IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.250 of 2011
Decided on: 23.02.2018

Jai Pal ....Appellant

Versus

State of Haryana & another ...Respondents

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

Present: Mr.Rakesh Nagpal, Advocate, for the land-owners in RFA-1751, 1752 & 1816-2006.

Mr.Sudeep Mahajan, Addl.A.G., Haryana and Mr.Shivendra Swaroop, AAG, Haryana.

Mr.Pritam Singh Saini, Advocate, for the Municipal Committee in RFA-549-2011.

G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 28 appeals bearing RFA-549, 250 to 254-2011, RFA-1245 to 1258, 1266, 1751, 1752, 1816, 2560 & 4104-2006, under Section 54 of the Land Acquisition Act, 1894 (for short, the 'Act'), filed by the land-owners, directed against the Reference Court award dated 30.11.2005 and 18.05.2010, passed by the Addl.District Judge, Kaithal, under Section 18 of the Act.

The Reference Court enhanced the compensation to Rs.3,58,000/- per acre from Rs.3,50,000/-, which was awarded by the Land Acquisition Collector, vide award dated 28.06.2002. The acquisition was of 52.48 acres of land in village Patti Chaudhary, Kaithal, Hadbast No.20 and was initiated on 20.10.2000 under Section 4. Section 6 notification was dated 11.10.2001 and the land was acquired for the purpose namely, for the development and utilization of the land to set up a Transport Nagar at Kaithal under the Haryana Urban Development Authority Act, 1977. The claim was rejected by holding that the land was acquired vide the same notification and to grant the same amount of compensation, which is allegedly for the same purpose, the Reference Court has relied upon the earlier award dated 30.09.2005.

In the objections raised by the land-owners, the plea taken was that the Collector had failed to appreciate the fact that the land was situated within the Municipal limits of the Municipality and surrounded by residential, commercial and industrial area. HUDA had carved out Model town at Jind Road, Kaithal about 20 years back, which was just adjacent to the land in question and now the entire colony had been occupied by the house owners. They had constructed their houses over the plots in that colony and the value of the plots in the said colony was not less than Rs.5000/- per sq.yards. New Anaj Mandi was constructed about 6 months ago and the vacant plots of the shops in the Mandi having area of 60 sq.yards had been sold for a sum of Rs.33 lacs. There were Government offices, godowns, plinths, factories near the land in question and it was used for commercial and residential purposes and its value was not less than Rs.2000/- per sq.yards.

The same was contested by way of filing written statement in the prescribed performa, denying the allegations.

The Reference Court, after discussing the evidence on record, came to the conclusion that on an earlier occasion, the Reference Court had decided a bunch of 27 cases, vide order dated 30.11.2005 in the case titled *Kehar Singh Vs. State of Haryana & others,* and the market value of the land had been assessed @ Rs.3,58,000/- per acre along with solatium and statutory benefits. Accordingly, it came to the conclusion that the compensation @ Rs.3,50,000/- along with 12% interest and statutory benefits will amount to Rs.5,25,882.20. The relevant para of the reasoning which had been adopted, reads as under:

> "20. Rebutting his arguments, learned Govt. Pleader has argued that the aforesaid land in the sale deed Ex.P5 has been sold for Rs.10/- lacs per acres on 2002 while notification of the suit land was effected on 2000 and hence, sale deed of the year 2000 shall be relevant in the present case. In the nearby area of the suit land, land was acquired for the construction of Kheri Sheru minor by the State Government, for the acquired land, market value was assessed Rs.3,58,000/- per acres in LA Case No.15 of 2004 decided on 30-9-2005 in case titled Kehar Singh etc. Vs. State of Haryana etc. by this court. Hence, in the present case, also, taking support from that judgment of Kehar Singh Vs. State of Haryana, decided on 30-9-2005, from the court of undersigned in LA Case No.15 of 2004, market value of acquired land is assessed to be Rs.3,58,000/- per acre instead of Rs.3,50,000/- per acre alongwith solatium and stutory benefits and interest. Even otherwise, compensation at the rate of Rs.3,50,000/- alongwith 12 per cent interest and statutory benefits also will amount to Rs.5,25,882.20 paise, while the new market value of acquired land assessed by this court at the rate of Rs.3,58,000/- per acre alongwith solatium, statutory benefits and interest at the rate of 12 per cent shall fetch more to the petitioners.
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> Regarding extra claim of Ramesh, Pritam and Rambhagat Purshotam, for the additional construction on the spot, no adequate evidence has been adduced by the petitioners, hence, amount given on the additional construction by the Land Acquisition Collector to the petitioners is considered adequate which calls for no further interference. Hence, both the issues are decided in favour of the petitioners and against the respondent."

A perusal of the above reasoning would go on to show that firstly, the Reference Court has relied upon an award which was not part of the record and was not exhibited. Neither there is any mention, as such, as to the date of the notification of the award in question. The location of the land of the said award is also left to be guessed out. It is, in such circumstances, counsel for the appellant/land-owners is well justified to submit that the reasoning given also that the amount of compensation will include the interest, as such, would work out to Rs.5,25,882.20, is against the principles of assessment of market value of land, to be done under Section 23 of the Act. The benefit of interest cannot be calculated for the purpose of calculating the market value. The interest is only given on account of the delay which the land-owner has to suffer on account of the delayed receipt of compensation, which might be at various stages, on account of taking possession before the Reference Court and in appeal and is only a protection, as such, which is granted under the Act. The market value is to be assessed under Section 23 of the Act, only on the date of Section 4 notification, on the basis of the relevant evidence which normally should be in the form of sale deeds of the acquired land or of the land adjoining, which would be the best exemplars. The awards passed also are relevant piece of evidence. But, as noticed, there is lack of discussion in the award in question on the basis of which the Reference Court has gone on to calculate and fix the market price.

Faced with this situation, this Court is to resort back to the evidence on record, to find out whether the land-owners, as such, have brought on record sufficient evidence for the assessment of the market price.

Mr.Nagpal, of course, has placed reliance upon the fact that Ext.P-4, executed on 10.10.2000 in favour of Kamlesh Rani, was a sale deed of one kanal of land by Satish Kumar-PW3, whereby land had been sold and the value would work out to Rs.10 lacs per acre. Reliance is, accordingly, placed upon the said sale deed, for assessment of the market value.

In the opinion of this Court, the said sale deed is not a safe exemplar, as pointed out by Mr.Mahajan, Counsel for the State. As noticed, it was executed 10 days before the Section 4 notification. A perusal of the sale deed would also go on to show that the land was sold by Satish Kumar, whose land was also being acquired. The sale consideration was also received at home and not before the Sub-Registrar. It is in such circumstances, this Court is of the firm opinion that the said sale deed cannot be taken into consideration for calculating the market value.

Another sale deed which is on record is Ext.P-5, which is for 8 acres of land, which was executed on 22.03.2002, by the Municipal Committee, Kaithal in favour of the Central Warehousing Corporation, though this sale deed is for the same revenue estate, but was executed 1 year 5 months after the Section 4 notification. The sale consideration is also for Rs.10 lacs per acre, for 8 acres of land but the fact remains that it is between 2 statutory bodies and therefore, the principle of the post-notification exemplar will not strictly be applicable in the facts and circumstances. However, as noticed, it is for a large tract of land but the requirement of the Central Warehousing Corporation might be peculiar requirement for the land which might be suitable for it and therefore, the sale consideration of Rs.10 lacs per acre, as such, cannot be taken as an exemplar, to be the true market value for the same revenue estate. The sale deed is of village Patti Chaudhary Tehsil Kaithal and the land was described to be close to the Municipal Limits. However, in the present case, no witness, as such, has been examined to show the location of the said land which was purchased by the Central Warehousing Corporation and that whether it was adjacent to the land acquired and the appellants cannot be given the same market value.

The location of the land in question is one factor and its potentiality, as such, which cannot be ignored, as it was acquired for the construction of Transport Nagar. A perusal of the site-plan (Exts. P1 & P2), which was prepared by Yogesh Kumar, Draftsman, would go on to show that the land in question was behind the land owned by Haryana Agro and close to godowns and a built-up area of Karan Vihar. Evidence in the form of land agreements dated 14.04.2000 have been placed on record as Ext.P3, to show that Kaushalya Devi wife of Ramesh Kumar had entered into an agreement with HAFED on the Jind road, for storage of wheat for the year 2000. Though the witness Ramesh Kumar-PW5 had also stated that he had spent Rs.10,000/- on the construction of the plinths and that his godowns had also been leased to the Warehousing Corporation, Kaithal @ Rs.350/- per sq.ft. However, no expert, as such, was examined neither any bills, photographs were produced on record that actually there were pucca plinths constructed and accordingly, the same has not been rightly accepted by the Reference Court.

PW-8, the Record Keeper of the HAFED has proved the fact that Kaushalya Devi had leased out the land to HAFED and an amount of Rs.37,320/- had been paid to her in respect of the plinth taken on lease and brought on record Exts. P8/A and P8/B, regarding the said payments. It came through in cross-examination that Kaushalya Devi was wife of Shri Ramesh Kumar who had also appeared as PW5, regarding this aspect. Nothing was brought on record by way of evidence to show that the land fell within the Municipal limits, which was the pleaded case, as such, and neither the notification under the Haryana Municipal Council has been placed on record to show the limits of the Municipal Council. Therefore, the land has rightly been treated as agricultural in nature, though it had potential to be used for the purposes co-related to agriculture and was in close vicinity of the main road which fact is also clear from the statement of Jai Narain, Patwari-RW1, whereby he admitted that the land was adjacent to the residential colony and some rice-shellers were also constructed which were far away from the acquired land. He had admitted the fact that the land was situated on the metalled Kaithal-Jind road and that some shops were constructed near the acquired land but he could not tell the distance of the said shops from the acquired land.

The Apex Court in **Chandrashekar (D) by LRs & others Vs. Land Acquisition Officer & another 2012 (1) SCC 390**, while keeping in view the earlier judgment which has been relied upon by the State in **ONGC Vs. Ramesh Jivanbhai Patel 2008 (14) SCC 745**, has upheld the orders of the High Court whereby a reverse cut had been made for grant of compensation and a post-notification exemplar had been taken into consideration.

Accordingly, keeping in view the location of the land, as such, and the fact that it was close to the main road, Kaithal Jind Road, a State Highway and has also been acquired for the purpose of construction of Transport Nagar and it was a contiguous piece of land of 52.48 acres, this Court is of the opinion that if a 50% cut is also granted on the exemplar (Ext.P5) whereby the land was sold @ Rs.10 lacs, per acre, keeping in view the fact that precise market value can never be pinned-down with mathematical precision, this Court is of the opinion that the land-owners would be entitled for compensation @ Rs.5 lacs per acre along with all statutory benefits including interest.

All appeals stand allowed, accordingly and the compensation is, accordingly, enhanced.

23.02.2018 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*