

FAO No.5109 of 2014 (O&M)
FAO No.6299 of 2014 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision : 12.11.2018

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FAO No.5109 of 2014 (O&M)

Union of India and another

..... Appellants

Versus

Avtar Singh and others

..... Respondents

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FAO No.6299 of 2014 (O&M)

Union of India and another

..... Appellants

Versus

Manjeet Kaur and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. R.S.Madan, Advocate
for the appellants (in both cases).

Ms. Amarjit Kaur Khurana, DAG, Punjab.

Mr. Paritosh Vaid, Advocate for
Mr. Harsh Banger, Advocate
for respondents No.1 & 2 (FAO-6299-2014).

Mr. Harish Mahajan, Advocate
for the respondents.

AJAY TEWARI, J. (Oral)

This order shall dispose of above mentioned two appeals.

FAO No.5109 of 2014 has been filed against the judgment and order dated 21.12.2013 passed by the Additional District Judge, Jalandhar dismissing the objections moved under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') by the appellants-National Highway Authority (NHAI) of India against the award dated 27.04.2011.

And **FAO No.6299 of 2014** has been filed against the judgment and order dated 06.05.2014 passed by the Additional District Judge, Jalandhar dismissing the objections moved under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') by the appellants-National Highway Authority (NHAI) of India against the award dated 04.07.2011.

At this stage it would be necessary to notice that as per that award the matter had first come up for filing the reply of the appellants-NHAI on 12.02.2009. They did not file any reply and on 12.01.2011 the following order was passed in FAO No.5109 of 2014:-

“A yellow notice was issued to National Highways Authority of India, Govt. of India, NHI, Govt. of India, Project Director, National Highways Authority of Jalandhar and standing counsel on 14.12.2010 to file reply/evidence as last opportunity. Notice was received by respondents. Even then they have failed to submit reply. It seems that NHAI is not interested for judicious disposal of the arbitration case. In case the reply is not filed on next date i.e. 24/1/2011, the defense of N.H.A.I. To file reply stands struck off and award would be issued based on record on file as well as awards of similar cases of the same village for similar land/structure.”

Thereafter, on 07.02.2011, the following order was passed in
FAO No.5109 of 2014 :-

“After giving so many opportunities for filing reply, a yellow notice was issued to contesting respondents and standing counsel on 26.11.2010 to file reply and evidence (if any). Notice was received by respondents. Even then they have failed to submit reply. It seems that the respondents are not interested for contesting the arbitration case. However in the interest of justice one more last opportunity is given for filing reply on dated 25/2/2011 failing which the defense of the respondents shall be deemed to be struck off.”

Likewise, similar orders were passed in **FAO No.6299 of 2014** i.e. on 14.01.2011 and 31.01.2011 respectively. Despite that neither any reply was filed nor any body appeared on behalf of the appellants-NHAI, ultimately the Arbitrator awarded a sum of Rs.62,500/- per marla in **FAO No.5109 of 2014** and Rs.80,000/- per marla in **FAO No.6299 of 2014**. In the objections filed the appellants-NHAI made a vague averments that 'no proper notice' was issued but did not make a categorical averment that no notice was issued/served. Ultimately, the Court having dismissed the objections (as mentioned above) the present appeals have been filed.

Counsel for the appellants-NHAI has vehemently argued that the Arbitrator increased the compensation on completely conjectural basis and did not take into account any sale deed. He has, however, not been able to deny that even the Court had granted opportunity to the parties to lead evidence but NHAI did not lead any evidence even before the Court.

It is against this backdrop of fact that this case has to be decided. No

doubt that the indicator of market value is sale deeds of the area, but here is a case where even the appellants-NHAI has not placed on record any sale deed to show what was the actual rate of the land. Can it be because the rate of the land as per the sale deeds may be even higher? Who knows! Moreover, this has to be viewed in the context that the appellants did not even file a reply to the claim which was filed by the respondents before the Arbitrator. He has relied upon ***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.”

I have gone through the awards of the Arbitrator. The Arbitrator noticed 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. The award of the Arbitrator contains reasons which can not be said to be completely extraneous or irrelevant. 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.

In the circumstances, the valuation of the land is accepted.

His last argument is that the award of interest @9%, 15% and 18% is not in consonance with the provision of Section 34 of the Land Acquisition Act, 1894 (for short Act) as held 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. I find merit in this argument and hold that the

land owners are entitled to interest only as per Section 28 of Act.

With this modification in the interest component the appeals are dismissed.

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

12.11.2018
pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No