IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.9435 of 2014 and other connected matters
Date of decision: 29.02.2016

Amrik Singh

... Appellant

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Manish Kumar Singla, Advocate
for the appellant(s) (in RFA Nos.8427 to 8432, 9040, 9435 of 2014)

Mr. Prateek Gupta, Advocate
for the appellant(s) (in RFA Nos.9520 & 9521 of 2014)

Mr. Ashwani Kumar Bura, Advocate
for the appellant(s) (in RFA Nos.8897, 8898, 9027 of 2014)

Mr. Prateek Mahajan, Advocate
for Market Committee, Tohana.

Mr. Arun Beniwal, DAG, 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 bunch of 13 appeals, bearing Regular First Appeal Nos.8427 to 8432, 8897, 8898, 9027, 9040, 9435, 9520 & 9521 of 2014, 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.9435 of 2014 (Amrik Singh Vs. State of Haryana and others).

Brief facts of the case are that State of Haryana sought to acquire land measuring 635 kanals, 10 marla (79.356 acres), out of the revenue estate of Tohana at public expenses for public purpose namely; for extension of New Grain Market, Tohana, District Fatehabad. Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') was issued on 06.09.2010, which was followed by notification dated 02.09.2011 under Section 6 of the Act. Land Acquisition Collector, vide his award dated 23.08.2012 assessed the market value @ Rs.24,00,000/- per acre upto two acres from the road and Rs.18,00,000/- per acre beyond two acres from the road. Dissatisfied, the land owners filed their objections under Section 18 of the Act and as a consequence thereof, land references were forwarded, which came to be decided by the learned reference Court vide its common impugned award dated 20.05.2014, assessing the market value of the acquired land @ Rs.30,00,000/- per acre upto depth of two acres from the main road and Rs.22,00,000/- per acre for the remaining land beyond two acres from the road.

State of Haryana or the beneficiary department i.e. Haryana State Agricultural Marketing Board or the Market Committee, Tohana did not file any appeal. However, the land owners felt aggrieved against the impugned award passed by the learned reference Court and have approached this Court by way of present set of appeals, seeking further enhancement in the amount of 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, 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.

During the course of hearing, learned counsel for the appellants-land owners placed reliance on the judgment of the Hon'ble Supreme Court in **Kashmir Singh Vs. State of Haryana and others, 2014 (2) SCC 165,** which was also exhibited as Ex.P20 before the learned reference Court and is available at page 289 of the lower Court record. ('LCR' for short). The only argument raised by learned counsel for the land owners-appellants is that since judgment of the Hon'ble Supreme Court in **Kashmir Singh's** case (supra) was pertaining to the land of this very revenue estate of Tohana, the market value assessed by the Hon'ble Supreme Court @ Rs.514/- per square yard, may be taken as the base value and the land owners, in the instant set of appeals, may be granted the benefit of annual increase of 12%, on cumulative basis, for the time gap between these two acquisitions.

However, this argument raised by learned counsel for the land owners has been refuted by learned counsel for the State as well as learned counsel for the beneficiary department, contending that judgment of the Hon'ble Supreme Court in **Kashmir Singh's** case (supra) is not applicable to the peculiar facts and circumstances of the present case, because there are sale instances available on record, which were relied upon by the land owners themselves. In this regard, they also placed reliance on the judgment of the Hon'ble Supreme Court in **Ram Kanwar and others Vs. State of Haryana and another, 2015 (1) RCR (Civil) 234** and **The General Manager, Oil and**

Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and another, 2008 (14) SCC 745.

After giving anxious consideration to the contentions raised by learned counsel for the parties, this Court is of the considered view that there could not have been any better piece of evidence than the judgment of the Hon'ble Supreme Court in **Kashmir Singh's** case (supra), which was pertaining to the earlier acquisition, wherein the land was acquired from this very revenue estate of Tohana. The findings recorded by the learned reference Court in para 22 of the impugned award regarding **Kashmir Singh's** case (supra), has been found patently illegal and the same cannot be upheld. It is so said because the learned reference Court has completely misread, misconstrued and misunderstood the evidence available on record in the form of statement of RW1 Manohar Bharti who was Secretary-cum-Executive Officer, Market Committee, Tohana-beneficiary department.

This witness, in his statement available at page 133 of the LCR, has admitted in unambiguous terms that the land in **Kashmir Singh's** case (supra) was acquired by the Haryana Government for HAFED. Similarly, the learned reference Court failed to appreciate the evidence available at page 69 of the LCR in the form of statement of PW2 Bansi Lal Bajaj, Draftsman, who has categorically proved that the acquired land was situated at 1.5 kilometers from Bus Stand Tohana. This witness has duly proved site plan Ex.P13. Despite the fact that this witness was put to lengthy cross-examination, nothing adverse could be elicited from his statement. Further, no question was put to this witness in his cross-examination that different establishments depicted by him on the site plan Ex.P13, were not existing at the site at the time of acquisition.

A bare perusal of the site plan Ex.P13 available at page 242 of the

LCR, would make it crystal clear that the acquired land was situated at a prime location on State Highway (Tohana-Ratia-Fatehabad-Hisar). As recorded by the Hon'ble Supreme Court in para 5 of its judgment in **Kashmir Singh's** case (supra), the land acquired thereunder was also situated on a State Highway. Similarly, the acquired land has been found situated on the State Highway in the present case. Further perusal of the site plan would show that very many establishments, some of which were commercial establishments were existing in the close vicinity of the acquired land, including Shagun Marriage Palace, Nursery, Pal Motors, Chandigarh Chemicals, Green Valley School, numerous Rice Sellers, Gramin B.Ed College, Guru Nanak Academy, Fiber Seat Factory, Petrol Pumps etc.

The Hon'ble Supreme Court has also referred to the Grain Market, Tohana in para 5 of its judgment in **Kashmir Singh's** case (supra) for the purpose of assessing the market value thereof. Having said that, this Court feels no hesitation to conclude that the acquired land was having great potentiality and it was similarly situated with the land acquired in **Kashmir Singh's** case (supra), if not on a better footing, as claimed by learned counsel for the appellants-land owners. In view of what has been discussed hereinabove, Ex.P20 available at page 289 of the LCR, which is the judgment rendered by the Hon'ble Supreme Court in **Kashmir Singh's** case (supra), has been found to be the best piece of evidence for the purpose of assessing the market value of the acquired land.

Once the Hon'ble Supreme Court has referred to Grain Market, Tohana in para 5 of its judgment in **Kashmir Singh's** case (supra) for the purpose of assessing the market value of the land acquired thereunder, it would be very safe to take the amount of compensation granted by the Hon'ble

Supreme Court in **Kashmir Singh's** case (supra), to be the base market value for the acquired land in the present set of appeals. The Hon'ble Supreme Court assessed the market value @ Rs.514/- per square yard in **Kashmir Singh's** case (supra).

So far as the judgments relied upon by learned counsel for the State and beneficiary department are concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, none of them has been found of any help to learned counsel for the respondents, being distinguishable on facts. 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. It is equally true that each case is to be decided on the basis of its own peculiar facts and circumstances. 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.** None of the arguments raised by the learned counsel for respondents have been found worth acceptance, being wholly misplaced and contrary to the judgment of the Hon'ble Supreme Court in **Kashmir Singh**'s case (supra).

The next question that arises for consideration of this Court is; as to what percentage of annual increase deserves to be granted to the land owners in the present set of cases on the abovesaid base market value assessed by the Hon'ble Supreme Court in **Kashmir Singh's** case (supra). Although oweing to the peculiar fact situation obtaining in the instant set of appeals and particularly the site plan Ex.P13, coupled with the statement made by abovesaid witnesses, the acquired land was enjoying the nature of at least semi-urban land, being not totally urban. However, to be fair to all concerned and with a view to do complete and substantial justice between the parties, proceeding on a holistic approach, this Court is of the considered view that it would be just and expedient to grant the benefit of only 12% annual increase to the land owners but on cumulative basis, for the undisputed time gap.

The benefit of annual increase of 12%, on cumulative basis, has to be granted in view of the law laid down by the Hon'ble Supreme Court in **Rameshbhai Jivanbhai Patel**'s case (supra) and **Ashok Kumar and others Vs. State of Haryana and others, 2015 (3) Scale 242.** Further, the order dated 26.03.2014 passed by this Court in **RFA No.5626 of 2010 (State of Haryana and others Vs. Murti Devi and another),** granting the benefit of annual increase for a period of 10 years and 03 months, was not only upheld by the Hon'ble Supreme Court vide its order dated 22.08.2014 passed in **SLP No.20531-20565 of 2014 (Narbadi Devi and others Vs. State of Haryana and others),** but was also modified granting the said benefit on cumulative basis, which was granted by this Court at flat rate.

The relevant observations made by this Court in **Murti Devi**'s case (supra), placing reliance on the earlier judgment of the Hon'ble Supreme Court in **Om Parkash (D) by LRs and others Vs. Union of India and another, 2004 (10) SCC 627**, which can be gainfully followed in the present case, read as under: -

> *"It has been held in **'Om Parkash (D) by LRs and others versus Union of India and another' The Punjab Law Reporter Vol. CXXXVIII (2004-3), 727**, wherein it was held as under:-*
>
> > *"In the circumstances, the High Court was justified in working out the fair market value of the lands in question on the basis of Rs. 16,750/- per bigha as on 30.10.1963. The*

High Court noticed that in several judgments of this Court escalation at different and varying rates i.e. 6% per annum from 1959 to 1965, @ 10% per annum for every year from 1966 to 1973 and @ 12% per annum from 1975 had been considered to be reasonable increase to arrive at the fair market value, assuming that the pace of escalation during this period was normal for the entire period from 1959 onwards. Since no material was placed on record to show that there was any abnormality during the period, the High Court applied the same principle to the facts and circumstances before it, and accepted increase of 10% every year progressively from 1963 to 1973 and thereafter @ 12% every year progressively upto the date of acquisition. The High Court noticed in the judgment that if escalation is allowed on the basis, the fair market value, would be Rs. 1,28,889/- per bigha. In case progressive increase is allowed @ 10% for the entire period, the amount will work out to Rs. 1,08,397/- per bigha. Allowing appreciation @ 12% per annum from 1963 to 1983, the amount would work out to Rs. 56,11/- per bigha. The High Court in its judgment under appeal pointed out that the market value of Rs. 16,750/- per bigha fixed in the case of Dharambir and others v. Union of India was not in respect of commercial land but only of agricultural land. That the market value of agricultural land is much lower than that of land suitable for commercial purposes, is trite. After having worked out *the market value of the lands on various bases and keeping in view the fact that between 8.12.1992 and 2.6.1983, the lands in question had at least some commercial potentiality, the High Court decided that the fair market value of all categories of lands situated in the villages in question as on the date of acquisition should be fixed at Rs. 82,225/- per bigha."*

Thus, the claimants are entitled to receive market value of the land as assessed by the Apex Court at the rate of ` 325/- per square yard + 12% increase per year for 10 years and 3 months."

The relevant part of the order dated 22.08.2014 passed by the Hon'ble Supreme Court in **Narbadi Devi**'s case (supra), which aptly apply to the facts of present case, reads as under: -

"From the impugned judgment of the High Court, it transpired that the High Court has followed the judgment of this Court in Asharfi and others Vs. State of Haryana and others 2013 (5) SCC 527 and has given increase at the rate of 12%. This was the demand of the petitioners herein which has been accepted following the ratio in Asharfi case (supra). To the extent there is no quarrel. However, it is pointed out by the learned counsel for the petitioner that in Asharfi case (supra), yearly increase of 12% was granted cumulatively and not at flat rate. This position as contained in Asharfi case (supra) could not be disputed by Mr. Narender Hooda, learned counsel for the State. Accordingly, the order of the High Court is modified to the extent that the 12% increase granted by the High Court shall be worked out on

cumulative basis."

As far as the time gap between the acquisition in **Kashmir Singh**'s case (supra) and the present acquisition is concerned, it is a matter of record that notification in **Kashmir Singh**'s case (supra) was issued on 11.01.2001, whereas in the present case, it was issued on 06.09.2010, thus, there was a time gap of more than nine and half years (to be precise 09 years, 07 months and 25 days). Granting the benefit of annual increase @ 12% for a period of 09 years and 06 months, on cumulative basis, on the abovesaid base market value of Rs.514/- per square yard, assessed by the Hon'ble Supreme Court in **Kashmir Singh**'s case (supra), the amount comes to Rs.1510.88, which is rounded off to Rs.1511/- per square yard. Accordingly, the land owners are held entitled to receive the amount of compensation for their acquired land @ Rs.1511/- per square yard, from the date of notification under Section 4 of the Act.

In **Mehrawal Khewaji Trust (Regd.), Faridkot and others Vs. State of Punjab and others, 2012 (5) SCC 432,** the Hon'ble Supreme Court has held that the land owners are entitled to receive the best price for their acquired land. In its judgment in **Udho Dass Vs. State of Haryana, 2010 (12) SCC 51,** the Hon'ble Supreme Court has held that the land owners are hardly compensated in the true sense of the word in the matters of granting of compensation on account of compulsory acquisition. So far as the land owners, in the present set of appeals, are concerned, they have been found identically placed with the land owners in **Kashmir Singh**'s case (supra), if not on better footing.

Another equally important question of law that falls for consideration of this Court is: whether belting system was warranted in the present case. The answer to this question is and has to be an emphatic no. it is so said because every inch of the acquired land was going to be put to the same use. Purpose of acquisition was the same. In such an undisputed fact situation, exact location or quality of any part of acquired land would be hardly of any consequence. LAC wrongly adopted and the learned reference Court illegally upheld the belting system. Such a patent illegality cannot be upheld.

The abovesaid view that has been taken by this Court on belting system also finds support from more than one following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***Udho Dass Vs. State of Hayana, 2010 (2) SCC 51.***
2. ***Ashrafi and others Vs. State of Haryana, 2013 (5) SCC 527.***
3. ***Kehar Singh Vs. Punjab State, 1992 (1) RRR 81.***
4. ***Harinderpal Singh Vs. Punjab State through the Collector, Amritsar, 1997 (3) RCR (Civil) 431.***
5. ***Union of India Vs. Dr. Balbir Singh, 1999 (2) RCR (Civil) 546.***
6. ***Pawan Kumar and another Vs. Land Acquisition Collector and others, 2001 (1) RCR (Civil) 598.***
7. ***Harjit Singh @ Kaka Singh Vs. State of Punjab and another, 2004 (1) RCR (Civil) 484.***
8. ***Smt. Mahabiri Devi and others Vs. State of Haryana and another, 2005 (4) RCR (Civil) 142.***
9. ***Gulzar Singh Vs. State of Haryana, 2006 (3) RCR (Civil) 174.***
10. ***Kashmira Singh and others Vs. Land Acquisition Tribunal Ludhiana Improvement Trust through its President and others, 2006 (2) LAR 59.***
11. ***Gursher Singh and others Vs. President, Improvement Trust Tribunal, Jalandhar and others, 2007 (1) RCR (Civil) 429.***

12. Baru Ram and others Vs. State of Haryana and another, 2010 (3) RCR (Civil) 754.

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 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 for the acquired land at the uniform rate of Rs.1511/- per square yard, 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 abovesaid appeals stand disposed of, in the abovesaid terms, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

29.02.2016
vishnu