IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.7705 of 2014 and other connected matters
Date of decision: 27.02.2016

Om Parkash and others

... Appellants

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Nitin Kumar, Advocate and
Ms. Chetna Rao, Advocate
for the Railways Department.

None for the appellant(s) (in RFA Nos.7705, 9817 of 2014, 3049, 3703 to 3705, 3178 of 2015)

Mr. Sandeep Kotla, Advocate
for the appellant(s) (in RFA Nos.8331 to 8335, 9151, 9152 of 2014)

Mr. Chander Shekhar Singhal, Advocate for
Mr. S.P. Chahar, Advocate
for the appellant(s) (in RFA Nos.8471 to 8473, 8630, 9648 of 2014)

Mr. Arun Yadav, Advocate
for the appellant(s) (in RFA Nos.1471 to 1481, 1483 to 1487, 2720 of 2015)

Mr. Sumit Gupta, Advocate
for the appellant(s) (in RFA No.8654 of 2014)

Mr. Ram Pal Verma, Advocate
for the appellant(s) (in RFA Nos. 593, 594, 937 of 2015)

Mr. Abhinash Jain, AAG, 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>

This batch of 105 appeals, out of which 66 appeals bearing Regular First Appeal Nos.2733 to 2763, 2765 to 2790, 3049, 3180 to 3187 of 2015, filed by the beneficiary department i.e. Railways Department, Government of India and remaining 39 appeals bearing Regular First Appeal Nos.7705, 8331 to 8335, 8471 to 8473, 8630, 8654, 9151, 9152, 9648, 9817 of 2014, 593, 594, 937, 1471 to 1481, 1483 to 1487, 2720, 3178, 3703 to 3705 of 2015, 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.7705 of 2014 (Om Parkash and others Vs. State of Haryana and others).

Briefly put, facts necessary for disposal of instant bunch of appeals, are that the State of Haryana sought to acquire land measuring 684 Kanals at public expenses for public purpose i.e. for laying the railway line (Rohtak-Jhajjar-Rewari) by the Railways Department, Government of India. Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 ('the Act' for short) came to be issued on 03.01.2007, which was followed by notification dated 25.01.2007 under Section 6 of the Act. Land Acquisition Collector, vide his common award No.35 dated 28.02.2007 assessed the market value of the acquired land at flat rate of Rs.12,50,000/- per acre.

Dissatisfied, the land owners filed their objections under Section 18 of the Act and as a consequence thereof, as many as 65 land references came to be decided by the learned reference Court vide common impugned award dated 04.04.2014. However, one case was decided at a later point of time vide separate but identical award dated 24.12.2014, which is under challenge in RFA No.3049 of 2015. Learned reference Court enhanced the compensation for the acquired land at the uniform rate of Rs.16,00,000/- per acre and also granted 20% of this market value, on account of severance charges, for the acquired or unacquired land, whichever was less.

Both the parties felt aggrieved against the impugned awards passed by the learned reference Court. Beneficiary department i.e. Railways Department has filed 66 appeals, seeking reduction in the amount of compensation awarded by the learned reference Court, whereas the land owners, by way of 39 appeals, are seeking further enhancement in the compensation for their acquired land. That is how, all these 105 appeals 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 since the appeals filed by the Railways Department have been found without any merit, the same are liable to be dismissed. However, the appeals filed by the land owners deserve to be partly allowed, 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 both the parties produced number of sale deeds before the learned reference Court in support of their respective stands taken. The land owners produced as many as eight (08) sale instances, whereas three (03) sale instances were produced by the State, particulars of which have been recorded by the learned reference Court in para 13 and 14 of the impugned award dated 04.04.2014. Since all the three sale deeds relied upon by the beneficiary department were disclosing the market value much less than what had been awarded by the Land Acquisition Collector, the learned reference Court rightly ignored these sale deeds, because the same were hit by the provisions of Section 25 of the Act.

However, the learned reference Court has proceeded on a wholly misconceived, perverse and patently illegal approach, while ignoring all the sale deeds duly proved on record by the land owners for the purpose of assessing the market value of the acquired land. Although the sale deeds produced by the land owners were discussed in para 18 of the impugned award, but the findings recorded by the learned reference Court for ignoring these sale deeds, were patently illegal and the same cannot be upheld. The learned reference Court would have justified in ignoring the post-acquisition sale deeds but not even those pre-acquisition sale deeds, which were very relevant and duly proved on record, particularly the sale deeds contained in Ex.PW6/K, Ex.PW6/J and other similar sale deeds.

Having said that, this Court feels no hesitation to conclude that the land owners were entitled for much higher compensation than the one granted by the learned reference Court, therefore, the impugned award passed by the learned reference Court is liable to be modified in this regard. To be fair to all concerned and in the absence of any other better piece of evidence, this Court is of the considered view that average of two sale deeds, one each, relied upon by both the parties i.e. Ex.PW6/K relied upon by the land owners and Ex.R3 relied upon by the State, would be the best course of action so that none of the parties may have any grouse in this regard.

Learned counsel for the Railways Department has strongly opposed this course of action. He submits that taking average of both these two sale deeds is not at all warranted. Although there was not much substance found in the argument raised by learned counsel for the Railways Department, yet to be fair to learned counsel for the beneficiary department and accepting his argument, the only other course of action left with the Court is to consider the other sale deeds relied upon by the land owners, pertaining to small pieces of land and thereafter applying a reasonable cut on the market value disclosed therein.

Ex.PW6/J dated 17.12.2004 is another sale deed, whereby land measuring 01 Kanal was sold @ Rs.23,20,000/- per acre. Similarly, sale deed Ex.P7 was dated 08.08.2006, whereby land measuring 10 Marla was sold @ Rs.44,16,000/- per acre. Other three sale deeds Ex.P9, Ex.P10 and Ex.P11 disclosed almost the same market value and therefore only one sale deed Ex.P10 out of these sale deeds would be taken into consideration. When the average of these three sale deeds Ex.PW6/J, Ex.P7 and Ex.P10 is taken, the market value would come to Rs.32,22,000/- per acre.

The next question that arises for consideration of this Court is, as to what percentage of annual increase is to be granted to the land owners on the abovesaid market value. Since the total acquired land was admittedly within the National Capital Region ('NCR' for short) and also the said area has been declared as Special Economic Zone (SEZ), which is duly proved on record by the uncontroverted evidence of PW2 Balwan and PW6 Dharam Singh, this Court is of the considered view that it would be just and expedient to grant 12% annual increase to the land owners for the time gap of 04 years.

Granting the benefit of annual increase @12% on cumulative basis, in view of the law laid down by the Hon'ble Supreme Court in **The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and another, 2008 (14) SCC 745** and **Ashok Kumar and others Vs. State of Haryana and others, 2015 (3) Scale 242,** for the time gap of 04 years between the abovesaid sale deeds and the date of acquisition, the amount would come to Rs.50,69,879.37, which is rounded off to Rs.50,69,880/- per acre. The sale deeds relied upon by the beneficiary department are not being taken into consideration for the specific reason that the learned counsel for the beneficiary department opposed that course of action which was being adopted by this Court, as noticed hereinabove.

Since the sale deeds pertaining to comparatively smaller pieces of land, contained in Ex.P10 and Ex.P7 have been taken into consideration for assessing the market value, a reasonable cut has to be applied. It has gone undisputed that the acquired land was within the NCR and the area has been declared as SEZ, because of which the potentiality of the acquired land cannot be doubted. However, taking the holistic and pragmatic view of the matter, to do complete and substantial justice between the parties and also keeping in view all the positive as well as negative determinative factors of the acquired land, it would be just and reasonable to apply 1/4th cut on the abovesaid market value. After applying 25% cut, which is Rs.12,67,470/-, the net amount comes to Rs.38,02,410/- per acre. These facts and figures have not been disputed by learned counsel for the parties. Accordingly, the land owners are held entitled to receive the compensation at the uniform rate of Rs.38,02,410/- per acre for their acquired land, from the date of notification under Section 4 of the Act.

To be fair to learned counsel for the Railways Department, his arguments based on the judgments relied upon by him in **Manipur Tea Co. Pvt. Ltd. Vs. Collector of Hailakandi, 1997 (9) SCC 673, Himmat Singh and others Vs. State of M.P. and another, 2013 (16) SCC 392**, whereby the Hon'ble Supreme Court has applied a cut of 50%, and the judgments of this Court in **Gurpreet Singh and another Vs. State of Punjab and others, 2005 (4) RCR (Civil) 807** and **Bhoop Singh Vs. State of Haryana and others, 2015 (2) RCR (Civil) 252,** are to be noted to be rejected. It is so said because the argument raised by learned counsel for the beneficiary department has been found wholly misplaced and the same have not been found worth acceptance.

So far as the judgments relied upon by learned counsel for the Railways Department are concerned, there is no dispute about the law laid down therein, however, on close perusal of the cited judgments, none of them have been found of any help to the beneficiary department. It is the settled proposition 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 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.**

Coming to the severance charges, the learned reference Court has granted 20% of the market value on account of severance charges for the acquired or unacquired land, whichever was less. However, the learned reference Court, in para 26 of the impugned award, has miserably failed to appreciate the true import of the relevant provisions of law on severance charges. On the other hand, learned reference Court has suggested that if the unacquired land is consolidated, the problem faced by the land owners would be solved. In saying so, the learned reference Court has exceeded its jurisdiction and the findings recorded in this regard cannot be upheld.

It is a matter of record that the beneficiary department was going to lay railway line through the acquired land. It goes without saying that land of the land owners would get bifurcated. Further, neither it is feasible nor practicable by the beneficiary department to provide underpasses or over-bridges at short distances, so as to facilitate the land owners to approach their unacquired land for the purpose of its cultivation. In such a situation, the land owners would be in a disadvantageous position for all times to come, because they will not be in a position to put their unacquired land to its optimum use. They will have to cover long distances to approach the unacquired land. It will considerably increase the transportation charges and other expenses, which shall substantially affect the net income from the agricultural land. Taking a judicial notice of all the abovesaid practicable aspects of the matter, it would be just and reasonable to grant 30% of the abovesaid market value to the land owners for their unacquired land, towards the severance charges. Granting any lesser amount of compensation on account of severance charges would be wholly inadequate.

It is pertinent to note that 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. Again, in the case of **Udho Dass Vs. State of Haryana, 2010 (12) SCC 51,** the Hon'ble Supreme Court held that there can be a scope of 100% annual increase in the prices and the land owners would hardly get the real and actual market value for their acquired land.

Let it be specifically recorded here that 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 cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that the appeals filed by the 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 hereby allowed to the extent indicated above. The land owners are held entitled to receive the compensation at the uniform rate of Rs.38,02,410/- per acre for their acquired land, from the date of notification under Section 4 of the Act. Further, they are also held entitled to receive 30% of the abovesaid market value on account of severance charges for their unacquired land, from the date of acquisition. Besides this, the land owners shall 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 abovesaid 105 appeals stand disposed of, in the abovesaid terms, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
27.02.2016 **JUDGE**
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