IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA-3055-2005 (O&M)
Date of Decision: November 02, 2017

Phool Chand and others

...Appellants

Versus

State of Haryana

...Respondent

and other connected matters, i.e.

Filed By	Case Nos.
Claimant/Landowners	RFA Nos. 3056 to 3062 and 3121 of 2005 (O&M)
State of Haryana	RFA Nos. 14, 15, 17, 18, 540, 966 & 1607 of 2006 (O&M); and 2000 of 2007 (O&M)

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Ajay Jain, Advocate,
for the claimant/landowners.

Mr. Sudip Mahajan, Additional Advocate General, Haryana,
for the State.

ARUN PALLI, J. (ORAL)

Vide this order and judgment, I shall decide a batch of 17 appeals, of which 9 have been filed by the claimant/landowners and the rest 8 by the State of Haryana. For, all these appeals are preferred against a common award, dated 27.07.2005, and arise out of the same acquisition, these are being disposed of by a common judgment. However, by consensus, the facts are being culled from **RFA No.3055 of 2005, titled "Phool Chand and others v. State of Haryana"**.

Vide notification, dated 09.03.1981, issued under Section 4 of the Land Acquisition Act, 1894, an area measuring 21.29 acres, situated in village Gokalgarh (H.B. No. 119), Tehsil and District, Rewari, was sought to be acquired for construction of 220 K.V. Sub Station, Rewari. The final declaration under Section 6 was published on 09.09.1981. Vide Award No.17, dated 14.12.1981, the Land Acquisition Collector assessed the market value of the acquired land at Rs. 13,000/- per acre, i.e. Rs.2.68 per Sq.Yd. Being aggrieved by the assessment as also the compensation awarded, the claimant/landowners filed objections under Section 18, to the award rendered by the Collector. Resultantly, the dispute was referred to the Civil Court for determination of the true value of the acquired land. The Reference Court vide award dated 27.04.1985, enhanced the compensation to Rs.16/- per Sq.Yd. The appeals as also the cross-objections filed by the parties against the award, dated 27.04.1985, i.e. **RFA No. 1340 of 1985**, titled **"State of Haryana v. Pardeep Kumar and others"**, and other connected matters, were dismissed by this Court, vide judgment, dated 21.11.1994. However, in the appeals preferred by the claimant/landowners, against the decision rendered by the learned Single Judge, i.e. **LPA No. 108 of 1995**, titled "**Kanti Parshad (dead) through LRs v. State of Haryana and others**", and other connected matters, the Letters Patent Bench set aside the award as also the impugned judgment, and the matter was remitted to the Reference Court for re-decision.

On a reconsideration of the matter in issue, the Reference Court discarded the sale deeds Exs. P-7, P-11 to P-16 that were proved by the claimant/landowners, for, in terms of location of the sites/land that were sold vide these sale deeds, these were not comparable to the acquired land. Whereas, the sale deeds Exs. P-8 to P-10 and Exs. P-17 to P-19 were found to be germane to the acquisition, and the land that was sold vide these sale deeds was located in close proximity to the acquired land. On the contrary, the State had only produced the mutations, but not the sale deeds on the basis of which the revenue authorities had mutated the land. And, thus those were ignored. Therefore, by drawing an average price from the sale considerations at which the sale deeds Exs. P-8, P-9 and P-17 to P-19 were executed, the Reference Court worked out the value of the acquired land at Rs.28/- per Sq.Yd. (40+16 = 56/2), i.e. Rs.1,35,520/- per acre. That is how, as indicated above, the parties are in appeal before this Court. Of course, the claimant/landowners seek further enhancement in the compensation. Whereas, the State has appealed to set aside the impugned award.

Mr. Ajay Jain, learned counsel for the claimant/landowners submits that although the claimants themselves had brought on record the sale deeds Exs. P-8 to P-10, vide which a land situated in the same village was alienated at Rs.16/- and Rs.20/- per Sq.Yd., respectively, but since these sale deeds/sale instances were executed post notification, dated 09.03.1981, under Section 4, these ought to have been ignored by the Reference Court. Rather, he submits for, vide sale deeds Exs. P-17 to P-19, the land that formed part of the same revenue estate, i.e. village Gokalgarh, and was located near the acquired land, was sold at Rs.40/- per Sq.Yd., therefore, value of the acquired land ought to have been determined in terms thereof.

Per contra, Mr. Sudip Mahajan, learned Additional Advocate General, Haryana, submits that for the assessment made by the Collector was just and appropriate, no further enhancement in the compensation was feasible. However, he does not dispute that the sale deeds/sale instances Exs. P-8 to P-10, that were relied upon by the Reference Court, were executed post notification dated 09.03.1981, under Section 4. He submits that even if the value of the acquired land was assessed on the basis of sale instances Exs. P-17 to P-19, vide which the land situated in the same vicinity was sold @ Rs.40/- per Sq.Yd., but considering the smallness of the area, i.e. 162 square yards, that was alienated vide these sale deeds, an appropriate deduction/cut shall have to be applied.

I have heard learned counsel for the parties and perused the records.

Ex facie, the State had failed to produce any sale deeds/sale instances in support of its case. Copies of the mutations that were brought on record by the State were rightly ruled out of consideration, for, these were not accompanied with the sale deeds on the basis whereof the mutations were entered/sanctioned by the revenue authorities. On the contrary, the claimant/landowners had brought on record the sale deeds Exs. P-7 to P-19, tabulated here-in-after, vide which the land that also formed part of the same revenue estate, i.e. village Gokalgarh, was alienated in the range of Rs.16/- to Rs.85.60 per Sq.Yd.

Exhibit	Year of execution of Sale Deed	Area	Sale consideration (in Rs.)	Value per Sq.Yd. (in Rs.)
P-7	1980	4M	1950/-	16/-
P-8	1982	7M	3500/-	16/-
P-9	1982	7M	3500/-	16/-
P-10	1982	8M	5000/-	20/-
P-11	1981	11M	30000/-	85.60
P-12	1979	9M	5000/-	18/-
P-13	1979	6M	4500/-	24/-
P-14	1980	5M	3000/-	20/-
P-15	1980	6M	11000/-	60/-

P-16	1980	15M	1000/-	20/-
P-17	1980	1/3 share	6500/-	40/-
P-18	1980	1/3 share	6500/-	40/-
P-19	1980	1/3 share	6500/-	40/-

However, the Reference Court on a comparative analysis of the location and proximity of the land/sites that were sold vide these sale deeds (Exs. P-7 to P-19), vis-a-vis the acquired land, reached a conclusion that the sale instances Exs. P-8 to P-10 and Exs. P-17 to P-19, alone could be taken into consideration to evaluate the acquired land. Accordingly, as indicated earlier, the Reference Court assessed the acquired land by drawing an average of the sale considerations at which the sale deeds Exs. P-8, P-9 and P-17 to P-19, were executed and assessed its value at Rs.28/- per Sq.Yd., i.e. 40+16 = 56/2 = 28. However, concededly, the sale deed Ex.P-8, dated 04.02.1982, Ex.P-9, dated 04.02.1982 and Ex.P-10, dated 19.04.1982, were executed post notification, dated 09.03.1981, under Section 4, therefore, could not be factored in to assess the value of the acquired land. The matter can be analyzed from yet another perspective. Apparently, the sale deeds Exs. P11 to P-19, were executed in the year 1979 to 1981 but for a much higher sale consideration. Therefore, the presumption that permeates the record is that possibly the sale deeds/sale instances, i.e. Exs. P-8 to P-10 were undervalued and, thus, were unsafe to be relied upon. And, as indicated earlier, the State failed to lead any cogent evidence to show that post notification dated 09.03.1981, under Section 4, the value of the real estate in the vicinity of the acquired land had indeed dropped or de-escalated. Thus, the sale deeds Exs. P-8 to P-10 ought to have been excluded out of consideration.

Having said that all what this Court is left with are the sale instances Exs. P-17 to P-19. The site plan Ex. P-2 and other evidence on record shows that the sites that were sold vide sale instances Exs. P-17 to P-19 were situated on Jhajjar-Rewari Road and were located near the Level Crossing. And, the acquired land too was situated on Jhajjar-Rewari Road and was a composite block/piece of land. None other than Shri D.C. Sharma (RW-1), conceded in his statement that Level Crossing was hardly at a distance of ½ kilometer from the acquired land. That being so, the only and the inevitable conclusion one could reach is; sale deeds Exs. P-17 to P-19 were not only the most suitable but also the safest mode to assess the true value of the acquired land, vide which the land located in the close proximity to the acquired land was sold @ of Rs.40/- per Sq.Yd.

This brings me to a short but a significant question: **For vide each of the sale deed Exs. P-17 to P-19, an area measuring 162 Sq.Yds. was sold**, so even if these sale instances are relied upon, whether any deduction or cut is required to be applied**?** And, if yes, at what rate**?**

The Reference Court itself on a consideration of the evidence on record had concluded that there were factories and houses in the close proximity to the acquired land much prior to the issuance of notification, dated 09.03.1881, under Section 4. None other than the witness examined by the State, i.e. Shri D.C. Sharma (RW-1), testified in his deposition that distance between the acquired land and municipal limits of Rewari was hardly ½ kilometer. The Railway Station, Rewari, was at a distance of 1 Km. Towards south of the acquired land, there was H.S.E.B. Power House Colony. The documents tendered by the State itself, i.e. mutations etc., did not support its version; that land under acquisition was being utilized as agricultural land. On the contrary the entries in the revenue record showed that the acquired land was *Gairmumkin* in nature, which rather proved the claim of the landowners that the land under acquisition was likely to be utilized for residential, commercial and industrial purposes. As indicated earlier State had failed to produce even sale deed/sale instances, least of a large/bigger chunk of land in the vicinity of the acquired land. Obviously, for none existed. Evidence on record conclusively proves that the acquired land had virtually transformed into an urban area. Therefore, in the given situation no deduction or cut in the value of the land sold vide sale deeds Exs. P-17 to P-19 was indeed warranted.

However, the fact remains that the site plan Ex.P-2 reveals that the sites that were alienated vide these sale deeds were situated at a distance of ½ a kilometer from the acquired land towards Rewari town and, therefore, were, a shade better in terms of location. Hence, a deduction @ 10% in the value of the land sold vide Exs. P-17 to P-19 shall balance the equities. Accordingly, the claimant/landowners are held entitled to compensation @ Rs.36/- per Sq.Yd. Needless to assert that they shall also be entitled to all the statutory benefits as admissible in law.

In conspectus of the above, the appeals filed by the claimant/landowners are disposed of in the above terms. But as a necessary consequence, the appeals filed by the State are dismissed.

(ARUN PALLI)
JUDGE

November 02, 2017
Pkapoor

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO