IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: March 21st, 2016

1. F.A.O.No.851 of 2015 (O&M)

Government of India, New Delhi & another

...Appellants

Versus

Rajdeep Kaur & others

...Respondents

2. F.A.O.No.854 of 2015 (O&M)

Government of India, New Delhi & another

...Appellants

Versus

Tarsem Singh & others

...Respondents

3. F.A.O.No.5001 of 2015 (O&M)

Union of India, New Delhi & another

...Appellants

Versus

Kulwant Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mrs.Jatinder Jit Kaur, Advocate,
for the appellants.

Mr.Randeep Singh, Advocate for
Mr.Vipin Mahajan, Advocate,
for respondent No.1 in FAO Nos.851 & 854 of 2015.

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AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of three F.A.O.Nos.851, 854 and 5001 of 2015 filed at the instance of the Union of India as the questions of fact and law involved in all these appeals are the same.

The National Highways Authority acquired the land for widening/four laning, maintenance, management and operation of National Highway No.15. The competent authority assessed the compensation of the land @ 33.00 lacs per acre falling within the strip of 2 acres adjacent to the Highway. Not satisfied with the rate assessed by the competent authority, the matter was referred to the Arbitrator, who, after taking into consideration the sale deed dated 24.12.2007 enhanced the compensation @ ₹63.15 lacs per acre.

Mrs.Jatinder Jit Kaur, learned counsel appearing on behalf of the appellants submits that the Arbitrator has awarded the compensation without calculating the value of the land. She further submits that the sale deed, which has been relied upon, pertains to 2007. The Arbitrator has not taken into consideration the fact that the acquired land was a small chunk of land and enhanced the compensation manifold. At best, he could have enhanced the compensation by 12%. He should not have treated the land as about 25% more valuable by taking into consideration the sale deed which was in respect of land, which was 350 feet away from the land acquired and, thus, the land acquired was agricultural and would not fetch so much value and, therefore, the increase is phenomenal and cannot be relied upon. Though as per Punjab Scheduled Roads and Controlled Area Restriction of Un-Regulated Development Act, 1963, construction of building/structures within 100 meters abutting the National Highways/Scheduled Roads of the National Highway cannot be raised as the character and nature of the land was agricultural, thus, the award is against the public policy, thus, prays for setting-aside of the impugned order.

Mr.Randeep Singh Advocate for Mr.Vipin Mahajan, learned couunsel appearing on behalf of respondent No.1 in FAO Nos.851 and 854 of 2015 submits that there is no illegality and perversity in the impugned order. The same is perfectly as per the law relied upon by the Arbitrator. The Objecting Court has observed that the Court cannot sit as an Appellate Court to re-appreciate the evidence within the four corners of Section 34 of 1996 Act.

I have heard the learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the findings rendered by the Arbitrator for the purpose of assessing the amount of compensation:-

> "*b) So far as the sale deed No.3477 dated 24.12.2007 is concerned, the learned counsel for respondents has referred to the judgment of Hon'ble Apex Court in the case of Karnataka Urban Water Supply and Drainage Board etc. Vs. K.S.Gangadharappa & Another etc. 2009 (2) (S.C.) 288 and has contended that price fetched for small plots can not form the basis for valuation of large tracts of land. He stated that the above judgment also talks of imposing necessary deduction. In rebuttal, the learned counsel has argued that the said judgment was not applicable in the instant case, because in the case considered by Hon'ble Supreme Court a sale deed of a small piece of land measuring 30' x 50' was being referred to fix the price of land in acres. Whereas, in the instant case the exemplar was for a land measuring about 1 kanal 2 Marlas and the applicant's land, which had been acquired, was also only a few kanals. He has further said that in the instant case the law laid down by the Hon'ble Supreme Court in the case of Bhagwathulla Samanna and Others Vs. Special Tehsildar and Land Acquisition Officer, cited as 1992 AIR 2298, was more*

relevant, wherein the Hon'ble Court had ruled-"If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified". I have considered the arguments of both the sides. In the instant case the land of the applicant was a small chunk (of a few kanals) and was situated on the National Highway itself. So, I feel that in the instant case the citation referred to by the learned counsel for the applicant is more relevant than the one referred to by the learned counsel for respondents No.1 & 2. Further, in Anjani Molu Dessai Vs. State of Gao & Another in para 13 of its judgment the Hon'ble Supreme Court has clearly held-"The legal position is that even where there are several exemplars with reference to similar lands, usually the highest of exemplers, which is a bona fide transaction, will be considered." While giving this judgment, the Hon'ble Supreme Court relied on a three judge bench of the same court, which ruled in the case of Shri Rani M Vijaylakshamanna Rao Bahadur, Ranee of Vuyyur Vs. The Collector of Madras, 1969 (1) MLJ 45- "After all, when the land is being compulsorily taken away from a person, he is entitled to say that he should be given the highest value which similar land in the locality is shown to have fetched in a bona fide transaction." In light of above, I feel that since the land of applicant was on the National Highway and was a few kanals only they are entitled for compensation at the rate of emerging from sale deed No.3477 dated 24.12.2007.

c) In the sale deed No.3477 dated 24.12.2007 the area is recorded as 22 marlas. But it is also mentioned that area has been worked out with the karam of five feet. In this respect, the Patwari has reported that it is a practice in this area to mention the area in the sale deeds on the basis of a karam of 5 feet, whereas revenue record is based on a karam of five feet six inches. In such cases when revenue records are updated on *the basis of sale deeds the area involved is first converted into feet by multiplying it with 225 and then converted into regular Marla by dividing it with 272. So, the area involved in the sale deed No.3477 dated 27.12.2007 us 22x22÷272 Marla i.e. 18.2 Marlas. The patwari halwa has further reported that he has calculated the area involved in this sale deed and that comes to 18.8. Marlas as per revenue record. This area has been sold for a consideration of Rs.5,65,500/-. Patwari Halqa has reported that thus this sale deed has been registered at the rate of Rs.48.12 Lakhs per acre.*

d) Further, in para 10 & 11 of its Judgment in the case of Haridwar Development Authority Vs. Raghubir Singh in 2010 (2) SCR 201, Hon'ble Supreme Court ruled- "10. Only one grievance of the claimants remains to be addressed. The claimants pointed out that the relied upon sale transaction is dated 19.12.1990, whereas the notification under Section 4(1) of the Act in this case was of 7.12.1991; and as there is a gap of nearly one year, an appropriate increase in the market value should have been provided keeping in view the steady increase in prices. It is well settled that increase in market value by about 10% to 12% per year can be provided, in regard to lands situated near urban areas having potential for non-agricultural development (See: Sardar Jogendra Singh Vs. State of UP-2008(17) SCC 133). 11. We are therefore of the view that the value arrived at by the Collector, and accepted by the Reference Court and the High Court requires to be increased by 12% in view of the fact that the preliminary notification was one year after the relied upon sale transaction. Accordingly by increasing the value of Rs.26/25 by 12%, we arrive at the market value as on 7.12.1991 as Rs.29/40, rounded off to Rs.20/50 pr sq. ft." In the instant case the notification under Section 3-A was done on 23.5.2008. So, there is a gap of about 5 months between the registration of sale deed and the notification under Section 3-A. Following the above law, the price reflected in the above sale deed should be *increased by 12% per annum and so by 5% for this 5 months period. By doing so, we arrive at the market value as on 23.5.2008 as Rs.50.52 Lakh per acre.*

e) Further, the learned counsel for applicant has argued that the sale deed referred to by him pertains to a chunk of land which is about 350 feet away from the road, whereas the acquired land was abutting the road. He has argued that it is a common knowledge that the land abutting the road fetches higher value. The Halqa Patwari has confirmed that the sale deed dated 24.12.2007 pertains to a piece of land which is about 350 feet away from the National Highway. He has stated that the land abutting the road is 30-40% more valuable than this. Having given my thoughtful consideration to all this, I feel that the land abutting the National Highway should be treated as about 25% more valuable than the land comprised in sale deed dated 24.12.2007. This gives the rate of Rs.63.15 Lakh per acre. I feel this is a fair rate, since the Patwari has reported that the land in question is only about 1.5 km away from Gurdaspur City (which is a district headquarter), and only one km away from a place where only two and a half years later PUDA developed an Urban Estate and sold plots at the rate of Rs.6,000/- per square yard."

The findings rendered by the Arbitrator, in my view, are based upon the test of reasonableness, much less by applying 1956 Act, the increase of 12% was caused in 2009, whereas the sale deed is of 2007. It is a matter of record that the land in respect of the sale deed of 2007 is 350 feet away from the road. It is settled law that a long strip of land measuring more than two-third of an acre lying alongside and adjoining the Highway cannot be treated as a land without value or without any potential for development. View of mine is supported by the judgment of the Hon'ble Supreme Court in **State of Goa and another Versus Gopal Baburao Gaudo & others, passed in SLP(C) No.10598 of 2009.**

In my view, the award of the Arbitrator is perfectly in accordance with settled law, much less based upon the actual aspect of the matter. There is no illegality in the award.

It is now a settled law that in what circumstances, the award has to be interfered with. The question, which is now 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 34 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. Combines (2015) 5 SCC 698.** In the aforementioned judgments, 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 embark on a path by substituting its own view in support of the Arbitrator's view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act. The Arbitrator has dealt with the dispute, which was contemplated and was within its scope. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but vis-a-vis proceedings. 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 claims of respective parties to the *lis*.

In my view, the award read as a whole is just, fair and reasonable. 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.

No error of law arises from the award as well as impugned order. The award is perfect and justified.

There is no merit in the aforementioned appeal. The same is accordingly dismissed.

March 21st, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**