HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

RFA-1931-2014 & connected matters
Date of decision:16.2.2016

Power Grid Corporation India Limited

...Appellant

Versus

Ajmer Singh and another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Mansur Ali, Advocate for the appellants in the appeals of Power Grid Corporation of India.
Mr.Abhinav Jain, Advocate for Mr.N.S.Wahniwal, Advocate for the appellants in land owners' appeals.
Mr.Ritesh Verma, Sr.DAG, Punjab.

RAMESHWAR SINGH MALIK, J. (Oral)

This batch of 50 appeals, out of which 29 appeals bearing RFA Nos.1912 to 1940 of 2014 have been filed by the beneficiary department, i.e. Power Grid Corporation India Limited and 21 appeals bearing RFA Nos.6967 to 6978, 8103 to 8106, 8169, 8188 to 8190 and 10590 of 2014, have been filed by the land owners, is being decided vide this common order, as these appeals arise out of 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.1931 of 2014** (Power Grid Corporation India Limited v. Ajmer Singh and another).

Facts necessary for disposal of instant batch of appeals, are that State of Punjab sought to acquire land measuring 248 kanals and 15 marlas, out of revenue estate No.23 Moga Mehla Singh and revenue estate No. 54

Nawan Moga, Tehsil and District Moga, at public expenses for public purpose, i.e. for construction of 800/400/200 KV Sub Station by Power Grid Corporation of India. Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 (`the Act' for short) was issued on 3.8.2009, which came to be followed by notification dated 25.1.2010 under Section 6 of the Act. Land acquisition collector, vide his village wise awards dated 23.7.2010 and 28.7.2010 granted the compensation to the land owners for their acquired land, at the rate of Rs.35 lacs per acre for the land which was abutting the main road and up to the depth of one acre i.e. `A' class land, Rs.27 lacs per acre was granted for the land beyond the depth of one acre for `B' class land and Rs.20 lacs per acre was granted for the land which was forming part of 'C' class land.

Dissatisfied, the land owners filed their objections under Section 18 of the Act and as a consequence thereof, learned reference court, vide its impugned award dated 11.4.2013, discarded the belting system and assessed the market value for the total acquired land at a uniform rate of Rs.45,50,000/- per acre.

Both the parties felt aggrieved against the above-said impugned award passed by the learned reference court. It is pertinent to note here that the above-said award dated 11.4.2013 was followed in later impugned awards dated 26.5.2013, 28.5.2013 and 1.7.2013. The appeals referred to hereinabove are directed against all the above-said four different but identical awards passed by the learned reference court. Power Grid Corporation India is seeking reduction in the amount of compensation awarded by the learned reference court to the land owners, whereas the land owners are seeking further enhancement in the compensation for their 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 totality of facts and circumstances of these cases, so far as the appeals filed by the Power Grid Corporation India are concerned, the same have been found bereft of merit and are liable to be dismissed, whereas the appeals filed by the land owners deserve to be partly allowed, suitably enhancing the amount of compensation for their acquired land. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the impugned awards passed by the learned reference court would show that although numerous sale instances were produced by both the parties before the learned reference court in support of their respective stands taken, yet the learned reference court did not place reliance on any of the sale instances. Ignoring the sale instances relied upon by both the parties, the learned reference court placed reliance on an order dated 26.11.2008 passed by this Court in **RFA No.317 of 1991 (Darbara Singh v. Punjab State Electricity Board and another)** and without referring to any method for assessing the market value, arrived at a figure of Rs.45,50,000/- per acre, at the uniform rate irrespective of location and quality of the land.

Learned counsel for the Power Grid Corporation India vehemently argued that once the sale instances were available on record and had been duly proved by both the parties in support of their cases pleaded before the learned reference court, those sale instances ought to have been made the basis for assessing the market value. This contention raised by the learned counsel for the beneficiary department has also not been opposed by the learned counsel for the land owners. The above-said common arguments raised by the learned counsel for the parties have been found worth acceptance by this Court as well.

So far as location and potentiality of the acquired land is concerned, it had never been in dispute at any point of time. As per the site plans available on record, the acquired land was situated very close to Moga City. It was no more a simple agricultural land because the adjoining area had already been developed. Very many establishments, including commercial establishments were existing in the close vicinity of the acquired land. Three revenue officials AW-2 Dilbagh Singh, Quanugo, Circle Moga Mehla Singh, AW-3 Baljit Singh, Patwari and RW-1 Kulwinder Singh, Patwari have admitted in one voice about the great potential of the acquired land. This material piece of evidence has gone unrebutted on record. Having said that, this Court feels no hesitation to conclude that the acquired land was semi urban in nature.

So far as the sale examplers are concerned, the learned reference court in para 14 of the impugned award has referred to six sale instances produced by the land owners and seven sale instances produced by the State. Learned counsel for both the parties were granted an option to choose the two best sale-deeds in their favour so that any of the party may not have any grouse in this regard. After having been pointed out by the learned counsel for the parties, two sale-deeds in the form of Ex.A8 dated 6.11.2007 and Ex.A9 dated 13.9.2005, relied upon by the learned counsel for the land owners on the one side and two sale-deeds Ex.R2 dated

15.5.2008 as well as sale-deed Ex.R3 dated 30.6.2009, relied upon by the learned counsel for the beneficiary department on the other side, have been taken into consideration for the purpose of assessing the market value of the acquired land.

To be fair to all concerned, average of all the above-said four sale-deeds has been taken and the undisputed market value which comes, on this average basis, is Rs.52,99,922.25 paise which is rounded of to Rs.52,99,923/-. As noticed hereinabove, since the acquired land was semi urban in nature, the land owners would be entitled at least for one year annual increase @ 15% per annum. Although taking the time gap between the sale-deeds relied upon by the land owners and the date of notification under Section 4 of the Act, time gap would come much more, yet taking into consideration the time gap between all the above-said four sale-deeds and the date of acquisition, this Court is of the considered view that it would be just and reasonable to grant only one year annual increase to the land owners.

In view of the law laid down by the Hon'ble Supreme Court in **The General Manager, Oil & Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel & another, 2008(14) SCC 745,** the land owners would be entitled for 15% annual increase on the above-said market value and the amount comes to Rs.7,94,988.45 paise which is round of to Rs.7,94,989/-. Thus, total market value comes to Rs.60,94,912/- per acre. The above-said facts and figures have not been disputed by the learned counsel for the parties. Accordingly, the land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.60,94,912/- per acre from the date of notification under Section 4 of the

Act.

Another question that falls for consideration of this Court is: whether the learned reference court was justified in ignoring the belting system which was adopted by the land acquisition collector. A perusal of the finding recorded by the learned reference court in para 18 of the impugned award would show that the learned reference court committed no error of law, while following the law laid down by the Hon'ble Supreme Court in **Union of India v. Harinder Pal and others, 2005 (12) SCC 564**, as it was very much applicable to the facts of present case. This finding recorded by the learned reference court deserves to be upheld. To say so, reason is that the beneficiary department was going to put every inch of the acquired land to the same use.

Having said that, this Court feels no hesitation to conclude that the belting system was not warranted in the instant case and it was rightly discarded by the learned reference court. The view taken by this Court in this regard also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

1. ***Executive Director Vs. Sarat Chandra Bisoi, 2000 (6) SCC 326;***
2. ***Ashrafi and others Vs. State of Haryana and others, 2013 (5) SCC 527;***
3. ***Harinderpal Singh Vs. Punjab State through the Collector, Amritsar, 1997 (3) RCR (Civil) 431; and***
4. ***Pawan Kumar and another Vs. Land Acquisition Collector and others, 2001 (1) RCR (Civil) 598.***

Coming to the issue of imposing any cut on the above-said market value, based on the average of four sale instances, this Court is of the considered view that owing to the location and nature of the acquired land, coupled with peculiar fact situation, no cut is warranted to be imposed on the present case. In fact, imposition of any particular percentage of cut 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 each case is to be decided on the basis of its own peculiar facts and circumstances.

So far as peculiar fact situation obtaining in the cases in hand is concerned, the beneficiary department was not going to waste any land because the acquired land was not going to be utilised for any residential purpose. Neither any road was to be carved out nor any green belt or park was to be left out of the acquired land, while putting it to its optimum use. In this view of the matter, no cut is liable to imposed on the above-said market value. The view taken by this Court on this issue, is also supported by the Division Bench judgment of this Court, rendered in **Harbans Singh and others v. State of Punjab through the Land Acquisition Collector, 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 in paras 12 and 13 by the Division Bench of this Court in **Harbans Singh's** case (supra), which can be gainfully followed in the present case, read as under:-

> *"12. There is no quarrel with the proposition, as has been laid down by the Hon'ble Apex Court in* ***Administrator General of West Bengal v. Collector's case*** *(supra), that where the sale instance relied upon by the claimants comprised of small plot of land, then 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 v. Special Tehsildar and Land Acquisition Officer, Visakhapatnam Municipality 1992(1) RRR 257*** *may be noticed :*

> *"The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in 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 satisfactorily 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 require 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."*

13. 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) v. 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."*

The Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Registered), Faridkot and others v. State of Punjab and others, (2012) 5 SCC 432** has held that the land owner is entitled to receive the best price for his acquired land. Further, Hon'ble the Supreme Court in **Udho Dass v. State of Haryana, 2010 (12) SCC 51** has held that in the matters of compulsory acquisition, land owner hardly gets the realistic market value for his acquired land. The law laid down by the Hon'ble Supreme Court in paras 17 and 18 of its judgment in **Udho Dass's** case (supra), which aptly apply to the facts of 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?"*

No better 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 case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the appeals filed by the Power Grid Corporation India, i.e. beneficiary department are wholly misconceived, bereft of merit and without any substance, thus, these must fail and the same are hereby dismissed.

The appeals filed by the land owners deserve to be partly accepted and the same are 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.60,94,912/- per acre from the date of notification under Section 4 of the Act. Besides this, the land owners shall also be entitled to all the statutory benefits available to them under the relevant provisions of the Act.

Resultantly, with the observations made above, all the afore-said appeals stand disposed of, in the afore-said terms, however, with no order as to costs.

16.2.2016 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**