IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA Nos.942 of 2001 and other connected appeals
Decided on : 17.01.2018

Poonam and another

... Appellants

Versus

Superintending Engineer and others

... Respondents

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

Present: Mr. RPS Ahluwalia, Advocate
for the appellants in RFA No.942 of 2001.

Mr. D.S. Matya, Advocate
for the appellant in RFA No.943 of 2001.

Mr. Sudeep Mahajan, Addl. AG, Haryana &
Ms. Safia Gupta, AAG, Haryana.

Mr. Sudhir Hooda, Advocate
for the appellants in RFA Nos.4466 and 4467 of 2001.

G.S. Sandhawalia, J. (Oral)

The present judgment shall dispose eight appeals i.e **RFA Nos.942, 943, 4466, 4467 of 2001 & RFA Nos.1679 to 1682 of 2000**, out of which four are filed by the land owners (i.e. RFA Nos.942, 943, 4466 and 4467 of 2001) for enhancement, whereas the other four (i.e. RFA Nos.1679 to 1682 of 2000) filed by the State for reduction of the amount awarded by the Reference Court under Section 18 of the Land Acquisition Act, 1894 (for short 'the Act') vide judgment dated 11.05.2000. The facts are being taken from **RFA No.942 of 2001 'Poonam and another Vs. Superintending Engineer and others'**.

The Reference Court assessed ₹800/- per square yard to be the market value of the land acquired (₹38,72,000/- per acre) and, therefore, granted the enhancement from ₹4,88,000/- per acre which was the amount assessed by the Land Acquisition Collector (LAC) vide award dated 28.12.1993. It is also pertinent to notice that a sum of ₹7,288.50/- was awarded for construction to the appellant in RFA No.942 of 2001. The assessment @ ₹800/- was made on the basis of Ex.P2, which was the collector rate fixed for land in question which was acquired for the purpose of construction of a Grade Separate Railway Over Bridge at National Highway No.1 near Central Jail, Ambala. The notification under Section 4 was issued on 15.06.1991 for land measuring 0.70 acre. Reference Court while deciding the four Reference Petitions framed following issues:-

> *"1. What was the market value of the acquired land on the date of notification under Section 4 of the Land Acquisition Act? OPP*
> *2. Whether the petitioners are entitled to any compensation in respect of the construction existing on the acquired land? OPP*
> *3. Whether the petitioners are entitled to any compensation on account of shifting of their business? OPP*
> *4. Relief."*

Keeping in view the statement of 8 witnesses examined by the land owners and 3 witnesses on the other side of the State, the Reference Court came to the conclusion that the acquired land was abutting the Chandigarh-Ambala National Highway and located near the trijuncture from where a road goes towards Delhi and other towards Chandigarh. The third road went towards Amritsar and there was a complex known Kingfisher set up by Haryana Tourism about 500 meters away from the acquired land. It was noticed that the State had not challenged the said part of evidence during cross-examination and the Clerk from the Municipal Committee, Ambala while producing the record testified that the land falls within the Municipal Limits of Amabala City. The appellant No.2-Vijay Kumar Mehra in RFA No.942 of 2001 was running a factory and a portion of the said factory had been also acquired and finding was recorded that the land was not agriculture land, but had high potentiality for commercial purposes and it was in such circumstances enhancement was done. The aspect of the market value to be in the range of ₹2,000- ₹2,500/- per square feet was disbelieved, on account of the fact that there was only oral evidence of an property dealer. The rates contained in Ex.P1 & P2, thus, were relied upon which was the rates fixed by District Collector, Ambala for the year 1991-1992 and 1993 and 1994. Ex.R2 to R4, sale deeds were not taken into account on the ground that they were not relevant as there was no evidence to show that the land of the sale deeds was situated within the municipal limits and in close vicinity of the acquired land. Rather reference was made to the statement of the State witness Shri R.K. Gupta who had appeared as RW1 and deposed that the land was situated at a distance of 10-12 acres away from the acquired land. Preference was given to rate list (Ex.P2), which was for the year 1991-1992, wherein the District Collector had constituted a valuation committee for assessing the market value of the land located in different localities of Ambala City, on the ground that the members of the committee had correctly assessed market value. Resultantly, the Reference Court held that there was no reason for not considering the rates mentioned in Ex.P2 to be the prevailing market value of the year 1991, once the same had been determined and approved by the officials of the State in the discharge of their duties for the purpose of charging stamp duty on the sale transactions. The range was for the commercial property on the National Highway upto the Central Jail between ₹800- ₹1300/- per square yard. However, keeping in view the fact that the land was sandwiched between the National Highway and railway track on the western side at about 70 feet and the nuisance would be high for the occupants on account of the train passing, the potentiality of the lands market value was fixed at a minimum rate of ₹800/- per square yard while deciding Issue No.1.

Regarding the entitlement of Vijay Kumar Mehra-appellant No.2 in RFA No.942 of 2001, regarding the claim of construction of ₹1,85,871/- on the basis of the valuation report dated 15.10.1993 (Ex.PW8/3) was repelled on the ground the author of the report had not stepped into the witness box and the same had been prepared post the acquisition two years later and, therefore, the best evidence had been withheld. Even otherwise as per the statement No.19, the Collector had shown two walls belonging to appellant-Vijay Kumar Mehra and, therefore, the amount having been awarded by the Collector was found justified.

Similarly, regarding issue No.3 whether the appellants are entitled for any compensation on account of shifting of their business, the argument that the petitioner had to incur extra costs for dyeing due to acquisition of dyeing unit was rejected and claim of loss of ₹1,91,17,896/- was declined on the basis that no data pertaining to the year was furnished and the annual turn over subsequently from 1996 had been shown. The claimant himself having stated that the number of workers had gone up in his factory and there was fall in turn over which had affected the turn over of the claimant's business was, accordingly, rejected.

Counsel for the appellant has accordingly challenged the findings on the market value and also on account that the appellant had been denied enhancement of compensation for the constructed portion and on account of the fact that he had to shift his dyeing unit.

Counsel for the State on the other hand has justified that the award was rightly passed by the Collector. Mr. Mahajan has argued that the Collector had rightly assessed the value and there was no cause to grant enhancement and the land was low lying and therefore, the order of the Reference Court could not be sustained.

A perusal of the record of the said claim petition under Section 18 of the Act filed by Poonam and Vijay Kumar Mehra would go on to show that land measuring 1 kanal 5 marlas situated in village Dhulkot, H.B. No.60, Tehsil & District, Ambala was the subject matter of acquisition. They had claimed that the market value of the acquired land was ₹1,500/- per square yard, as per the value fixed by SDO, Civil and duly intimated to the Collector, District Ambala for the year 1993-1994, whereas for the year 1989-1990 the market value had been fixed @ ₹1,200/- per square yard. The sale deeds were not liable to be considered and to be impounded by the Sub-Registrar, in case the same were at lower rate than prescribed by the SDO Civil, Ambala. The potentiality of the land was also highlighted on the ground that it was situated between the limits of City Ambala and Ambala Cantonment as well being located on the main National Highway adjoining the commercial complex and being used for industrial purposes. The land acquired was situated on the main crossing at the Central Jail, Ambala, which was a trijunction and one road was going towards Delhi, other towards Amritsar and other one going towards Chandigarh and there was commercial as well as various residential colonies. Part of the Carpet Factory itself had been acquired and the Kingfisher Tourist Complex of Haryana Tourism was hardly at a few yards. The Baldev Nagar Camp and Session Court was 1-2 furlong from the land acquired and the Milk Plant was across the road, whereas Old Officer Colony, DC Residence, SP Residence, Central Jail, petrol pump, godown, motor transport godown were also close by.

It was pleaded that petitioner was running a Duree factory in the premises in question and the portion acquired there had tanks constructed and were used for dyeing purposes and no compensation had been awarded for the same. The approach to the factory had gone and remaining land of the claimant had become useless. The nature of the land was also wrongly mentioned and, therefore, claimants had been left with no other option but had been forced to close down their factory and shift to a new place and no compensation had been granted on this account. The claim for compensation ₹1,85,871/- had accordingly been made, which was value for construction. The open land claim was made @ ₹2,500/- per square feet.

In the reply filed by the State it was denied regarding the location of the land and that it was far away from a busy locality and nor it was in a central place. It was clarified that there was a railway track at the back and after that Old Officers Colony and DC Residence. The Central Jail, Ambala and petrol pump was at a distance of about 1Km and Session Court about 2 Kms. The Milk Plant was at a distance of 3 Kms from the acquired land. There was no severance of the land of the petitioner and one side of the land had been acquired and no covered portion of the factory had been acquired. Only portion of the court yard wall had been acquired and business was still going on and the factory was approachable by main road after the acquisition of the land. It was also submitted that land was situated within the municipal limits but the construction of the court yard had been raised without the permission of the Municipal Committee. Only part of the boundary wall of the factory had been acquired for which compensation had been correctly assessed.

After hearing counsels for the parties, this Court is of the opinion that appeals of the land owners are liable to be allowed, since the market value has been assessed at a lower level. Ex.P2 dated 26.07.1991 upon which reliance has been placed would go on to show that under Zone No.12 the value of land had been classified under the heading as residential and commercial. The value of land within the municipal limits *'Shheri Bhumi Ke'* had been assessed and classified as residential and commercial area pertaining to Zone No.12 which was running from Central Jail to the old Ropar-Chandigarh Chowk, abutting the G.T. Road and the land which would fall between G.T. Road and the Ambala Kalka Railway Line within the municipal limits and for the Industrial Area, Motor Market, Vasant Vihar and G.T. Road exactly. The value of the commercial land for Zone No.12 had been fixed @ ₹1,200/- to ₹1,400/- per square yard.

Similarly, for Zone No.14 land falling in Baldev Nagar Camp on both sides of the Ambala Chandigarh Road till Central Jail was fixed for the commercial sites @ ₹800 to ₹1,300 per square yard. The site plan Ex.PW4/1 depicts the land which was under the acquisition which would show that the land was falling on the National Highway just after the trijunction and would come under Zone No.14 as has been held by the Reference Court.

It is not disputed that the land acquired was on the National Highway, so that a over bridge can be made to go over the railway line, which was situated at the back of the acquired land. The land was thus situated in a prime area abutting the Central Jail between Ambala City and Ambala Cantonment and adjoining Baldev Nagar Camp. The residential areas of the DC and SSP were across the railway line and it is not disputed that the land was being used for the industrial purposes and the factory itself was running there, part of which was acquired. From

Ex.R1 it would also be clear that the distance from the acquired land to the Central Jail was 1.59 kms, whereas it was 0.61 kms to the Kingfisher Tourism Complex, which was situated on the highway on the other side. The potentiality of land, thus, cannot be loss sight off. Merely because there was a railway line behind the acquired land would not as such diminish it in any manner, since it was being used for industrial purposes and the nuisance value for the industrial purposes of the train passing was not a valid ground to assess the compensation at a less rate @ ₹800/- per square yard and reasoning, thus, adopted by the Reference Court cannot be justified in any manner. The exemplar which has been used regarding the Collector rate cannot be as such disputed and even counsel for the State could not contend to the contrary that the exemplar as such which was used was liable to be discarded. The photographs Ex.PD to PH would go on to show that flyover was built up in front of the premises in question leading to the concrete wall coming up in front of the factory.

Counsel for the appellant is well justified in placing reliance upon the judgment passed in **'Revenue Divisional Officer-cum-Land Acquisition Officer Vs. Shaik Azam Saheb and others' 2009 (3) RCR (Civil) 114** that the potentiality of the land falling on the National Highway cannot as such be lost sight off which is even more justified in the facts and circumstances of the present case that the land itself was being used for industrial purposes. Similarly, reference can also be made to judgment of the Apex Court passed in **'V. Hanumantha Reddy (Dead) by Lrs. Vs. The Land Acquisition Officer & Mandal R.**

Officer' ' 2003 (12) SCC 642 and in **'Haridwar Development Authority, Haridwar Vs. Raghubir Singh and others' 2010 (11) SCC 581.**

It has also come in evidence that across the land there was petrol pump and opposite thereto there was transport area and other industrial and commercial units. Automobile Agencies like Modern Automobile Agency as well Agency of the Kinetic Honda were also situated in the near vicinity and shows the commercial potential of the land.

The factum of the factory as such shifting its dyeing unit on account of the acquisition of the land, however, could not be validy proved. The loss under Clause-4 of Section 23 of the Act as such has been rightly denied under Issue No.3, that there was no proof that a sum of ₹22 lakhs had been spent for shifting the factory which came as a bare statement in the evidence of PW-2 Vijay Kumar Mehra and could not be taken as gospel truth, even if the unit was 100% export unit. Nothing was brought on record to show that an additional area had been purchased nor any document was brought on record in accordance with law that an extra 15% was spent on the dyeing charges which is the case projected by Mr. Ahluwalia. It is also important to note that in the cross-examination of PW-8 Vijay Mehra, it has come on record that a *Kacha* Road had been provided to the factory, though he had stated that there was a wall in front of the factory at height of 20-23 feet. He has also not stated in any manner that any land was purchased for the purposes to set up a dyeing unit.

The Reference Court has rightly noticed that rather the business had gone up as number of employees had also gone up and, therefore, the judgment of the Division Bench in **'Smt. Savitri Devi Vs. State of Haryana' 1984 PLR 47** would come into play that for the purpose of calculations for loss of earnings under Clause-4 of Section 23 of the Act various factors have to be taken into consideration. The loss of earnings thus would have to be calculated on the basis of what the earnings would be if the premises had been shifted. The relevant part reads as under:-

> *"4. The loss of income is a factor to be taken into consideration in fixing the market value of land itself which the owner is to get under clause Fourthly of section 23 of the Act. Loss of earnings is to be calculated on the basis of what the earnings would be if the trade or business were pursuing business is compelled to give it up or to carry it on elsewhere. The compensation for the land and sheds, structures and godown etcetera is not the same things as compensation for the loss of business or even of the poultry farm with its actual and potential income value. The income which the claimant derives from his poultry is not simply the product of the poultry birds-not to speak of the fixtures alone. It is also the product of labour, skill etcetera. The loss of income is certainly not compensation by paying for the lands, sheds and structures alone."*

However, as noticed the said factor has not been established in earnestness by appellant No.2 as neither the Chartered Accountant was produced to show as such that after the date of the acquisition the company was earning less and on an earlier occasion the company as such was earning more. In such circumstances, the denial as such on the

Issues No.2 and 3 is justified. It is to be noticed the valuation report was also post acquisition almost 2 years later and even the valuer was never presented for cross-examination and, therefore, the reliance has correctly not been placed upon the said report.

The argument of the State that the sale deed Ex.R2 to Ex.R4 were to be taken into consideration would be also of no help, in view of RW-1 himself, whereby he stated that the land was situated about at a distance of 10-12 acres from the acquired land on the eastern side. As noticed the land of the said area in Zone No.14 had potential and was used for commercial use being on the highway, therefore, the sale deeds of the State as such would not depict the correct market value. Similar was the deposition of RW-2, Gurdial Singh, Kanungo regarding the location of land falling in Ex.R2 to Ex.R4. The potentiality of the land is further clarified by the fact that house tax had been paid by the claimant and receipt in this regard had been produced on record as PW8/1 and PW8/2.

In such circumstances, this Court is of the opinion that the market value should have been assessed at the average of the Collector rate as provided @ ₹800/- to ₹1,300/- per square yard as per Ex.P2 and, therefore, the enhancement is, accordingly, granted @ ₹1,050/- per square yard, which would take the market of the land @ ₹50,82,000/- per acre.

Resultantly, the appeals of the land owners are accordingly allowed and the amount of compensation is enhanced and the market value is assessed @ ₹1,050/- per square yard alongwith statutory benefits and the appeals filed by the State are dismissed.

(G.S. SANDHAWALIA)
JUDGE

JANUARY 17, 2018
Naveen

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*