IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 01.03.2016

1. RFA No.3119 of 2013 (O&M)

Indian Oil Corporation Ltd.

... Appellant

Vs.

State of Haryana and others

... Respondents

2. RFA No.4414 of 2013 (O&M)

Kashmir Singh

... Appellant

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. P.K. Mutneja, Advocate
for Indian Oil Corporation Ltd.

Mr. Ashwani Talwar, Advocate
for the appellant (in RFA No.4414 of 2013)

Mr. Arun Beniwal, DAG, Haryana.

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

*****

<u>RAMESHWAR SINGH MALIK, J.</u>

These two appeals, one each filed by the beneficiary department and the land owner, bearing Regular First Appeal Nos.3119 & 4414 of 2013, are being decided vide this common order, as both 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.3119 of 2013 (Indian Oil Corporation Ltd. Vs. State of Haryana and others).

Facts are hardly in dispute. State of Haryana sought to acquire land measuring 05 acres out of the revenue estate of village Sithana, Tehsil and District Panipat, at public expenses for public purpose namely; for resettlement of oustees of village Bohli, whose land was acquired for Panipat Oil Refinery and for construction of Shamshan Ghat, Hadda Rori and Kumhar Mitti (Kumhar Dana). Accordingly, notification dated 14.12.2006 was issued under Section 4 of the Land Acquisition Act, 1894 ('the Act' for short), which came to be followed by notification dated 04.06.2007 under Section 6 of the Act. Land Acquisition Collector, vide his award dated 27.02.2009 assessed the market value of the acquired land @ Rs.16,00,000/- per acre. Dissatisfied, the land owners filed their objections under Section 18 of the Act and as a consequence thereof, land reference came to be decided by the learned reference Court, vide impugned award dated 14.01.2013, assessing the market value @ Rs.28,65,500/- per acre.

Both the parties felt aggrieved against the abovesaid impugned award passed by the learned reference Court. One appeal each have been filed by both the parties. Beneficiary department i.e. Indian Oil Corporation Ltd. ('IOC Ltd.' for short) is seeking reduction in the amount of compensation awarded to the land owner by the learned reference Court, whereas the landowner is seeking further enhancement in the compensation for his acquired land.

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 case, so far as the appeal filed by the IOC Ltd. is concerned, it has been found without any merit and the same is liable to be dismissed. However, the appeal filed by the landowner deserves to be partly allowed, suitably enhancing the amount of compensation for his acquired land. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the impugned award passed by the learned reference Court would show that the land owner produced and duly proved on record as many as 16 sale exemplars, as noticed by the learned reference Court in para 13 of the impugned award. The State or IOC Ltd. did not produce any sale instance with a view to substantiate their stand taken before the learned reference Court. However, they placed reliance on three awards passed by the learned reference Court pertaining to the acquisition of nearby villages in the form of Ex.R1, Ex.R2 and Ex.R3.

While assessing the market value of the acquired land, learned reference Court took the average market value of as many as six sale instances, available on record in the form of sale deeds Ex.P3, Ex.P5, Ex.P7, Ex.P9, Ex.P15 and Ex.P16. Vide sale deed Ex.P3, land measuring 08 acres and 03 kanals was sold @ Rs.1318.38 per square yard on 12.10.2006 out of the revenue estate of village Kabri. Vide sale deed Ex.P5 dated 07.11.2005, land measuring 96 kanals and 17 marla out of the revenue estate of village Kabri was sold @ Rs.1095.04 per square yard. Similarly, vide sale deed Ex.P7 dated 22.11.2005, land measuring 24 kanals and 17 marla was sold out of the revenue estate of village Kabri @ Rs.1094.30 per square yard. Again, vide sale deed Ex.P9 dated 30.12.2005, land measuring 60 kanals and 18 marla was sold out of the revenue estate of village Kabri @ Rs.1141.52 per square yard. Vide sale deed Ex.P15 dated 07.11.2005, land measuring 86 kanals and 03 marla was sold out of the revenue estate of village Kabri @ Rs.1095.04 per square yard. Vide sale deed Ex.P16 dated 07.11.2005, land measuring 114 kanals and 18 marla out of the revenue estate of village Kabri was sold @ Rs.1095.04 per square yard.

Since these were the only relevant sale deeds and were not pertaining to small pieces of land, the learned reference Court committed no error of law, while placing reliance on these sale instances, for the purpose of assessing the market value of the acquired land. Further, the learned reference Court proceeded on a fair and justified approach, while taking the average market value of all the abovesaid six sale deeds, which came to Rs.1129.61 per square yard. This finding recorded by the learned reference Court in paras 20 & 21 deserves to be upheld.

However, the learned reference Court fell in serious error of law, while applying a cut of 30% on the abovesaid market value. It is so said because keeping in view the size of plots sold by way of abovesaid sale deeds, no cut was warranted to be imposed on the abovesaid market value. In fact, imposition of any particular percentage of cut on the market value disclosed in the relevant sale instances, is not an absolute rule. Neither it is desirable nor it is possible to lay down any straight-jacket formula in this regard, which might be made applicable in every given situation. It is equally true that every case is to be decided on the basis of its own peculiar facts and circumstances. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

The abovesaid view 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 of this Court in paras 12 and 13 of its judgment in **Harbans Singh'**s case (supra), which can be gainfully followed in 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:*
>
> > *"The proposition that large area of land cannot possible fetch a price at the same rate at which small 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 Division Bench of this Court in the cases referred to hereinabove and applying the same to the peculiar fact situation obtaining in these appeals, this Court feels no hesitation to conclude that no cut was warranted to be imposed on the abovesaid market value disclosed from as many as six sale instances, which were pertaining to much bigger chunks of land sold thereunder than the chunk of acquired land.

To be fair to the learned counsel for the beneficiary department i.e. IOC Ltd., his arguments have been duly considered but were found wholly misplaced and cannot be accepted. His first argument that the abovesaid sale deeds were not relevant for the purpose of assessing the market value of the acquired land, has not been found worth acceptance, because the site plan Ex.PW3/12 available at page 183 of the lower Court record ('LCR' for short) has been duly proved. His next argument that the acquired land was situated far away from the main road and because of that reason average market value of the abovesaid six sale deeds could not have been taken into consideration, has also been found misplaced. His third argument regarding situation and location of the acquired land that it was not showing any potentiality of the acquired land, has also been found contrary to the record. His last argument referring to the purpose of acquisition, contending that it would not show that the acquired land was having any potentiality, has also been found without any force.

It is so said because a bare perusal of the duly proved site plan Ex.PW3/12, coupled with the statements of PW3 Ved Pal whose statement is available at page 371 of the LCR and PW4 Rampal whose statement is available at page 373 of the LCR, leaves no manner of doubt that the acquired land was situated on a metalled road. Very many establishments, including commercial establishments, were situated in the close vicinity of the acquired land. Primary Health Centre, Primary School and numerous shops were also situated nearby the acquired land. In this view of the matter, it can be safely concluded that the acquired land was no more a simple agricultural land, because it could have been easily put to residential, industrial as well as commercial use.

Coming to three earlier awards passed by the learned reference Court in the form of Ex.R1, Ex.R2 and Ex.R3, none of them have been found relevant for the purpose of assessing the market value of the acquired land. The reason is that these awards were pertaining to village Bal Jattan and Bohli. On the site plan, distance between these two villages namely Bal Jattan and Bohli as well as the acquired land has not been shown. In the absence of any such clinching evidence available on record, these awards in the form of Ex.R1 to Ex.R3 cannot be made the basis for assessing the market value of the acquired land.

The Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Regd.), Faridkot and others Vs. State of Punjab and others, 2012 (5) SCC 432** has held 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 the land owners are hardly get compensated in the matters of compulsory acquisition, wherein they had no role to play.

The Court has to make an endeavour to reach closest to the truth as per the peculiar facts and circumstances of each case, with a view to do complete and substantial justice between the parties. Proceeding on a holistic and pragmatic approach with a view to strike a balance between the parties, this Court is of the considered view that it is just and expedient to grant the compensation to the land owner on the basis of abovesaid market value for his acquired land. Granting any lesser amount of compensation would be wholly inadequate. Accordingly, the land owner is held entitled to receive the amount of compensation for his acquired land @ Rs.1129.61 per square yard, which is rounded off to Rs.1130/- per square yard, from the date of notification under Section 4 of the Act.

So far as the claim of the land owner for further enhancement of the amount on account of severance charges is concerned, a reasonable amount of Rs.5,00,000/- has also been granted by the learned reference Court. Since the findings recorded by the learned reference Court in para 24 of the impugned award has been found just and reasonable in the peculiar facts and circumstances of the case, the same deserves to be upheld. Ordered accordingly.

Let it be specifically recorded here that no better evidence or other 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 case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the appeal filed by the beneficiary department i.e. IOC Ltd. has been found wholly misconceived, bereft of merit and without any substance, thus, it must fail and the same is hereby dismissed. The appeal filed by the land owner deserves to be partly accepted and the same is allowed to the extent indicated above. The land owner is held entitled to receive the compensation for his acquired land at the rate of Rs.1130/- per square yard, from the date of notification under Section 4 of the Act. Besides this, the land owner shall also be entitled to all the statutory benefits available to him, under the relevant provisions of the Act.

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

[RAMESHWAR SINGH MALIK]
01.03.2016 **JUDGE**
vishnu