my view the award of the Arbitrator does not suffer from any illegality, in as much as, the Arbitrator who is expert has dealt with the matter and decided the claim of respective claimants of the parties to the *lis*.

It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

In my view, no error of law arise from the award as well as order impugned. The award is perfect and justified.

There is no merit in the aforementioned appeals.

The appeals are accordingly dismissed.

27.01.2016 **(AMIT RAWAL)**
yogesh **JUDGE**