IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.187 of 2013 and other connected matters
Date of decision: 23.02.2016

Vallu Singh

... Appellant

Vs.

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. C.M. Munjal, Advocate and
Mr. H.D. Kathpal, Advocate
for the appellant(s) in all cases.

Mr. Vivek Singla, Sr. Panel Counsel
for Union of India.

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 51 appeals, bearing Regular First Appeal Nos.187 to 236 & 1793 of 2013, filed by the land owners, is 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.187 of 2013 (Vallu Singh and Union of India and others).

Brief facts of the case are that the State of Punjab sought to acquire 192 Acres, 4 Kanals and 7 Marlas of land out of the revenue estates of two villages namely Penchan Wali and Korian Wali, both situated in Tehsil Fazilka (now District Fazilka), District Ferozepur at public expenses for defence purpose. Accordingly, notification dated 10.07.2002 was issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act'), which came to be followed by notification dated 17.09.2002 under Section 6 of the Act. 60 Acres, 2 Kanal and 11 Marlas of land was acquired from the revenue estate of Village Penchan Wali and land measuring 132 Acres, 1 Kanal and 16 Marlas was acquired from the revenue estate of village Korian Wali. Although possession was taken on 27.07.2004, yet the award was not being announced by the Land Acquisition Collector ('LAC' for short). The land owners had to approach this Court by filing CWP No.6034 of 2007, which was decided by this Court on 10.12.2007. In compliance of the order passed, LAC, vide his award No.1 of 2008 dated 31.01.2008, assessed the market value of the acquired land, out of both the abovesaid two villages at the uniform rate of Rs.2,75,000/- per acre. Land owners felt dissatisfied and filed their objections under Section 18 of the Act. Consequently, as many as 51 land references were forwarded, which came to be dismissed by the learned reference Court vide its common impugned award dated 20.09.2012.

Feeling aggrieved against the impugned award passed by the learned reference Court, the land owners have approached this Court by way of instant bunch of appeals seeking enhancement in the compensation for their acquired land. That is how, all these 51 appeals are being decided together.

Learned counsel for the appellants-land owners places reliance on site plan Ex.P15 available at page 465 of the lower Court record ('LCR' for short), to contend that the acquired land was having great potentiality and the same could have been put to residential, industrial as well as commercial use. He also places reliance on the sale instances Ex.P48, Ex.P51 and Ex.P52.

Learned counsel for the appellants-land owners would also place reliance on Ex.P62 at page 967 of the LCR, which was copy of award dated 25.01.1992 passed by the learned reference Court regarding earlier acquisition, whereby land out of revenue estate of village Penchan Wali itself, was acquired for setting up Grain Market, Fazilka. He would next contend that although there were superstructures existing on the acquired land in as many as 24 cases and the land owners had claimed the market value thereof for more than Rs.50,00,000/- but LAC granted only Rs.1,91,084/- for the superstructure. In this regard, he refers to the numerous valuation reports including Ex.P2, Ex.P3, Ex.P16 to Ex.P45 and Ex.P53 to Ex.P58, which were duly proved by PW3 Jangsher Bahadur. He refers to the statement of RW1 Murari Lal, Kanoongo, who has rightly admitted the claim put forth by the land owners for their respective superstructures existing on their acquired land.

Per contra, learned counsel for the beneficiary department submits that the learned reference Court rightly dismissed the land references for want of cogent evidence. He further submits that whatever was found due, it had been granted for the superstructure as well and there was no further scope of any enhancement in the compensation.

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 keeping in view the peculiar facts and circumstances of the cases noticed hereinabove, the appeals filed by the land owners deserve to be partly allowed, suitably enhancing the compensation for their acquired land as well as superstructure, for the following more than one reasons.

So far as the award Ex.P62 dated 25.01.1992 pertaining to the earlier acquisition for Grain Market, Fazilka is concerned, it is not safe to make this award as the basis for assessing the market value in the instant acquisition. It is so said because the market value of the land acquired under award Ex.P62 was assessed on the basis of sale of small and commercial plots for construction of shops in the Grain Market. These small plots were sold by way of auction. Learned counsel for the appellants-land owners could not substantiate his argument in this regard. Having said that, this Court feels no hesitation to conclude that the market value for the acquired land cannot be assessed on the basis of this award Ex.P62, particularly when other relevant sale exemplars produced and relied upon by the land owners themselves, are available on record.

Ex.P52 was a sale deed dated 18.10.1995, whereby land measuring 5 Kanal was sold for Rs.4,15,000/- @ Rs.6,64,000/- per acre. It is available at page 667 of the LCR. The land sold vide this sale deed was part of the acquired land from the revenue estate of village Korian Wali, thus, there could not be any better piece of evidence than this sale deed Ex.P52. So far as the sale deed Ex.P51 dated 09.11.1992 is concerned, the land sold thereunder was situated at a distance of about one kilometer from the acquired land and in this view of the matter, it would not be a safe guide for assessing the market value of the acquired land. Similarly, sale deed Ex.P48 was not only post-acquisition, being dated 10.01.2003, but it was also situated at about half kilometer from the acquired land. For both these reasons, these sale deeds would also not be the relevant pieces of evidence for assessing the market value in the instant acquisition.

Admittedly, there was no sale instance produced by the State before the learned reference Court. However, copies of some mutations were placed on record in the form of Ex.R2/A to Ex.R9/A, Ex.R17 and Ex.R47. In the absence of any relevant site plan produced on record by the respondent-State, so as to compare the distance between the land sold under these mutations and the acquired land, the learned reference Court rightly ignored this type of evidence produced by the respondent-State. The findings recorded by the learned reference Court in this regard deserves to be upheld, because learned counsel for the respondents could not refer to any relevant piece of evidence even before this Court, so as to point out as to how these mutations could have been made the basis for assessing the market value, in the absence of any relevant site plan.

On the basis of abovesaid discussion, the only relevant piece of evidence available before this Court is Ex.P52 dated 18.10.1995. As noticed hereinabove, land measuring 5 Kanal was sold by way of this sale deed @ Rs.6,64,000/- per acre and it also forms part of the acquired land. There was a time gap of about 07 years (to be precise three months less than seven years) between the sale deed Ex.P52 and the date of acquisition in the present set of appeals, because the notification under Section 4 of the Act was issued on 10.07.2002.

So far as the location and potentiality of the acquired land is concerned, it had never been in dispute. The land was situated at a prime location. It was no more a simple agricultural land. The acquired land was surrounded by very many establishments including commercial establishments i.e. Grain Market. In this regard, when learned counsel for the beneficiary department was confronted with the statement of RW1 Murari Lal, Kanoongo, who had admitted the entire case of the land owners including the potentiality and location of the acquired land, learned counsel had no answer and rightly so, it being a matter of record.

In such an undisputed fact situation, it can be safely concluded that the acquired land was semi-urban in nature and the land owners would be entitled for 15% annual increase on cumulative basis, on the abovesaid market value disclosed in sale instance Ex.P52 i.e. Rs.6,64,000/- per acre, for this time gap of 07 years. Following the law laid down by the Hon'ble Supreme Court in **The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and another, 2008 (14) SCC 745** as well as in **Ashok Kumar and others Vs. State of Haryana and others, 2015 (3) Scale 242** and granting the benefit of 15% annual increase to the land owners on cumulative basis, for the abovesaid time gap, the market value comes to Rs.17,66,252.83 per acre, which is rounded off to Rs.17,66,253/- per acre.

Another equally important aspect of the matter is; whether any cut is required to be imposed. Applying any particular percentage of cut on the market value disclosed in the relevant sale deed, is not an absolute rule. Neither it is desirable nor it is possible to lay down a straight-jacket formula, which might be made applicable in every given situation. It is also true that each case is to be decided on the basis of its own peculiar facts and circumstances. In the present case, since the land measuring 5 Kanal was sold by way of sale deed Ex.P52, which was not a small plot coupled with another material fact that the area had already been developed, no cut is warrnated to be imposed.

The view that has been taken by this Court also finds support from a Division Bench judgment of this Court in **Harbans Singh and others Vs. State of Punjab through the Land Acquisition Collector, Patiala, 2006 (1) RCR (Civil) 634,** which was, in turn, based on the law laid down by the

Hon'ble Supreme Court. The relevant observations made by the Division Bench in paras 12 & 13 of its judgment in **Harbans Singh**'s case (supra), which aptly apply to facts of the present case, read as under: -

> *"There is no quarrel with the proposition, as has been laid down by the Hon'ble Apex Court in* ***Administrator General of West Bengal Vs. Collector's case*** *(supra), that where the sale instance relied upon by the claimants comprised of small plot of land, than a cut has to be applied while evaluating a large tract of land. However, in our considered view, the aforesaid proposition of law would not be attracted to the present case. As has been noticed by the learned reference Court as well as by the learned Single Judge, it is clear that the acquired land was situated within the municipal limits. G.T. Road was situated on one side of the acquired land whereas on the other side of the acquired land a by-pass road connecting Sirhind town with the G.T. Road was situated. There were certain shops, workshops, and petrol-pumps near the acquired land. In this view of the matter, certain observations made by the Hon'ble Apex Court in* ***Bhagwathula Samanna and others Vs. Special Tehsildar and Land Acquisition Officer, 1992 (1) RRR 257: 1992 L.A.C.C. 314*** *may be noticed:*
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> > *"The proposition that large area of land cannot possible fetch a price at the same rate at which shall plots are sold is not absolute proposition and in the given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the*

purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted. With regard to the nature of the plots involved in these two cases, it has been satisfactory shown on the evidence on record that the land has facilities of road and other amenities and is adjacent to a developed colony and in such circumstances it is possible to utilise the entire area in question as house sites. In respect of the land acquired for the road, the same advantages are available and it did not required any further development. We are, therefore, of the view that the High Court has erred in applying the principle of deduction and reducing the fair market value of land from Rs.10/- per sq. yard to Rs.6.50 per sq. yard. In our opinion, no such deduction is justified in the facts and circumstances of these cases."

*Following the aforesaid dictum laid down by the Hon'ble Supreme Court of India, a Division Bench of Madras High Court in **Special Tehsildar (Adi Dravidar Welfare) Vs. Abdul Reguman, 1996 L.A.C.C. 394** held as follows:*

"In our view the observation made by the Supreme Court is squarely applicable to the case in hand. Admittedly, the land in question is already in a developed area and situated in an advantageous position and quite suitable for building purpose. It is also proved in evidence that the land in

> *question has all the amenities such as roads, drainage, electricity, communications etc. Therefore, we are of the view that the learned Subordinate Judge is not justified in deducting 20% from the market value. We, therefore, set aside that part of the order of the learned Subordinate Judge, fixing the market value at Rs.1325/- less 20%. The cross-objection is, therefore, allowed and the order of the Subordinate Judge is modified to this extent."*

Respectfully following the law laid down by the Hon'ble Supreme Court as well as by the Division Bench of this Court, it is unhesitatingly held that instant one is not a fit case for any cut on the abovesaid market value disclosed in the sale deed Ex.P52. Accordingly, the land owners, in these appeals, are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.17,66,253/- per acre, from the date of notification under Section 4 of the Act.

Coming to the claim regarding superstructure, it is again the undisputed case between the parties that the beneficiary department or the State of Punjab did not produce on record any valuation report before the learned reference Court. Whatever valuation reports were produced by the land owners, the same have gone unrebutted. Once it is so, the learned reference Court ought to have accepted the valuation reports and the amount of compensation, as assessed by the expert witness PW3 Jangsher Bahadur, should have been granted to the land owners for their existing superstructure on the land at the time of its acquisition. No contrary evidence has been pointed out by learned counsel for the respondents in this regard and rightly so, because there is none available on record.

In view of what has been discussed hereinabove, this Court is of the considered view that it would be just and expedient to grant the same amount of compensation to the land owners, which has been assessed by the expert witness PW3 Jangsher Bahadur in his different valuation reports. Accordingly, the land owners are held entitled to receive the amount of compensation for their respective superstructure, as assessed by PW3 Jangsher Bahadur, in whichever case it was found existing on the acquired land at the time of its acquisition. Since the learned reference Court has failed to appreciate this unrebutted evidence available on record in favour of the land owners, the contrary findings recorded in this regard cannot be sustained.

It has been held by the Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Regd.), Faridkot and others Vs. State of Punjab and others, 2012 (5) SCC 432** that the land owners are entitled to receive the best price for their acquired land. Further, the Hon'ble Supreme Court in **Udho Dass Vs. State of Haryana, 2010 (12) SCC 51,** has held that since the proceedings for assessing the market value and granting compensation to the land owners keep on going for decades together, the land owners hardly get compensated in true sense of the word. It has come true in the instant acquisition as well. The land owners had to come this Court by filing writ petitions seeking a direction to the respondent authorities even for announcing the award, which finally came to be announced after more than five and half years.

The relevant observations made by the Hon'ble Supreme Court in paras 17 & 18 of its judgment in **Udho Dass**'s case (supra), which can be gainfully followed in the present case, read as under:-

"Although, in the present matter, sale instances around or near abouts the date of Notification of the present acquisition are

available yet these cannot justify or explain the potential of a particular piece of land on the date of acquisition as the potential can be recognized only some time in the future and it is open to a landowner claimant to contend that the potential can be examined first at the time of the Section 18 Reference, the first Appeal in the High Court or in the Supreme Court in appeal as well. We must also highlight that Collectors, as agents of the State Government, are extraordinarily chary in awarding compensation and the land owners have to fight for decades before they are able to get their due. We take the present case as an example. The land was notified for acquisition in May 1990. The collector rendered his award in May 1990 awarding a sum of Rs. 2,00,000/- per acre. The Reference Court by its award dated January 2001 increased the compensation to Rs. 125 per square yard for the land of the road behind the ECE factory and Rs. 150 per square yard for the land abutting the road which would come to Rs. 6,05,000/- and Rs. 7,26,000/- respectively for the two pieces of land. This itself is a huge increase vis-a-vis the Collector's award. The High Court in First Appeal by its judgment of 24th September 2007 enhanced the compensation for the two categories to Rs. 135 and 160 respectively making it Rs. 6,53,400/- and Rs. 7,74,400/-. In other words, this is the compensation which ought to have been awarded by the Collector at the time of his award on 12th May 1993. This has, however, come to the land owner for the first time as a result of the judgment of the High Court which is under challenge in this appeal; in other words, a full 17 years from the date of

Notification under Section 4 and 14 years from the date of the award of the Collector on which date the possession of the land must have been taken from the landowner. Concededly, the Act also provides for the payment of the solatium, interest and an additional amount but we are of the opinion, and it is common knowledge, that even these payments do not keep pace with the astronomical rise in prices in many parts of India, and most certainly in North India, in the land price and cannot fully compensate for the acquisition of the land and the payment of the compensation in driblets. The 12% per annum increase which Courts have often found to be adequate in compensation matters hardly does justice to those land owners whose land have been acquired as judicial notice can be taken of the fact that the increase is not 10 or 12 or 15% per year but is often upto 100% a year for land which has the potential of being urbanized and commercialized such as in the present case. Be that as it may, we must assume that the landowners were entitled to the compensation fixed by the High Court on the date of the award of the Collector and had this amount been made available to the landowners on that date, it would have been possible for them to rehabilitate their holdings in some other place. This exercise has been defeated for the simple reason that the payment of compensation has been spread over almost two decades. In this view of the matter, we are of the opinion that a landowner is entitled to say that if the compensation proceedings continued over a period of almost 20 years as in the present case, the potential of *the land acquired from him must also be adjudged keeping in view the development in the area spread over the period of 20 years if the evidence so permits and cannot be limited to the near future alone. We, therefore, feel that in the circumstances, the appellants herein were fully entitled to say that the potential of the acquired land had not been fully recognized by the High Court or by the Reference Court. We must add a word of caution here and emphasize that this broad principle would be applicable where the possession of the land has been taken pursuant to proceedings under an acquiring Act and not to those cases where land is already in possession of the Government and is subsequently acquired.*

There is another unfortunate aspect which is for all to see and to which the Courts turn a Nelson's eye and pretend as if the problem does not exist. This is a factor which creates an extremely grim situation in a case of compensation based exclusively on sale instances. This is the wide spread tendency to under value sale prices. The provision of Collector's rates has only marginally corrected the anomaly, as these rates are also abnormally low and do not reflect the true value. Where does all this leave a landowner whose land is being compulsorily acquired as he has no control over the price on which some other landowner sells his property which is often the basis for compensation?"

Let it be specifically recorded here that no other evidence or judicial precedents were 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 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.17,66,253/- per acre, from the date of notification under Section 4 of the Act. They are also held entitled to receive the compensation for their respective superstructures in the abovesaid terms of this order. Besides this, the land owners shall be entitled to all the statutory benefits available to them, under the relevant provisions of the Act.

Resultantly, with the observations made above, all these 51 appeals stand disposed of, in the abovesaid terms, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

23.02.2016
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