

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RFA No.3619 of 2015
Date of Decision :07.04.2017

Haryana State Industrial Development Corporation (now Haryana
State Industrial and Infrastructure Development Corporation Limited)

.....Appellant

Versus

Ashok Kumar and others

..... Respondents

and other connected matters:

Filed By	Numbers	Total
HSIIDC	RFA Nos.3620 to 3645, 3837 to 3863, 3866 to 3880, 3882, 3884 to 3927, 3944 to 4021, 4130 to 4146, 4149, 4566 to 4579, 5447 to 5488, 5769, 6581 to 6688, and 6696 to 6707 of 2015	386
Claimants/ landowners	RFA Nos.3311 to 3319, 3398, 4233 to 4279, 4334 to 4339, 4350 to 4359, 4386, 4387, 4509, 4510, 4554, 4711 to 4713, 4716, 4717, 4755 to 4761, 4845, 4846, 5078 to 5086, 5094 to 5098, 5242 to 5249, 5254 to 5256, 5362, 5380, 5396, 5411, 5428, 5613, 5614, 5640 to 5642, 5660, 5663, 5665 to 5668, 5677, 5786, 5843, 5844, 5850, 5851, 5855, 5860 to 5864, 5875 to 5878, 5888, 5908 to 5924, 5926, 5932, 5937, 5938, 5985 to 5992, 6020, 6021, 6052 to 6055, 6090, 6120, 6121, 6145, 6146, 6259, 6260, 6274, 6275, 6366, 6367, 6369, 6400, 6418, 6419, 6422 to 6424, 6456, 6498 to 6500, 6840, 6843, 6976, 6977, 6978, 6988, 7030, 7341, 7342 to 7345, 7354, 7366 and 7658 of 2015; & 66, 152, 364 to 367, 397 to 399, 552, 1130, 1261, 1332, 1622, 1745, 1882, 1883, 1935 to 1937, 1981 to 1985, 1987, 2396, 2447, 2507, 2508, 2523, 2623, 4093, 4094, 4130, 4199, 4208, 4385, 4472 to 4474, 4477 and 4478 of 2016	265

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

Present : Mr. Pritam Singh Saini, Advocate with
Mr. Deepak Sabherwal, Advocate;
Mr. Deepak Manchanda, Advocate;
Mr. Parvindra Singh Chauhan, Advocate;
for the appellant(s)/respondent(s)/HSIIDC.

Mr. Sanjay Mittal, Advocate;
Mr. Arun Yadav, Advocate;
Mr. J.P.Jangu, Advocate;
Mr. Aditya Singh Yadav, Advocate;
Mr. B.K.Bagri, Advocate;
Mr. S.S.Khurana, Advocate;
Mr. Ram Darhsan Yadav, Advocate; and
Mr. Sanjay Vashisth, Advocate
for the landowners.

Mr. Abhinash Jain, AAG, Haryana.

ARUN PALLI, J. (Oral)

Vide this order and judgment, I shall decide a batch of 652 appeals, of which 387 appeals have been filed by the HSIIDC (beneficiary of the acquisition) and the rest 265 appeals have been preferred by the claimants-landowners. For, the matter arises out of the same acquisition, and the question that require determination in all these appeals is common, these are being disposed of by a common order. However, by consensus the facts are being culled out from RFA No.3619 of 2015 (Haryana State Industrial Development Corporation (now Haryana State Industrial and Infrastructure Development Corporation Limited) Vs. Ashok Kumar and others).

Vide notification dated 02.12.2005, issued under Section 4 of the Land Acquisition Act, 1894, (for short 'the Act'), a land measuring 8129 kanal 3 marlas, situated in 9 different villages such as Bawal, Banipur,

Patuhera, Jaliawas, Suthani, Suthana, Karnawas, Chirahara and Asalwas, Tehsil and District Rewari, was sought to be acquired for extension of Industrial Growth Centre, Bawal. Final declaration under Section 6 of the Act was published on 13.03.2006. The Land Acquisition Collector, vide separate awards, for each of the revenue estate, assessed the market value of the acquired land at ₹12,50,000/- per acre. Being aggrieved by the assessment and the compensation awarded by the Collector, the claimants filed objection under Section 18 of the Act. Resultantly, the dispute was referred to the Civil Court. And, on a consideration of the matter, the reference Court, vide impugned awards dated 26.02.2015 (for revenue estate of Bawal), 19.3.2015 (for village Banipur), 20.3.2015 (for village Patuhera and Jaliawas), 21.03.2015 (for village Suthani), 23.3.2015 (for village Karnawas), 26.3.2015 (for village Chirahara) and 31.3.2015 (for village Asalwas), enhanced the compensation awarded to the claimants to ₹16,00,000/- per acre. That is how, both the parties are in appeal before this Court. Of course, HSIIDC prays that the award(s) rendered by the reference Court be set aside, and the claimants seek further enhancement.

Mr. Pritam Singh Saini, learned counsel for the appellant submits that the reference Court seriously erred, for the enhancement awarded to the claimants has no basis. Although, he asserts, the reference Court did record that in view of the facts, circumstances and the location of the acquired land, the claimants were entitled to further enhancement, but nothing indeed was referred to justify the conclusion arrived at. Further, he submits that the appellants had brought on record the sale deeds Exs. RW3/3 to RW3/5, RW3/1, RW3/2 and RW3/6 to RW3/33, but these sale

instances were discarded by the reference Court for, in terms of Section 25 of the Act, the claimants could not be granted compensation less than what was awarded by the Collector. He submits that apparently the reason assigned by the reference Court is erroneous.

Per contra, learned counsel for the claimants-landowners submit in unison that even though the reference Court, did not demonstrate the precise facts, circumstances, as also the location of the acquired land that necessitated enhancement, but the fact remains that enormous evidence was led by the claimants to show that the land under acquisition had a huge potential of being used for residential/commercial/industrial purpose. Rather, the grievance of the claimants is that reference Court apparently failed to appreciate the evidence on record, and thus, the compensation awarded is far to inadequate. Further, it is asserted that even if it is assumed that the sale deeds that were brought on record by the claimants were of a smaller area, but for these were contemporaneous sale instances and were extremely crucial, these could never be ignored. Or, at best, could be taken into account with an appropriate cut. Thus, it is urged that the claimants are entitled to further enhancement.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the impugned award is wholly unsustainable, and thus, liable to be set aside for the reasons that are being recorded herein-in-after.

Concededly, the Land Acquisition Collector had assessed the market value of the acquired land at ₹12,50,000/- per acre, and the reference Court enhanced the compensation to ₹16,00,000/- per acre. For, the precise

grievance of the HSIIDC (beneficiary of the acquisition) is that the enhancement awarded by the reference Court has no basis, and the finding recorded in this regard is perverse, it would be apposite to refer to the conclusion arrived at by the reference Court:-

“The petitioners have claimed that the compensation awarded by learned Land Acquisition Collector is very inadequate. To prove their case, besides oral evidence of Ran Singh (PW1), Jang Bahadur (PW2) and Suresh Kumar (PW5), the petitioners have produced on file copy of sale deeds Ex.PW4/A to Ex.PW4/F. It is observed that sale deeds Ex.PW4/A to Ex.PW4/F pertain to the year 2005 and the same pertain to small chunk of land. It is settled law that small chunk of land cannot be relied upon for determination of the market value of the land. The sale deeds Ex.RW3/3, Ex.RW3/4 Ex.RW3/5 were executed in the year 2004 and sale deeds Ex.RW3/1, Ex.RW3/2 and Ex.RW3/6 to Ex.RW3/33 were executed in the months of January, March, April, May and June, 2005. Learned Land Acquisition Collector has awarded compensation @ Rs.12.50 lacs per acre for all kinds of land. However, as per Section 25 of Land Acquisition Act, 1894, the amount of compensation awarded by the court shall not be less than the amount awarded by the Collector under Section 11. Admittedly, the acquired land was agricultural in nature. Keeping in view the facts and circumstances of the case, location and nature of the land acquired, purpose of acquiring the market value of the acquired land is assessed at the rate of Rs.16,00,000/- (Rs.Sixteen lacs) per acre for all kinds of land from the date of issuing the

notification under Section 4 of the Act along with all statutory benefits under Section 23(1-A), 23(2) and 28 of the Act. This issue is, accordingly, decided in favour of the petitioners”.

Ex facie, all that forms basis of the enhancement awarded by the reference Court is; that in the wake of facts and circumstances of the case, the location and nature of the acquired land the compensation awarded to the claimants was required to be enhanced to ₹16,00,000/- per acre. But, what precisely were/are those facts and circumstances, how exactly the acquired land was located, what was it surrounded with, nothing indeed is referred to, least demonstrated. Apparently, the conclusion arrived at by the reference Court is not preceded by any process of analysis and appreciation of the material and evidence on record. Further, even the sale deeds i.e. Ex.RW3/1 to Ex. RW3/33 that were brought on record by the HSIIDC (beneficiary of the acquisition), were discarded by the reference Court, for, in terms of Section 25 of the Act, the claimant could not be awarded compensation less than what was granted by the Collector. Undoubtedly, there can never be any quarrel with the said proposition of law. But, still, what appears to have been overlooked is that Section 25 does not prohibit the Court to factor in even such sale instances provided those are bona fide transactions. And, that too for a limited purpose to ascertain the true value of the acquired land. Be that as it may, the fact remains that the reference Court has not even referred to a single sale deed to show as to at what rate or consideration these were executed.

Likewise, even the landowners have a similar grievance, for the

sale deeds that were brought on record by the claimants, that is, Ex.PW4/A to Ex.PW4/F were ruled out of consideration, for, these purport to be of an extremely small or a negligible area. Needless to assert that it has not been laid down, as yet, as absolute rule of law that notwithstanding anything the sale instances of small chunks of land can never be taken into account to determine the market value of the acquired land. Rather, a contemporaneous sale instance, even though of a smaller area, if germane to the acquisition can always be taken cognizance of. May be, with suitable deduction/cut as the situation, in a given case, warrants. Not just that, nothing indeed is referred to by the reference Court to indicate as to what was the area that was alienated vide these sale deeds so as to justify their exclusion from the evaluation process. Significantly, the reference Court noticed the claim of the landowners in paragraph 5 of the impugned award: that the acquired land was located on NH-8 and 71-A, was surrounded by many leading industrial houses; railway station Bawal was also situated close by, and it was a part of National Capital Region Development Plan. Indisputably, the claimants proved the site plan (Ex.P1) to depict the location of the acquired land, and led the necessary evidence in support of their claims. But, there was/is no tangible appreciation or analysis of the evidence led by the landowners in this regard.

In a nutshell, this is a case where both the parties are aggrieved by the finding recorded by the reference Court as regards the market value of the acquired land. Grievance of the HSIIDC (beneficiary of the acquisition) is that conclusion arrived at by the reference Court is per se perverse, for nothing in specific is referred to or demonstrated to assess the

acquired land at ₹16,00,000/- per acre. Whereas, the grievance of the claimants is that the reference Court failed to weigh, analysis and appreciate the material and the evidence led by them, and thus, the enhancement awarded is not the true reflective of the value of the acquired land.

Faced with this situation, learned counsel for the parties have reached a consensus that let the impugned award be set aside, and the matter be remitted to the reference Court for re-decision. In normal parlance, in the matter of this nature, remand is the last resort and is least desired, but in the matter in hand it appears to be the inevitable option. Resultantly, the impugned award is set aside. And, the matter is remitted for re-decision. For, now the reference Court shall re-determine the dispute, I deem it expedient to observe that both the parties shall be granted two opportunities each, on the date that shall be specified by the reference Court in this regard, to lead any further evidence if so desired. But, in the event of default no further opportunity shall be granted at any cost. I am reminded to point out that this Court while admitting the appeal on July 07, 2015 had stayed the payment, beyond 50% of the enhanced compensation. But during the course of hearing I was informed by the learned counsel for the parties that in fact the entire awarded amount had since been deposited with the executing Court. So much so, in certain matters where this Court had not stayed the operation of the impugned award, the claimants have even been released the entire enhanced amount. Whereas in the matters, in which payment of enhanced compensation beyond 50% was stayed, only half the amount was released to the claimants. That being so, it is made clear that the appellant shall not recover the amount that has already been released to

the claimants, till the matter is re-decided. However, the reference Court shall pass the necessary and appropriate orders in this regard, and as the situation would warrant while rendering a final judgment. Parties through their respective counsel shall appear before the District Judge, Rewari on 24.04.2017. Needless to assert that it shall be the discretion of the District Judge to either decide the matter himself or assign it to any other Court of competent jurisdiction. However, in the facts and circumstances of the case, the Court that shall decide the matter is requested to decide the same, positively, within a period of two months from 24.04.2017. Needless to assert that this order shall not constitute any expression of opinion on the merits of the case of either party. And, the reference Court shall decide the matter on merits, and strictly in accordance with law.

In conspectus of the above, all these appeals are accordingly, disposed of in the above terms.

The Registry is directed to send back the LCR to the reference Court forthwith.

07.04.2017

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No