

ARUN PALLI, J. (ORAL)

Vide this order and judgment I shall decide a batch of 108 appeals and one cross objection, of which 78 appeals have been preferred by the State of Haryana and the rest 30 as also the cross objections have been filed by the claimants landowners. For, all these appeals arise out of the same acquisition, and the questions that arise for determination are common, these are being disposed of by a common judgment. However, by consensus, the facts are being culled from **RFA No.7431 of 2015 (The State of Haryana and others v. Satish Singh alias Satish Kumar)**.

Vide notification dated 30.03.2012, issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act'), a land measuring 38 acres 2 kanals and 12 marlas, situated in 9 different villages i.e. Bassi Akbarpur, Khojkipur, Garhi Khajur, Behlolpur, Faisalipur Majra, Budanpur, Mundi Garhi, Sadarpur and Darulama Tatarpur, Tehsil Gharaunda, District Karnal, was sought to be acquired for construction of *katcha* Drain from village Kairwali to Mundi Garhi . The final declaration under Section 6 was published on 30.04.2012. Vide 9 separate awards, rendered on different dates, for each of the villages the Land Acquisition Collector assessed the market value of the acquired land at Rs.12,00,000/- per acre. Being aggrieved by the assessment as also the compensation the claimant/landowners filed objections under Section 18 to the award rendered by the Collector. Resultantly, the dispute between the parties was referred to the Civil Court for determination of the true value of the acquired land. On a consideration of the matter in issue and the evidence on record the reference Court discarded the sale deeds Exs.R1 to R3, for, these were executed at a lesser rate than what was even awarded by the Collector.

Moreover, no site plan was produced to show that the land sold vide these sale deeds was indeed comparable to the acquired land. Sale deed Ex.R4 was also ignored, for, this was executed post notification under Section 4. Likewise, sale deed Ex.P1 proved by the claimant/landowners was also ruled out of consideration, for, it was a sale instance post notification under Section 4. Further, the land sold vide said sale deed was situated in village Sadarpur and nothing was brought on record to show the distance between village Sadarpur and the villages in which acquired land was situated. As a result, the sale deeds Ex.P3 (though mentioned as Ex.P2 in the impugned award) and Ex.P4 were taken into consideration, for, these were sale instances from village Bassi Akbarpur and Mundi Garhi itself. However, the reference Court relied upon the sale deed Ex.P3, vide which land measuring 10 marlas was sold @ Rs.31,46,797/- per acre, and thus, vide impugned award dated 4.9.2015, the acquired land was assessed accordingly at the same rate. It is clarified that in all the subsequent awards, rendered on the same date or otherwise, the reference Court awarded compensation to the claimant/landowners in terms of the award dated 4.9.2015. That is how, as indicated above, both 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(s).

Mr. Sudeep Mahajan, learned Additional Advocate General, Haryana submits that the reference Court erred in discarding the sale deeds Ex.R1 to R3, for, these were executed at lesser value than what was awarded even by the Collector. He submits that a bare analysis of the impugned

@ Rs. 12,00,000/- per acre, and the sale deeds dated 18.07.2011 (Ex.R2) and 27.07.2011 (Ex.R3) at Rs.13,00,000/- per acre. Thus, he asserts that the finding recorded by the reference Court is apparently perverse. Further, he submits that another reason, because of which the sale deeds Ex. R1 to R3 were ignored was that no site plan was brought on record to show that distance between the land sold vide these sale instances and the acquired land. Likewise, one of the reasons to discard even the sale instance dated 1.8.2012 (Ex.P1) was that the land sold vide said sale deed was situated in a different village i.e. Sadarpur, and nothing was brought on record to show its proximity with the villages in which the acquired land was situated. That being so, he asserts, going by the same analogy even the sale deeds Exs.P3 and P4 ought not to have been relied upon, for, no site plan was brought on record to show if these were indeed comparable sale instances. Therefore, he submits that acquired land needs to be re-evaluated in terms of the sale deeds Exs.R1 to R3. However, in the alternative, he submits that even if it is assumed that the reference Court had rightly relied upon the sale deeds Ex.P3 and P4, but as the area sold vide these sale instances was extremely small i.e. 10 and 14 marlas respectively, the reference Court ought to have caused/applied an appropriate cut to work out the true value of the acquired land.

Per contra, learned counsel for the claimant/landowners submit in unison that even though the rate at which the sale deed Ex.R1 was executed was the same as awarded by the Collector and the sale deeds Ex.R2 and R3 were executed for a higher price, but the fact remains that the claimants landowners were entitled to the best value for their land holding.

same revenue estate i.e. Bassi Akbarpur and Mundi Garhi, and were executed prior to the issuance of a notification under Section 4, these indeed were the most suitable sale instances/exemplars to assess the true value of the acquired land. Particularly, for, this was never the case of the State at any stage of the proceedings that the land sold vide sale deed Ex.P3 and P4 was dis-similar to the acquired land. Rather, it is urged that the sale deed (Ex.P3), relied upon by the reference Court, was executed on 18.05.2010 that is almost two years prior to the notification dated 30.03.2012 issued under Section 4, but, yet the claimants were not awarded an appropriate/suitable increase. In response to the argument that smallness of the area sold vide relied upon sale deed Ex.P3 warranted an appropriate cut/deductions, it is submitted that the evidence on record showed that the area in the vicinity of the acquired land was surrounded by many residential and commercial establishments and was under a rapid transformation. Therefore, sale instances of a larger chunk of land were hardly available. Further, the total land under acquisition i.e. 38 acres 2 kanals 12 marlas was not a compact block situated in one revenue estate which was being evaluated on the basis of a small and fully developed site, but was comprised in 9 different villages. Thus, no deduction in the value of the land sold vide sale deed Ex.P3 was called for. Finally, it is submitted that owing to the construction of katcha drain the land holdings of the claimants/landowners stood bifurcated into two parts, but, yet they have not been awarded any compensation therefor.

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

Ex facie, the sale deeds brought on record by the State i.e. Ex.R1 to R3 were executed @ Rs.12,00,000/- and Rs. 13,00,000/- per acre, respectively and it is not disputed either that the Land Acquisition Collector had assessed the acquired land at Rs.12,00,000/- per acre. Thus, the finding recorded by the reference Court **“as regards the sale instances put forward by the respondents (Ex.R1 to Ex.R3), the land under those sale deeds was sold for the consideration which is even less than the compensation awarded by the LAC. Thus, the same cannot be taken into consideration for assessing the market value of the acquired land at the relevant time”** is perverse and contrary to the record. Further, the land sold vide these sale deeds was also situated in village Bassi Akbarpur itself, in which the part of acquired land was situated, thus, these could not be outrightly ignored being irrelevant.

No doubt, as indicated earlier, one of the reasons the reference Court assigned to discard the sale instances Exs.R1 to R3 was that no site plan was proved to show the proximity of the area sold vide these sale deeds with the acquired land, and on the same analogy the sale deed Ex.P1 was also ignored. And, likewise, no site plan was produced by the claimant/landowners either to show the precise location and the proximity of the area sold vide the relied upon sale instance with the acquired land. But, the fact remains that it has never been the case of the State either before the reference Court or in these proceedings that the land sold vide relied upon sale instance was dis-similar in nature, quality and value to the acquired land. Further, the bonafides of these transactions were never questioned by the State. It is equally true that the sale deeds Ex.P3 and P4

Section 4, and the land sold vide these sale instances formed part of the village Bassi Akbarpur and Mundi Garhi itself. That being so, it could not be urged that the reference Court erred in placing reliance upon the sale instance Ex.P3. Rather, in the given situation, that was not only the most suitable but also the safest evidence to determine the true value of the acquired land.

Adverting to another significant dimension of the matter the area sold vide relied upon sale instance Ex.P3 was 10 marlas, and while assessing the acquired land in terms thereof the reference Court itself observed that the sale deeds Ex.P3 and P4 pertained to small pieces of land, ***“However, the sale deed Ex.P3 was in respect of sale of 10 marlas land whereas Ex.P4 was in respect of sale of 424 sq. yard land. Thus, through these sale deeds, small pieces of land were sold. However as there is no other material on the case file on the basis of which market value of the acquired land could be determined, so the same are taken into consideration.”*** But, the issue/question as to whether the evidence on record warranted any appropriate or suitable deduction/cut to be caused was never examined. Likewise, the relied upon sale instance Ex.P3 was executed nearly two years prior to the notification dated 30.03.2012 issued under Section 4, but the reference Court failed to consider if the claimant/landowners were entitled to any suitable increase, and if yes at what rate.

The argument advanced by the learned counsel for the claimant/landowners that they were entitled to compensation even on account of severance of their land holdings is not devoid of merit either.

The only reason assigned by the reference Court to discard the claim of the

landowners is that they failed to lead any evidence to show that owing to the acquisition their holdings indeed stood severed. It would be apposite to point out at this juncture that the land under acquisition was acquired for construction of *katcha* drain from village Kairwali to Mundi Garhi. Thus, the very purpose of the acquisition suggests that bifurcation/severance of holdings of the claimants was inevitable, except where the entire land of the claimant/landowners was acquired. No doubt, the claimants had not led any conclusive evidence to support their individual or respective claims, but the fact remains that Satish Singh (PW1) one of the claimant/landowner testified in his deposition that owing to the acquisition, his land holding was divided into two parts. Likewise, Mittar Pal (PW2) deposed that as there was a drain between the two parcels of his land the value of his un-acquired land had de-escalated or diminished. And, not just that the claimants suffered an acute hardship to irrigate and cultivate their holdings situated across the *katcha* drain. On being pointedly asked, learned State counsel could not show if the testimonies of these witnesses were questioned in their cross-examination. Rather, he fairly submits that it seems obvious that construction of *katcha* drain through the fields of the claimants might have resulted in severance of the holdings of few of the claimant/landowners.

An analysis of the position, as sketched out above, irresistibly shows that the finding recorded by the reference Court to discard the sale deeds Ex.R1 to R3 is perverse. Likewise, certain vital issues as regards causing any deduction in the value of the relied upon sale instances Ex.P3 as also an appropriate or suitable increase, the claimant/landowners were entitled to for the time difference between the execution of the sale deed

Ex.P3 and the notification under Section 4, remained un-answered. In the given facts the finding that claimant/landowners were not entitled to any compensation on account of severance is not sustainable either. Thus, the only and the inevitable conclusion that could be reached is; the matter warrants to be remitted for re-decision. And, least it effect the interest of either of the parties, it shall be just and appropriate to permit them to lead any further evidence, if so required. However, both the parties shall be afforded only two effective opportunities to lead and conclude their respective evidence on the dates that shall be specified by the reference Court. And, in the event of default no further adjournment shall be granted. I am also reminded to point that vide order dated 17.05.2017, this Court had stayed payment of 20% of the enhanced compensation, and out of the balance amount, 50% of the enhanced compensation was ordered to be disbursed to the claimant on furnishing security and the rest 50% without any security. The said order has been in operation to date. It is clarified that even though, the impugned awards are being set aside but the amount realized by the claimant/landowners in terms of the order dated 17.05.2017 shall not be recovered till the matter is re-decided. For, the necessary orders in this regard shall be passed by the reference Court while pronouncing the final judgment and as the situation would so warrant.

In conspectus of the above, the impugned awards are set aside. The matter is remitted to the reference Court for re-decision in accordance with law. Parties through their respective counsel shall appear before the District Judge Karnal on 18.1.2018. It shall be the discretion of the District Judge to either decide the land references himself or to assign the matter to

the present case, the reference Court is requested to re-decide the matter within a period of 6 months from the date the parties shall cause appearance before the District Judge. Needless to assert that this order shall not constitute any expression of opinion on merits of the case of either party. For, all the questions that arise for determination in the present lis shall be decided afresh and in accordance with law. Accordingly, the appeals preferred by both the parties as also the cross objection are disposed of in the above terms. LCR be returned forthwith.

(ARUN PALLI)
JUDGE

December 21, 2017

Manoj Bhutani

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