IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.2158 of 2015 (O&M)
Date of decision: 14.1.2016

Ajit Singh and another

.. Appellants

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Munish Kumar Garg, Advocate
for the appellants in RFA Nos 8893 to 8896 of 2014
and RFA No. 2158 of 2015.

Mr. Jasbir Mor, Advocate
for the appellants in RFA No. 4606,4607 & 4609 of 2008.

Mr. Satyawan Singh Nain, Advocate for
Mr. R.N. Lohan, Advocate
for the appellants in RFA No. 3013 and 5817 of 2008.

Mr. U.K. Agnihotri, Advocate
for the appellant in RFA No. 451 of 2009 and
for the respondents in RFA No. 1070 of 2008.

Mr. Sanjeev Sheokand, Advocate
for the appellant in RFA No. 958 of 2008

Mrs. Vibha Tewari, AAG, Haryana
for the appellants in RFA No. 1054 to 1086, 1334 of 2008.

and for the respondents in RFA 8893 to 8896 of 2014
RFA No. 2158 of 2015, 4606 ,4607 & 4609 of 2008
RFA No. 3013 and 5817 of 2008, RFA No. 451 of 2009
RFA No. 958 of 2008.

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. (Oral)

These 46 regular first appeals out of which 35 have been filed by the State of Haryana bearing RFA No. 958, 1054 to 1086, 1334 of 2008 and 11 by the land owners bearing RFA 8893 to 8896 of 2014, 2158 of 2015, 4606 ,4607 & 4609 of 2008, 3013 and 5817 of 2008 and RFA No. 451 of 2009, are being decided together, as all these appeals are arising out of the same acquisition and raise identical questions of law and fact. However, for the facility of reference, facts are being culled out from RFA No. 1076 of 2008 (State of Haryana Vs. Ajit Singh and others).

Briefly put, basic facts necessary for disposal of this batch of appeals are that State of Haryana sought to acquire land measuring 71 kanals out of the revenue estate of village Ramgarh Dhani at public expenses for public purpose, i.e. construction of Jind Distributory No. 7. Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 ('the Act' for short) was issued on 8.5.2002 which was followed by notification dated 13.8.2002 issued under Section 6 of the Act. The Land Acquisition Collector, announced his award dated 13.1.2003, whereby compensation at uniform rate of ₹1,50,000/- per acre was granted for the acquired land, as the entire land was Nehri. Dissatisfied, land owners filed their petitions under Section 18 of the Act and as a consequence thereof, as many as 34 land references were forwarded to the learned reference court, which were decided vide common award dated 8.10.2007. The learned reference court granted compensation @ ₹3 lacs per acre and an amount ₹15,000/- per tubewell, was also granted.

Both the parties felt aggrieved against the abovesaid impugned award passed by the learned reference court. State of Haryana filed 35 regular first appeals seeking reduction in the compensation awarded by the learned reference court, whereas the land owners are seeking enhancement in the compensation.

Learned counsel for the State submits that learned reference court has proceeded on a patently illegal approach, while altogether ignoring three sale deeds, i.e. Ex. R-1 to Ex.R-3 produced on record by the State on Haryana. She further submits that the Collector has granted reasonable amount of compensation to the land owners and the learned reference court ought to have dismissed their references. She also submits that since award dated 9.12.2005 (Ex.PX) was pertaining to different village namely Behbalpur, the same could not have been made basis for assessing the market value of the acquired land in village Ramgarh Dhani. Finally, she prays for dismissal of the appeals filed by the landowners and for allowing the appeals filed by the State.

On the other hand, learned counsels for the land owners submit that all the three sale deeds produced on record by the State of Haryana, being post acquisition, were liable to be discarded and were rightly discarded by the learned reference court. They further submit that in the absence of any other evidence on record, sale deeds Ex.P-1 and P-2 were the best possible evidence which ought to have been made the basis for assessing the market value for the acquired land. Award Ex.Px dated 9.12.2005 was since pertaining to a different village and different acquisition, it could not have been made basis for assessing the market value for the land of village Ramgarh Dhani. They would next contend that so far as location of the acquired land was concerned, it was adjoining the municipal area of Jind City. This fact was admitted by Dharampal Kuhar, SDO, while appearing as RW1 before the learned reference court and there could have been no better evidence to show the potentiality of the acquired land.

While referring to the statement of RW1- Dharampal Kuhar, learned counsel for the land owners submit that since remaining land stood bifurcated and it was left without any passage, the land owners are also entitled for reasonable compensation on account of severance charges. Regarding compensation of ₹15,000/- per tubewell, learned counsel for the landowners submit that it was on very lower side, because no tubewell could have been installed with any amount lesser than ₹1,00,000/- They pray for dismissal of the appeals filed by the State of Haryana and for allowing the appeals filed by the land owners.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of these cases and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that appeals filed by the State of Haryana have been found without any merit and same are liable to be dismissed, whereas the appeals filed by the land owners deserve to be partly allowed. 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 sale deeds Ex.R-1 to Ex.R-3 produced by the State in its evidence were rightly ignored, all these sale deeds being post acquisition. However, learned reference court fell in serious error of law, while ignoring the sale deeds Ex.P-1 and P-2 duly proved on record by the land owners. Learned counsel for the land owners have been found fully justified in contending that in the absence of any other relevant evidence available on record, sale deeds Ex.P-1 and P-2 are the best possible evidence which can be made basis for assessing the market value of the acquired land.

Sale deed Ex.P-1 is available at page 16 of the lower court record ('LCR' for short). Land measuring 5.6. marlas was sold by none else but State of Haryana itself on 10.8.2001 and as a consequence of the said transaction, sale deed dated 8.5.2002 (Ex.P-1) was executed. The land measuring 5.6 marlas was sold for an amount of ₹2,85,000/- @ 4,30,188/- per acre. Sale deed dated 4.6.2001 Ex.P2 is available at page 19 of the LCR, whereby the land measuring 11 k 7 m was sold for an amount of ₹4,99,000/-.

Although the land owners were entitled for best price of their acquired land which was reflected at ₹4,30,188/- per acre, yet to be fair to all concerned, this Court is of the considered view that average of both these sale deeds would be just and expedient for assessing the market value of the acquired land. Average of both the sale deeds, i.e. Ex.P-1 and P-2 comes to ₹3,90,970 which is rounded off to ₹3,91,000/- per acre.

Since the abovesaid market value was calculated on the basis of average of both the sale deeds i.e. Ex.P-1 and P-2, which were about one year earlier than the date of notification under Section 4 of the Act, the land owners are also entitled for annual increase @ 12% which comes to ₹46,920/- and the same is rounded off to ₹47,000/-. Total of ₹3,91,000/- and ₹47,000/- comes to ₹4,38,000/- per acre. Thus, landowners are held entitled to receive the compensation for their acquired land @ ₹4,38,000/- per acre from the date of notification under Section 4 of the Act.

Coming to another component on account of severance charges, it has gone undisputed on record that unacquired land of the landowners stood bifurcated, as admitted by none else but Dharampal Kuhar, SDO, while appearing as RW1 before the learned reference court. Relevant part of the cross examination of RW1, which speaks volumes in favour of the landowners and is available at page 94 of the LCR, deserves to be noticed here and the same reads as under:-

> "*It is correct that the land of the applicant divided into two parts due to construction of this minor. It is correct that there is no bridge on the minor in question to cross the minor. It is correct that the land acquired by the Govt. in this project is nehri. It is incorrect to suggest that the landowners are facing difficulty in irrigation and cultivation of their remaining land due to*

> *construction of this minor. It is correct that the acquired land is adjoining to the municipal area of the Jind City. It is incorrect to suggest that at the time of acquisition the value of the land was more than Rs. 10 lacs per acre. It is also incorrect to suggest that now present the value of the acquired land is Rs. 20 lac per acre. It is correct that the Govt. has announced a cost of land in this Zone is Rs. 800000/- per acre as on today. But no such compensation paid by this Department so far.*

It is also a matter of record that no compensation has been awarded by the learned reference court to the landowners on account of severance charges. Taking a holistic view of the matter and with a view to do complete and substantial justice between the parties, this Court is of the view that it would be just and reasonable to grant 50% of the market value, on account of severance charges, to the land owners for their acquired land. The view taken by this Court also finds support from two judgments of this Court in **Surjit Singh and others Vs. State of Punjab through Land Acquisition Collector and others, 2008 (2) RCR (civil) 78** and **Kartar Singh Vs. State of Haryana, 2010 (2) RCR (civil) 443.**

The relevant observations made by this Court in *Kartar Singh's case* (supra), which can be gainfully followed in these cases, read as under:-

> "*Though in the present case, it has come on record that divided two parts of the land of*

> *the appellant are accessible through culvert on the distributory, but still the fact remains that his one chunk of land has been divided into two parts and there is difficulty to the appellant to cultivate the same. As the right of the appellant has been effected, he is entitled to some element of compensation on account of severance. In my considered opinion, keeping in view the fact that two parts of the land of the appellant are not accessible as such, the appellant shall be entitled to damages at the rate of 50% of the market value on account of severance. Reference can be made to a judgment of this Court in Surjit Singh and others v. State of Punjab through Land Acquisition Collector and others, (2008-2) P.L.R. 763 where the issue was acquisition of land for SYL canal. The appellant shall also be entitled to all statutory benefits as are available under the Act."*

Since in these cases, RW1-Dharampal Kuhar, SDO, admitted that there is no culvert/bridge for minor, so as to enable the landowners to approach their unacquired land, the landowners, in these cases, have been found placed on better footing than in the case of Kartar Singh's (supra). However, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

Coming to the next argument raised by learned counsel for the landowners that they are entitled for compensation @ ₹1,00,000/- per tubewell, this Court, while striking a balance between the parties, deem it appropriate to grant an amount of ₹60,000/- per tubewell to the landowners. Ordered accordingly.

Since the policy of the State of Haryana declaring the market value of land @ ₹8 lacs per acre came to be announced at a later point of time, the landowners in this acquisition would not be entitled for the benefit of the said State policy.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that appeals filed by the State of Haryana are wholly misconceived, bereft of merit and without any substance, thus, these must fail and the same are hereby dismissed.

Appeals filed by the landowners are allowed in the abovesaid terms and they are held entitled to receive the compensation @ ₹4,38,000/- per acre for their acquired land from the date of notification under Section 4 of the Act. Landowners are also held entitled to receive the compensation @ 50% of the abovesaid market value for their acquired land, towards damages on account of severance charges and ₹60,000/- per tubewell. Besides this, landowners shall also be entitled for all other statutory benefits available them under the relevant provisions of the Act.

Before parting with the order, it is deemed appropriate to clarify that the landowners, whose appeals were delayed by inordinate long period, shall not be entitled for interest for the period of delay, e.g. 2418 days in RFA No. 2158 of 2015, in view of the law laid down by the Hon'ble Supreme Court in **Imrat Lal and others Vs. Land Acquisition Collector and others, 2015 (2) RCR (civil) 437**.

Resultantly, with the observations made above, all these 46 appeals stand disposed of, in the abovesaid terms, however, with no order as to the costs.

(RAMESHWAR SINGH MALIK)
JUDGE

14.1.2016
AK Sharma