HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RFA No.1583 of 2003 (O&M)
Date of Decision: 02.11.2018

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Ashok Kumar & Anr. ... Appellants

VS.

Haryana State & Anr. ... Respondents

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CORAM: HON'BLE MR.JUSTICE G.S. SANDHAWALIA

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Present: Mr. Dhawal PS Ahluwalia, Advocate for
Ms. Peeyushi Diwan Jain, Advocate for the appellants

Mr. Sandeep Mahajan, Addl. AG Haryana and
Ms. Vibha Tewari, AAG Haryana

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G.S. SANDHAWALIA, J. (Oral)

This order shall dispose of RFA Nos.1583 & 1678 of 2003 filed by the landowners and the State both against the common award dated 08.11.2002. RFA No.1583 of 2003 is being treated as the lead case for the purpose of deciding both the appeals.

This Regular First Appeal under Section 54 of the Land Acquisition Act, 1894 arises out of the Award dated 08.11.2002 passed by the Reference Court, Panchkula whereby, for the land acquired, a sum of ₹ 250/- per sq.yard was assessed as the compensation. Apart from that, the landowners were held entitled to the benefit of interest under Section 28 & 34 of the 1894 Act from the date when the Collector took possession since it was the case of the landowners that the possession had been taken in the year 1986 while the notification for acquisition under Section 4 was issued only on 29.06.1994.

The basis of enhancement for the land which measured 5 kanals 8 marlas falling in village Fatehpur, Panchkula comprising khasra No.8/15 was on the strength of the earlier notification dated 29.01.1990 for the same village and the award of the Reference Court was passed on 20.12.1991 (Ex.P23) whereby, the market value has been assessed at ₹ 160 per sq.yard. The reasong to give the same amount reads as under:-

> *"21. Lastly, Ex.P23 pertains to an award passed by this Court for a notification dated 29.1.90 where this Court had assessed market value at Rs.160/- per square yard for the land situated in the same village i.e. Fatehpur. In this case, the petitioners had produced sixteen sale deeds and nine court awards and this Court after considering the entire evidence produced on the file had reached the conclusion that the market value was Rs.160/- per square yard. As already discussed above, the Court awards are considered a good piece of evidence for arriving at the market value. So, in the light of the said previous award Ex.P23 passed by this Court and providing an increase of 12% per annum, the market value would be around Rs.250/- per square yard. The said market price seems to be the most reasonable and satisfactory when we consider the entire evidence produced in the present case. So, following the said previous award passed by this Court which pertains to the same village, market value is assessed at Rs.250/- per square yard. This issue is decided accordingly."*

It is not disputed that *qua* the said notification i.e. 29.01.1990, the matter stands finalized upto the Supreme Court in case of ***Ashok Kumar & Ors. vs. State of Haryana & Anr. (2015) 15 SCC 200*** and the market value has been enhanced to ₹ 394/- per sq.yard. Once that is so, this Court is of the opinion that the benefit of said enhancement must necessarily flow to the landowners.

The argument, as such, which has been raised by counsel for the appellant-landowners, for further enhancement, on the strength of the sale deed (Ex.P18) dated 27.06.1994 whereby the market value for the land measuring 101 sq.yards which was sold for ₹ 1.5 lakh which worked out at ₹ 1485/- per sq.yard has rightly been not accepted by the Reference Court on the ground that the sale example was a small plot measuring 101 sq.yards which was situated within the *abadi deh* of the village and also the sale has been made just two days before the issuance of the notification dated 29.06.1994. However, if the enhancement at 12% cumulative increase on the amount as awarded in ***Ashok Kumar and Ors.*** case (supra) is granted, it would work out to ₹ 650/- (rounded off) for the difference of 4 years 5 months. It is also pertinent to mention that in ***Ashok Kumar,*** the Apex Court was also dealing with the notification dated 21.12.1994 for which the compensation amount was assessed at ₹ 689 sq.yards. Resultantly, this Court is of the opinion that ₹ 650/- would be the appropriate market value since there is a difference of another six months *inter se* between the subsequent notifications.

Coming to the second issue as to the grant of interest on account of possession having been taken in the year 1986, has been opposed by the State in view of the decisions, namely, (i) ***R.L. Jain (D) by L.Rs. vs. DDA and others, (2004) 4 SCC 79;*** and (ii) ***Special Land Acquisition Officer vs. Karigowda and others, (2010) 5 SCC 708,*** that the Collector was the competent authority. However, the finding of fact as such has been recorded that the plot was carved out on the land of the petitioner and allotted on 12.09.1987 and the land is surrounded by all developed area for the purpose of development of Sector 21 and the notification was issued much later. The State has utilized the land before the formal preliminary notification and therefore the finding recorded to the effect that the petitioner is also entitled to interest from the date of taking possession, is also justified. Accordingly, the judgment in ***Civil Appeal No. 10665 of 2010, M. Buggappa (D) through L.Rs. And others vs. Land Acquisition Officer-cum-Mandal*** dated 13.12.2010 of the Apex Court would come to the rescue of the landowner since a period of more than 30 years has gone by and it would not be, at this stage, justified to subject the landowners to another round of litigation for the grant of damages as such before the Collector. The relevant portion in ***M. Buggappa's*** *case (supra)* reads thus:-

> "*8. We are of the view that having regard to the fact that the possession of the land was taken as long back in 1977, that is 33 years ago, it would not be just and proper to remand the matter to the Collector at this stage for determination of compensation for wrongful use at this stage. Award of 6% per annum on the compensation amount, as damages for use and occupation from the date of dispossession (17.11.1977) to date of preliminary notification (3.7.1990) in addition to what has been awarded by the High Court would serve the interest of justice.*
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> *9. Learned counsel for the appellant submitted that in Madishetti Bala Ramul (supra) this Court had awarded damages at the rate of 15% per annum (on the market value determined) and, therefore, we should award damages at that rate. We find that award of damages at 15% on the compensation on the peculiar facts and circumstances of the case, and not on account of any principle evolved. Further, the market value as on 17.11.1977 when possession was taken would have been much less than the market value as on 3.7.1990. Therefore, if damages is awarded at 6% per annum on the market value determined as on 3.7.1990, the actual rate of damages with reference to the market value as on 17.11.1977 will be much more. In the circumstances, we are of the view that the damages for dispossession without initiating acquisition proceedings, when expressed in terms of a percentage of the compensation determined with reference to the market value more a decade later should not be more than 6% per*

annum.Where of course the preliminary notification is issued within one or two years from the date of taking possession, the court may award damages even at 8% to 10% of the market value determined depending upon the facts and circumstances.

10. We accordingly allow the appeal in part, and award in addition to what has been awarded by the High Court, damages at 6% per annum from 17.11.1977 to 3.7.1990, on the market value determined as on 3.7.1990. The amount so due as damages shall carry interest at 6% per annum from the date of award (21.3.1991) to date of payment. The amount awarded as damages shall not carry any additional amount or solatium."

Accordingly, the appeal filed by the State objecting to the grant of interest also and for interference in the Award is dismissed and the appeal filed by the landowners is allowed in view of the above observations by fixing the compensation at ₹ 650 per sq.yards plus statutory benefit along with benefit of interest @ 6% from the date when possession was taken till 29.06.1994. The State shall comply with the directions as contained in the judgment of the Apex Court in ***HSIIDC vs. Pran Sukh, (2010) 11 SCC 175*** and deposit the amounts due within a period of *three months* from the date of receipt of certified copy of this order.

Ordered accordingly.

02.11.2018 **(G.S. Sandhawalia)**
vvishal **Judge**

1. Whether speaking/reasoned? ***Yes***
2. Whether reportable? *No*