IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

<u>218</u>

Date of Decision : 12.11.2018

1. FAO No.2131 of 2014 (O&M)

Union of India and another

...... Appellants

Versus

Sarabjit Singh and others

...... Respondents

2. FAO No.2132 of 2014 (O&M)

Union of India and another

...... Appellants

Versus

Balwinder Kaur and others

...... Respondents

3. FAO No.1899 of 2017 (O&M)

Union of India and another

...... Appellants

Versus

Thakur Dass @ Thakur Singh & another

...... Respondents

4. FAO No.3869 of 2017 (O&M)

Union of India and another

...... Appellants

Versus

Jeet Singh and another

...... Respondents

5. FAO No.193 of 2017 (O&M)

Union of India and another

...... Appellants

Versus

Gurmeet Singh and another

...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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Present : Mr. R.S.Madan, Advocate and
Mr. Ish Puneet Singh, Advocate
for the appellants.

Ms. Amarjeet Kaur Khurana, DAG, Punjab.

Mr. Harish Mahajan, Advocate
for the respondents (in other cases).

Mr. Vaibhav Goel, Advocate for
Mr. Dheeraj Mahajan, Advocate
for the respondents (FAO-193-2017).

Ms. Rimjhim Mahajan, Advocate for
Mr. Sanjeev Pandit, Advocate
for respondent No.1 (FAO-3869-2017).

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AJAY TEWARI, J. (Oral)

CM-6264-CII of 2017 in FAO-1899 of 2017

For the reasons recorded, the application is allowed. Delay of 176 days in filing the appeal is condoned.

CM-652-653-CII of 2017 in FAO-193 of 2017

For the reasons recorded, the applications are allowed. Delay of 12 days in filing the appeal and delay of 22 days in re-filing the appeal is condoned.

<u>Main cases</u>

This order shall dispose of above mentioned five appeals whereby the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short the Act) filed by the appellants were dismissed. For the sake of convenience, the facts are being taken from FAO No.2131 of 2014. The dispute centers around acquisition for the widening of National Highway on the Jalandhar-Pathankot Section where the arbitrator awarded Rs.1,25,000/- per marla as compensation. This was done on the basis of a valuation report which reflected the value of the land at Rs.95,000/- per marla and a post notification sale deed of similar land in an adjacent village where the value of the land was Rs.2.25 lacs per marla.

I have gone through the award of the arbitrator. The arbitrator notices that the competent authority had awarded the compensation as per the Collector rate. Counsel for the appellants-NHAI is not in a position to dispute that the Collector rate is not the market value. Resultantly, the sum awarded by the competent authority also has to be ignored.

Counsel for the appellants has relied upon a judgment of the Supreme Court passed in ***Bhupal Singh and others Vs. State of Haryana, 2015 (2) RCR (Civil) 634*** in that case also there were no sale instances and the Supreme Court held as follows :-

> *"18. Keeping the aforesaid principles in mind, we have perused the evidence in these cases. It is not in dispute that the acquisition of land in question was made in the year 1977 and it was for a large chunk of undeveloped*

agriculture land. It is also not in dispute that it was for construction of "residential purpose". It is further not in dispute that the appellants did not file any sale deed in evidence in support of their case to prove the fair market value of the acquired land. All that they adduced was an oral evidence of some witnesses to prove the potentiality of the lands by showing its location, proximity to the main road which was passing in the area and named some industries and hospitals operating in the nearby areas of the acquired lands etc."

And then went on to hold :-

" *26. We have arrived at the figure of "Rs.63/- per sq. yard" after applying all relevant factors, which we have mentioned above. In our view, the rate determined by this Court is just, reasonable and represents fair market value of the lands in question on the date of acquisition. Indeed, in such cases, one can never come to any exact figure of price of lands because in the very nature of things, the prices are bound to vary from land to land and further they also depend upon the individual buyer-to- buyer, seller-to-seller and the reasons which led to such sale and purchase. However, Courts in such cases always exercise their discretion within the permissible parameters after appreciating the entire evidence brought on record and applying the relevant legal principles. We have kept these factors in mind."*

It is also not disputed that for the same acquisition in the two Sub divisions of Dasuya and Tanda, 629 awards were passed which have been satisfied by the NHAI in 2009 itself. The arbitrator has taken that fact also into account because the present case too pertains to Dasuya Sub Division. The award of the arbitrator contains reasons which can not be said to be completely extraneous or irrelevant.

In this case, I am not satisfied that the compensation awarded for the land is excessive and consequently reject the challenge.

The other issues which have been raised by the learned counsel for the appellants are that, firstly, the arbitrator has erred in granting 10% 'ease money' as well as 30% solatium. As per the learned counsel for the appellants, both ease money and solatium are different expressions which basically deal with the fact that the seller had no choice and it was a compulsory acquisition and therefore, cannot be awarded under different heads. Counsel for the respondents are not in a position to deny the logic of this argument. Resultantly, the amount of 10% awarded as 'ease money' has to be deducted in ***FAO No.1899 of 2017 and FAO No.3869 of 2017.***

The second argument is that after giving compensation for the structure some amount has been awarded under the head 'compulsion to shift the house'. As per learned counsel for the appellants, this is also an impermissible payment. Counsel for the respondents are not in a position to deny the logic of this argument also. In the circumstances, the amount paid under the head 'compulsion to shift the house' has also to be deducted in ***FAO No.193 of 2017 and FAO No.3869 of 2017.***

The third argument raised is that for evaluating the amount paid for the structure the arbitrator has taken the cost of construction of the year 2011 whereas it should have been taken as per the cost of construction prevalent at the time of taking possession viz 2009 and thereafter assigning a depreciation to it based on the actual year of construction. Though in a vacuum, this argument is attractive yet there is no explanation why the appellants-NHAI could not give its own valuation report after taking into consideration the cost of construction on the date of taking possession and by applying proper depreciation. In the circumstances, this dispute cannot be covered under Section 34 of the Act and I reject the same.

The last argument raised is that the interest has to be as per the judgment passed by a division Bench of this Court in ***M/s Golden Iron and Steel Forging Vs. Union of India and others, 2011 (4) RCR (Civil) 375*** and in FAO No.6151 of 2014 titled as ***Union of India and another Vs. Gurudwara Sahib Ji and others***, decided on 17.11.2016. Counsel for the respondents have accepted this also. In the circumstances, the interest is modified to that as per the judgment of this Court in M/s Golden Iron and Steel Forging (supra). With these modifications, the appeals are disposed of.

Since the main cases have been decided, the pending Civil Miscellaneous Applications, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

12.11.2018
pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No

POOJA SHARMA
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