HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.8113 of 2014 and connected matters
Date of decision:12.5.2016

Ram Mehar

...Appellant(s)

Versus

State of Haryana and another

...Respondent

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.Shailendra Jain, Sr.Advocate with
Mr.Sanjiv Gupta, Advocate for the appellant(s) in
RFA Nos.8195, 8196 and 8198 of 2014.
Mr.S.N.Pillania, Advocate for the appellant(s) in
RFA Nos.9590 to 9592 of 2014.
Mr.Amit Kumar Jain, Advocate for the appellant(s) in
Rfa No.5310 of 2014.
Mr.Ashok K. Sharma (Bhana), Advocate for the appellant(s) in
RFA Nos.8113 to 8119 of 2014.

Ms.Vibha Tiwari, AAG, Haryana.
Mr.Nitin Kumar, Advocate for Railway Department.

RAMESHWAR SINGH MALIK, J. (Oral)

This batch of 14 Regular First Appeals, bearing RFA Nos.5310, 8113 to 8119, 8195, 8196 and 8198, 9590 to 9592 of 2014, 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.8113 of 2014 (Ram Mehar v. State of Haryana and another).**

Facts are hardly in dispute. State of Haryana sought to acquire the land measuring 21.82 acres, out of the revenue estate of village Siwana Mall, Tehsil Safidon, District Jind, at public expenses for public purpose;

namely for construction of Jind-Gohana-Sonepat Railway Line. Accordingly, notification dated 31.12.2008 came to be issued under Section 4 of the Land Acquisition Act, 1894 (`the Act' for short), which was followed by notification dated 4.2.2009 under Section 6 of the Act. Land acquisition collector (`LAC' for short), vide his award No.16 dated 26.11.2009, assessed the market value of the acquired land at the uniform rate of Rs.8 lacs per acre.

Dissatisfied with the market value assessed by the LAC, land owners filed their objections under Section 18 of the Act and as a consequence thereof, land references were forwarded to the learned reference court for its decision. Learned reference court, vide its impugned award dated 24.3.2014, assessed the market value of the acquired land at the uniform rate of Rs.13 lacs per acre and also granted 10% of the market value as compensation, on account of severance charges.

Feeling aggrieved against the above-said impugned award dated 24.3.2014 passed by learned reference court, the land owners have approached this Court, seeking further enhancement in the amount of compensation for their acquired land. That is how, all these 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 keeping in view the totality of facts and circumstances of these cases, the appeals filed by the land owners deserve to be partly allowed, suitably enhancing the amount of compensation, for the following more than one reasons.

Since there was hardly any evidence produced by the State of Haryana before the learned reference Court, learned counsel for the State was well justified, while not referring to any such evidence, it being a matter of record. Coming to the evidence produced by the land owners, they placed reliance on numerous sale-deeds, site plans and earlier award Ex.P50. In fact, crux of the arguments raised on behalf of the land owners, was that since the LAC vide award Ex.P50, assessed the market value of the land acquired out of adjoining revenue estate of village Ishapur Kheri, District Sonepat, at the rate of Rs.20 lacs per acre, said award deserves to be followed. Notification under Section 4 of the Act was issued for acquiring the land of village Ishapur Kheri on 1.7.2009, but purpose of acquisition was the same. Learned counsel for the appellants concluded by submitting that let a 6% reverse cut may be applied on the market value of Rs.20 lacs per acre vide Award Ex.P50, for this time gap of 6 months, while assessing the market value of the acquired land.

However, learned counsel for the State sought to distinguish the award Ex.P50, contending that it was pertaining to District Sonepat, whereas the village of the appellants was in District Jind. To resolve this controversy, reference can be made to an admitted fact situation, available on record in the form of statement made by RW-1 Vijay Kumar. In fact, it has been so recorded by learned reference court in para 29 of the impugned award, wherein RW1 Vijay Kumar has admitted that revenue estates of village Ishapur Kheri, District Sonepat and village Siwana Mall, District Jind were adjoining with each other.

It seems that LAC, Sonepat, assessed the market value of the land acquired from the revenue estate of village Ishapur Kheri at the rate of

Rs.20 lacs per acre, on the basis of recommendations made by District Level Price Fixation Committee, Sonepat. On the other hand, LAC in the instant set of appeals, would have accepted the recommendations made by the District Level Price Fixation Committee, Jind, while assessing the market value of the acquired land at the rate of Rs.8 lacs per acre. This material fact goes a long way to show that there is no coordination amongst the District Level Price Fixation Committees and these have been making recommendations as per their own whims and fancies, without realizing any ground realities. Be that as it may, it is not possible to reconcile as to how there could have been this much substantial difference, while assessing the market value of the land acquired, out of adjoining revenue estates.

When confronted with this anomalous and material fact situation, learned counsel for the State had no answer and rightly so, it being a matter of record. However, she placed reliance on an order dated 20.10.2015 passed by this Court in **RFA No.4918 of 2013 (Ishwar Singh and others v. State of Haryana)**, whereby land of village Ludana of District Jind was assessed at the rate of Rs.10,52,000/- per acre, in spite of the fact that land of village Ludana was also acquired for this very railway line. She also placed reliance on the judgment of this Court rendered in **RFA No.5351 of 2013 (Krishan and others v. State of Haryana and others)**. To controvert this argument raised by the learned counsel for the State, learned counsel for the appellants have pointed out that as per the site plan Ex.P65 village Ishapur Kheri in District Sonepat and village Siwana Mall have been shown to be adjoining to each other, whereas there is no such site plan available on record nor any such evidence has been referred by the learned counsel for the State, which may show that either village

Ludana in **Ishwar Singh's** case (supra) or villages Bhambheva and Malsari Khera in **Krishan's** case (supra) were adjoining either with the revenue estate of village Siwana Mall or Ishapur Kheri.

Once the authorities of the respondent-State itself have assessed the market value of the land acquired from the revenue estate of village Ishapur Kheri, District Sonepat at the rate of Rs.20 lacs per acre, this Court has found no reason as to why the land owners in the instant set of appeals be not granted the benefit of said award Ex.P50 nor any such reason could be pointed out by the learned counsel for the State. In fact, it has gone undisputed on record that revenue estates of both these villages were adjoining with each other, as per the statement of RW1-Vijay Kumar and also as per site plan Ex.P65.

Having said that, this Court feels no hesitation to conclude that the land owners in the instant set of appeals have been found entitled for the benefit of award Ex.P50. However, since there was a time gap of six months between the instant acquisition and the acquisition decided vide Ex.P50, 6% reverse cut for a period of 6 months at the rate of 12% per annum is to be applied. After applying 6% reverse cut on the market value assessed by the LAC vide award Ex.P50, the amount comes to Rs.18,80,000/- per acre. Accordingly, the land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.18,80,000/- per acre, from the date of notification under Section 4 of the Act. It is so said because 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 owners are entitled to receive the best price for their acquired land.

Coming to the severance charges, it goes without saying that in the very nature of things, construction of railway line will bifurcate the land. Further, neither it would be feasible nor practicable for the railway authorities to provide under passes or flyovers to the land owners at short distances, so as to enable them to reach their unacquired land for the purpose of its cultivation. Consequently, the land owners will have to cover long distances to approach their unacquired land for the purpose of its cultivation, which would add expenses to be incurred by the land owners, while cultivating their unacquired land, including the transportation charges. This serious difficulty will be faced by the land owners for all times to come. Covering long distances will substantially reduce net agricultural income. In this view of the undisputed fact situation, this Court is of the considered opinion that as per the law laid down by this Court in numerous judgments, including in the cases of **Smt.Bindu Garg v. State of Haryana, 1999 (2) RCR (C) 261, State of Haryana v. Kartar Singh, 2010(2) RCR (C) 443, Chanan Singh v. State of Punjab, 2010 (5) RCR (C) 283** and **State of Punjab and another v Ishar Singh, 2010 (5) RCR (C) 239,** the land owners are entitled to receive 50% of the above-said market value, as compensation, on account of severance charges.

The relevant observations made by this Court in paras 14 and 15 of its judgment in **Chanan Singh's** case (supra), which can be gainfully followed in the present case, read as under:-

> *"Reverting back to the second argument of the learned counsel for the appellant that severance charges allowed by the learned Reference Court @ 25% of the market value of the un-acquired land should have been 50%. I am in full agreement with the argument raised by the learned counsel for the appellants that in view of the decision of this Court*

rendered in the cases of ***State of Haryana v. Rajinder Kumar, 2000(1) All India Land Acquisition & Compensation Cases 360,Punjab State v. Gurbachan Singh and others, 1988 PLJ 490****,* ***Smt. Narinder Kaur v. The State of Punjab and others, 1980 PLR 473,State of Punjab through Collector, Hoshiarpur and another v. Gopal Singh, (2002-2) PLR 843*** *and* ***State of Punjab through Collector, Hoshiarpur v. Radha Krishan, 1989 All India Land Acquisition and compensation Cases 667****,* ***Tehal Singh and others v. The State of Punjab and another, 1987 All India Land Acquisition & Compensation Cases 491*** *and* ***Bishan Dass v. State of Punjab, 1997(2) PLJ 416.*** *(supra), severance charges has to be awarded @ 50% of the market value of the unacquired land instead of 25%. In view of above, the finding of the learned Reference Court on issue No. 2 is modified and the appellants are held entitled to the severance charges @ 50% instead of 25% as given by the learned Reference Court.*

With this modification in the judgment of the learned Reference Court, the appeals filed by the landowners/claimants are allowed. They are held entitled to compensation @ Rs. 64,000/- per acres from the date of issuance of notification under Section 4 of the Act, besides all the statutory benefits in terms of the provisions of the Amended Act. They shall also be entitled to severance charges @ 50% instead of 25% of the land which has been severed to due to acquisition. The appellants are also held entitled to the costs of the appeals.

Coming to the claim of land owner for super-structure in RFA No.5310 of 2014 (Smt.Angoori Devi v. State of Haryana), she has duly proved on record valuation report Ex.P1 available at page 26 of the lower court record (`LCR' for short). This valuation report was proved by PW1 S.P.Gupta. This witness was put to lengthy cross-examination but nothing adverse could be elicited from him. Further report Ex.P18 prepared by the concerned revenue officials and verified by Tehsildar, makes it clear that the appellant had constructed two rooms on the ground floor and one room on first floor, besides room for tubewell. There were two fruit bearing trees on the land of the appellant.

It is also a matter of record that no contrary evidence was sought to be produced by the State to controvert the above-said evidence produced by the land owner. However, in spite of the above-said undisputed fact situation, learned reference court has proceeded on a patently illegal approach, while recording the finding that valuation report Ex.P1 cannot be made the basis for awarding the compensation to the land owner for super-structure. This finding recorded by the learned reference court is not only contrary to the record but also wholly misconceived and the same cannot be sustained which is hereby set aside. Since the evidence led by the land owner in the form of Ex.P1 and Ex.P18 has gone unrebutted and uncontroverted, the learned reference court ought to have taken this evidence into consideration, while assessing the compensation for super-structure and fruit bearing trees.

As per valuation report Ex.P1, the value assessed by the expert witness PW-1 was Rs.3,75,100/-. After hearing the learned counsel for the parties, this Court is of the considered view that the land owner-appellant in Smt.Angoori Devi's case (supra) is entitled to receive the compensation for her super-structure to the tune of Rs.3,50,000/-, because granting any lesser amount will be wholly unjustified. Ordered accordingly. There was no separate valuation report regarding fruit bearing trees, which were only two in number. Appellant has not been found entitled for any further enhancement in the amount of compensation for two fruit bearing trees.

Let it be specifically recorded here that no other 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 land owners deserve to be partly accepted and the same are allowed to the extent indicated above.

Accordingly, the land owners are held entitled to receive the compensation for their acquired land at the rate of Rs.18,80,000/- per acre, from the date of notification under Section 4 of the Act. The land owners are also held entitled to receive 50% of the above-said market value, as compensation, on account of severance charges. 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 appeals stand disposed of, in the afore-said terms, however, with no order as to costs.

12.5.2016 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**