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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : 20.12.2017

1. **RA-CR-142-CII-2017 (O&M) IN FAO-8090-2014**

Nirmal Kumar and others

... Applicant(s)

Versus

National Highway Authority of India

... Respondent(s)

2. **RA-CR-213-CII-2017 (O&M) IN FAO-2848-2016**

Sunil Kumar and others

... Applicant(s)

Versus

Sub-Divisional Magistrate-cum-Competent Authority-cum-Land Acquisition Collector, Amritsar-II and others

... Respondent(s)

3. **CM-22609-CII-2017 IN RA-CR-213-CII-2016 IN FAO-8650-2014**

Tejpal Singh and others

... Applicant(s)

Versus

National Highway Authority of India

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Madan, Advocate
for the applicant/respondent/NHAI.

Mr. Naresh Kaushal, Advocate and
Mr. Vikram Rathore, Advocate
for the non-applicant/appellants
in RA-CR Nos.142 & 213-CII of 2017 .

Mr. Prateek Mahajan, Advocate
for the non-applicant/appellant(s) in CM-22609-CII-2017.

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AMIT RAWAL, J. (ORAL)

CM-17914-CII-2017 IN RA-CR-142-CII-2017

For the reasons stated in the application, which is supported by the affidavit, the application is allowed and the delay of 385 days in filing the review application is condoned.

MAIN CASES

This order of mine shall dispose of two review applications bearing ***RA-CR-142-CII-2017*** titled as ***"Nirmal Kumar and others V/s National Highway Authority of India"***, ***RA-CR-213-CII-2017*** titled as ***"Sunil Kumar and others V/s Sub-Divisional Magistrate-cum-Competent Authority-cum-Land Acquisition Collector, Amritsar-II and others"*** and one application bearing ***CM No.22609-CII-2017 IN RA-CR-213-CII-2016*** titled as ***"Tejpal Singh and others V/s National Highway Authority of India"*** seeking reviewing/recalling of the orders dated 19.05.2016, 05.09.2016 and 14.09.2016.

This Court vide order dated 19.05.2016 had disposed of two FAOs bearing No.8650 of 2014 and 8090 of 2014 and one appeal bearing No.2848 of 2016, vide order dated 14.09.2016, had also been disposed of in terms of order dated 19.05.2016.

Thereafter, an review application bearing No.RA-CR-213-CII-2016 in FAO-8650-2014 on behalf of the landowners was moved seeking review of the order dated 19.05.2016, on the premise that the compensation @ ₹20,000/- per square yard, had been granted to the landowners, whose land was placed in Category 'A', whereas in respect of the land of the landowners in FAO No.8090-2016, despite having been categorized in 'B' Category, the compensation @ ₹30,000/- per square yard had been awarded. Notice in the review-application was issued to the non-applicant/NHAI and Mr. R.S. Madan, Advocate had put in appearance on behalf of the NHAI. This Court vide order dated 05.09.2016 had allowed the review application by enhancing the compensation @ ₹30,000/- per square yard along with all the statutory benefits instead of compensation @ ₹ 20,000/- per square yard i.e. by bringing the land at par with the land of the landowners in FAO No.8090 of 2014.

Mr. R.S. Madan, learned counsel appearing on behalf of the review applicant/NHAI submitted that the genesis of the order dated 19.05.2016, while disposing of the two appeals, was on the basis of the Award dated 17.02.2009 in respect of the same village, where the Collector/Competent Authority had assessed the compensation @ ₹20,000/- per square yard, whereas in respect of the Award dated 31.05.2010, subject matter of challenge in the aforementioned FAO, the compensation had been granted on the basis of the categorization of the land i.e. Quality, Location etc., but in none of the Award, the amount of ₹30,000/- per square yard, had at any point of time been awarded and therefore, there is an error apparent on record and it is, in this backdrop of the matter, an application bearing CM No.22609-CII-2017 in RA-CR-213-2016 and two review applications bearing RA-CR Nos.142 & 213-CII of 2017 have been filed.

Learned counsel appearing on behalf of the non-applicant/appellant(s)/Landowners submitted that even the compensation @

₹20,000/- per square yard had not been deposited.

This Court vide order dated 03.11.2017 observed that pendency of the review application, would not debar the National Highways Authority of India to pay the compensation @ ₹20,000/- per square yard, already determined in order to avoid further incurring of any interest thereon.

Mr. Naresh Kaushal, learned counsel appearing on behalf the non-applicant/appellant(s)/landowners has relied upon the judgment dated 25.09.2017 passed by the Co-ordinate Bench of this Court rendered in ***RFA No.4447 of 2003*** titled as ***"Bhupinder Singh and others V/s State of Punjab"***, whereby the amount of compensation has been awarded keeping in view the situation of the land, nature of development in surrounding area, availability of land for development in the area and the demand for land in the area. The aforementioned judgment had been rendered on the basis of the *ratio decidendi* culled out by the Hon'ble Supreme Court in ***"The General Manager, Oil & Natural Gas Corporation Ltd. V/s Rameshbhai Jivanbhai Patel & Anr." 2008 (14) SCC 745***, wherein in paragraph 11, it was held as under:-

> *"11. Primarily, the increase in land prices depends on four factors - situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much*

> *higher rate, as compared to rural areas.*
>
> *X X X X*
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> *Therefore if the increase in market value in urban/semiurban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same."*

thus, urges this Court for dismissal of the application by upholding the orders, under challenge.

Mr. Madan, in rebuttal, submitted that only the landowners in FAO No.8650 of 2014 had filed the execution application, in which, NHAI had put in appearance before the Executing Court and sought time to file reply.

I have heard the learned counsel for the parties and appraised the paper book. The factual aspect i.e. passing of the award dated 17.02.2009 in respect of Village Verka and Award dated 31.05.2010 in respect of same very Village Verka, is matter of record and not in dispute. The notification under Section 3A of the National Highways Act, in Award No.18 dated 31.05.2010, was issued on 23.05.2008, whereas in Award No.1 dated 17.02.2009, on 27.05.2008, there is a gap of four days only.

In Award No.1 dated 17.02.2009, the Competent Authority assessed the compensation for all chunks of land @ ₹20,000/- per square yard by relying upon the prevalent Collector rate, whereas, in Award No.18

dated 31.05.2010, different amount of compensation was awarded keeping in view category of land ranging from ₹6,000/- onwards to ₹12000/- maximum per square yard. This Court while relying upon the findings rendered in Award No.1 of 2009, granted the compensation @ ₹20,000/- per square yard to all the landowners in order to maintain parity and consistency as well as passing of contradictory award. However, while disposing of the review application bearing RA-CR No.213-CII of 2016, compensation of ₹30,000/- was also awarded to the landowners in FAO-8650-2014, keeping in view the potentiality of the land.

In my view, there is no force in the arguments of Mr. Madan, that the landowners would not be entitled to considerable increase in the compensation over a period of time particularly in view of the *ratio decidendi* culled out by Hon'ble the Supreme Court in ***"General Manager's case*** (supra), extracted *ibid.* It is, in this backdrop of the matter, I am of the view that the landowners are entitled to 30% increase on account of the fact that there was almost a gap of one year in passing of the Award and they were deprived of the possession of the land. Since the Collector/Competent Authority, in Award No.1 of 2009, had awarded the compensation @ ₹20,000/- per square yard, by taking 30% increase of ₹20,000/-, in my view, the compensation, which the landowners are entitled, comes to ₹26,000/- per square yard instead of ₹30,000/- per square yard.

Resultantly, orders dated 19.05.2016, 05.09.2016 and 14.09.2016 are recalled/modified and it is held that the landowners shall be entitled to compensation @ ₹26,000/- per square yards with all statutory benefits as per the *ratio decidendi* culled out in ***"M/s Golden Iron and Steel***

Forging V/s Union of India" 2011 (4) RCR (Civil) 375.

It would be in the fitness of things that the wisdom may dawn upon the officers at the helm of the affairs to comply the order in letter and spirit in order to save the State Exchequer from burden of payment of interest.

With the aforesaid observations, Review Applications bearing No.***RA-CR-142-CII-2017 IN FAO-8090-2014*** & ***RA-CR-213-CII-2017 IN FAO-2848-2016*** and one application bearing ***CM No.22609-CII-2017 IN RA-CR-213-CII-2016*** are partly allowed.

(AMIT RAWAL)
JUDGE

20.12.2017
Yogesh Sharma

Whether speaking/reasoned **[✓ Yes]/ No**

Whether Reportable **Yes/ [✓ No]**