IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No. 793 of 1999
Date of decision: 29.01.2018

The Executive Engineer, Provl. Divn., Naraingarh and another
....Petitioner(s)

Versus

Lachhman Singh ...Respondent(s)

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

Present: Mr. Sudeep Mahajan, Addl. A.G., Haryana, for the appellant.

None for the landowner.

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of two appeals and one cross objections i.e. RFA Nos. 793 and 864 of 1999 and X Objections No. 177-CI of 1999 as common questions of facts and law are involved in all the cases. Facts are being taken from ***RFA No. 793 of 1999, State of Haryana vs. Lachhman Singh.***

The State is aggrieved against the enhancement granted by the Reference Court namely Additional District Judge, Jagadhari under Section 18 of the Land Acquisition Act, 1894 (in short 'the Act') vide judgment dated 24.09.1998. Vide the said award, a sum of Rs.82,000/- was fixed as the compensation for the land acquired which was 1.10 acres for the purpose of link road from G.M.D. Road to Harijan Basti in village Aharwaha.

The Collector had awarded Rs.25,000/- for Chahi land, Rs.16,500/- for Barani land and Rs. 4,000/- for Gair Mumkin land on the basis of which the reference petition was filed claiming compensation @ Rs.2,00,000/- per acre. The reliance by the Reference Court was upon the sale deed dated 10.07.1989 (Ex.P-1) to determine the market value which was for two kanals and the land had been sold for Rs.27,000/- which would come to Rs.1,08,000/- per acre. Accordingly, reverse cut of 12% was put on account of the fact that the notification in question was dated 04.02.1987 keeping in view the judgment of the Apex Court in ***State of U.P. vs. Major Jitendra Kumar and others, AIR 1982 SC 876*** to determine the market value. The Reference Court discarded sale deeds dated 30.01.1990 and 08.07.1988 Exs. P-2 and P-3, which was for 2 and 3 marlas of land respectively whereby land had been sold @ Rs.4,000/- and Rs.6,000/- which would translate into Rs.2,20,000/- per acre and Rs.3,20,000/- per acre. The ground for rejecting the sale deeds was also that since they were of smaller chunks of land and, therefore, they could not be considered for reflecting the true market value. The sale deed dated 27.07.1984 (Ex.R-1) produced by the State was rejected on the ground that it could not be looked into evidence as neither the vendor nor the vendee had been examined wherein sale consideration was Rs.400/- for 5 marlas, which has been wrongly mentioned at Rs.4,000/- in the judgment.

Counsel for the State has vehemently argued that the principle of applying the reverse cut has not been appreciated by the Apex Court in ***ONGC Ltd. vs. Rameshbhai Jeewanbhai Patel, 2008 (14) SCC 748*** and accordingly sought rejection and submitted that there was unnecessarily enhancement as such on the basis of a sale deed which was post the notification more than 2 years and 5 months. He has accordingly argued that Ex.R-1 should have been taken into consideration.

Firstly, it is to be noticed that the certified copy of the sale deed was never produced in evidence and only an attested photocopy has been placed on record and, therefore, even Section 51-A would be of no help to the State. Secondly, it is to be noticed from Ex.R-2, the site plan, that the land in question was situated at considerable distance from the acquired land which has been shown as red whereas the land in Ex.R-1 was shown blue in colour. Even otherwise, the sale deed is around 4 years prior in time from the acquisition.

It is not disputed that in the application under Section 18 of the Act it has also been averred that the land of the applicants has been divided into two parts making whole of the land of the applicant uneconomical and open to damages and, therefore, special compensation ought to have been awarded on the said aspect. The factum that the land has been acquired for a road has not been disputed by the State to deny the severance on the said account. It has come in the evidence of RW-1 that the road is constructed on the already existing kachha path. It has also come in evidence that the Gopal Mochan Fair was held near the land in question. Ex.P-1, which was the exemplar relied upon, was touching the land which had been acquired and even some area from the said khasra number had been acquired which had been purchased by Surjan Singh PW-1. The fair which was being held was less than half a kilometer away from the land and it was once a year. The potentiality of the land as such which is already abutting the path, thus, cannot be ignored which was a factor not taken into consideration by the Reference Court.

As noticed, it was admitted by the said witness that the road was being constructed on the already existing path and, therefore, the land around the path was acquired. It is apparently in such circumstances the value of the land started moving up, which would be clear from the sale considerations of subsequent years in 1988 and 1990 wherein for one marla of land, the price had gone upto Rs.2,000/-. The said sale transactions are for the same portions of land and of the same khasra number which had been acquired which would be clear from the statement of PW-3 Parmeshwari Devi to depose that the land was purchased from Joti from the same khasra number and on the adjoining land, there were constructed houses prior to the purchase of the land and the acquisition. It is also settled principle that sale instances of the acquired land are the best parameter to assess the market value. The reverse cut, thus, which has been applied in the facts and circumstances of 12% was on the strength of the judgment in *Major Jitendra Kumar's case (supra)* wherein, compensation had been enhanced by the High Court on the basis of Ex.21, which was three years later than the date of notification, which is also the case herein. The Apex Court had gone on to hold that in the absence of any material showing fluctuation in the market rate from 1948 onwards to 1951, no error as such had been committed by the High Court and appeal was dismissed.

There is no denying the fact that the Apex Court has in *Rameshbhai's case (supra)* has not appreciated the principle of applying the reverse cut. However, in ***Chandrashekhar (D) by L.Rs. And others vs. Land Acquisition Officer and another, 2012 (1) SCC 390,*** while keeping the said judgment into consideration, the reverse cut was clubbed under the issue of de-escalation. The exemplar was executed 1 year 7 months and 17 days after the publication of the preliminary notification and resultantly, the deduction of 10% under the head of de-escalation was approved. It was in such circumstances, the compensation determined at Rs.65,000/- per acre was not interfered with. It is to be noticed that the cut herein was also @ 12% for the land falling in a rural area. The Reference Court has rightly as such rejected the smaller sale deeds in question which were not only later in time but were for very small portions of 2 and 3 marlas and even the sale deed would show that there was jump and spike in the prices. The same could have been on account of various reasons. One that acquisition had already taken place and secondly due to the link road, the value had gone up. The sale deeds had, thus, been rightly rejected. The fall back as such by applying the reverse cut keeping in view only 2 years and 5 months gap, the amount was, thus, reduced from Rs.1,08,000/- to Rs.82,000/- per acre to assess the market value. The additional factor of potentiality as such was not taken into consideration which would have also entitled the land owners for better market value in view of the peculiar location of the land adjoining the path leading to the Gopal Mochan Fair to offset the argument of the State counsel that the percentage of cut should be more.

In such circumstances, this Court is of the opinion that the market value which has been assessed by the Reference Court would not require interference and both the appeals and cross objections by the land owner Krishna Devi are dismissed.

29.01.2018 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No