HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

RFA-3712-2014 & connected matters
Date of decision:18.2.2016

Anup Singh and others

...Appellants

Versus

State of Punjab 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.Hardip Singh, Advocate for the appellants in RFA Nos.3710 to 3712, 4950 to 4952 and 6696 of 2014.
None for the appellants in RFA Nos.4441, 4609 and 4659 to 4665 of 2015.
Mr.Piyush Bansal, DAG, Punjab.

RAMESHWAR SINGH MALIK, J. (Oral)

This batch of 16 appeals, bearing RFA Nos.3710 to 3712, 4950 to 4952 and 6696 of 2014, 4441, 4609 and 4659 to 4665 of 2015, all 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.3712 of 2014 (Anup Singh and others v. State of Punjab and another).

Facts necessary for disposal of instant batch of appeals are that State of Punjab sought to acquire the land, out of the revenue estates of three villages namely Kotla, Mirzapur and Rai Majra in Tehsil Rajpura, District Patiala, at public expenses for public purpose i.e. for construction of link road to Thermal Power Plant in village Nalas. Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 (`the Act' for short) was issued on 13.8.2010 which was followed by notification dated 16.12.2010 under Section 6 of the Act. Land acquisition collector, vide his award No.1 dated 18.4.2011, granted the compensation at the uniform rate of Rs.26 lacs per acre. Dissatisfied, the land owners filed their objections under Section 18 of the Act and as a consequence thereof, as many as 19 land references were forwarded, which came to be dismissed by the learned reference court vide its common award dated 31.10.2013.

Feeling aggrieved against the above-said impugned award dated 31.10.2013 passed by the learned reference court, the land owners have approached this Court by way of present set of appeals, which are being decided together.

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 noted above, the appeals filed by the land owners deserve to be partly accepted, suitably enhancing the amount of compensation for their acquired land, for the following more than one reasons.

A bare reading of the impugned award passed by the learned reference court would show that he did not place reliance on the sale instances for two reasons. One was that most of the sale instances were post acquisition and another was that market value disclosed therein was less than what had already been granted by the collector. However, the findings recorded by the learned reference court in paras 10, 11 and 12 of the impugned award, while discarding two land acquisition awards Ex.P37 and P38 cannot be sustained because the said findings have been found totally perverse. It is so said, because there could not have been any better piece of evidence than the above-said two earlier awards Ex.P37 and Ex.P38, for the purpose of assessing the market value of the acquired land.

It is a matter of record that land of village Basantpura was acquired, which is also situated in Tehsil Rajpura vide award Ex.P37 for identical purpose, i.e. for execution, maintenance, management and operation of special railway project, Eastern Dedicated Freight Corridor, in District Patiala itself. Similarly, vide award Ex.P38, land of three villages namely Basantpura, Chandu Majra and Sural Khurd was acquired, which are again situated in Tehsil Rajpura. Land of these villages was acquired for the similar purpose i.e., for laying down the railway line to link this very thermal plant from village Sarai Banjara.

A comparative study of these three awards passed by the land acquisition collector, i.e. award in the present case and awards Ex.P37 and P38, makes an interesting reading. The District Level Price Fixation Committee, Patiala, fixed the market price for the acquired land in the instant appeals @ Rs.26 lacs per acre, whereas in the award Ex.P37, same District Level Price Fixation Committee fixed the market price of the land at Rs.60 lacs per acre. Again, this very Committee fixed the market price at Rs.50 lacs for the land of above-said three villages, whose land was acquired vide award Ex.P38.

It is not possible to reconcile the rates fixed by the same District Level Price Fixation Committee, Patiala for the land acquired by the above-said three awards. The argument raised by the learned counsel for the land owners in this regard has been found fully justified and worth acceptance. He contended that for the land acquired vide Ex.P37 and

Ex.P38, the amount of compensation was to be paid by the Railway Department, of Union of India and for the land acquired vide award No.1 dated 18.4.2011 in the present case, the amount of compensation was to be paid by the State of Punjab. The District Level Price Fixation Committee seems to have acted in this fashion, being predisposed in favour of State of Punjab. However, this Committee did not realise that it was working in most arbitrary and discriminatory manner, while fixing the market rates of the land of these villages. Although, the learned counsel for the State has tried his level best to justify the fixation of market price by the District Level Price Fixation Committee in the present case, yet he could not substantiate his argument, referring to any cogent evidence in this regard and rightly so, it being a matter of record.

Learned counsel for the State also places reliance on the judgment of the Hon'ble Supreme Court in **Charan Dass (dead) by LRs v. Himachal Pradesh Housing and Urban Development Authority & others, 2010 (13) SCC 398** to contend that in view of the observations made by the Hon'ble Supreme Court in para 12 of the judgment in **Charan Dass's** case (supra), all the positive as well as negative factors deserve to be taken into consideration for assessing the market value of the acquired land. There cannot be any doubt about this proposition of law put forth by the learned counsel for the State.

Exactly that is what has been sought to be done by this Court as well. When all these three awards namely award No.1 dated 18.4.2011 in the instant acquisition as well as earlier awards Ex.P37 and Ex.P38 are minutely compared with each other, on the basis of all the positive and negative determinative factors, it is not at all possible to reconcile these three types of rates fixed by the same District Level Price Fixation Committee, for the land of those villages which were situated in the close proximity from each other and the land from the revenue estates of all these villages was acquired for similar purpose, as noticed hereinabove.

In fact, there could not be a more glaring example of discrimination than the present one. A close perusal of the site plan Ex.P1, photographs Ex.P3 to P22 available on the lower court record ('LCR' for short) would make it crystal clear that the land of villages Kotla, Mirzapur and Rai Majra, which was acquired in the instant acquisition, was placed on much better footing than the land of village Basantpura and its other adjoining villages which was acquired vide awards Ex.P37 and Ex.P38.

In view of what has been discussed hereinabove, this Court feels no hesitation to conclude that the land owners-appellants in the instant batch of appeals, are certainly entitled to receive the market value for their acquired land, after getting the benefit of earlier award Ex.P37. Since the learned reference court has miserably failed to appreciate this crucial aspect of the matter, while dismissing the land references of the land owners, the impugned award cannot be sustained for this reason also.

Hon'ble the Supreme Court in the case of **Mehrawal Khewaji Trust (Registered), Faridkot and others v. 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. Similarly, in the case of **Udho Dass v. State of Haryana, 2010 (12) SCC 51,** the Hon'ble Supreme Court has held that in the matters of compulsory acquisition, land owner hardly gets the realistic market value for his acquired land. The relevant observations made by the Hon'ble Supreme Court in paras 17 and 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?"

Keeping in view the peculiar fact situation obtaining in the present cases, there was no reason, whatsoever, available with the learned reference court, to discard the best piece of evidence on record in the form of Ex.P37, which was an earlier award announced by the land acquisition collector himself. It is equally pertinent to note here that vide award Ex.P37 the land was acquired vide notification dated 20.4.2010, whereas notification in the present case was issued about four months later, i.e. on 13.8.2010.

The land acquisition collector has rightly discarded the belting system, while awarding the same amount of compensation for the total acquired land at the uniform rate of Rs.26 lacs per acre. The total acquired land was going to be put to the same use, i.e. for construction of road to approach the Thermal Power Plant. In such a situation, exact and pointed location as well as kind or quality of land, would be hardly of any consequence.

Striking a balance, with a view to do complete and substantial justice between the parties, proceeding on a holistic and pragmatic approach, this Court is of the considered opinion that, if not more, land owners in the present set of cases, are entitled at least for the same amount of compensation for their acquired land, which was granted to the land owners vide above-said award Ex.P37. Ordered accordingly. The land owners-appellants in all these appeals are held entitled to receive the compensation for their acquired land at the rate of Rs.60 lacs per acre, from the date of notification under Section 4 of the Act.

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 all these appeals 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.60 lacs 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.

18.2.2016 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**