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

RFA No. 7831 of 2013 and connected matters
Date of decision: 24.04.2018

Jangir Kaur ....Appellant(s)

Versus

State of Punjab and another ...Respondent(s)

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

Present: Mr. Karan Gupta, Advocate,
for the appellants.

Ms. Akshita Chauhan, AAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 14 appeals i.e. RFA Nos. 7831 to 7844 of 2013, as common questions of facts and law are involved in all the appeals. Reference is being made to ***RFA No. 7831 of 2013, Jangir Kaur vs. State of Punjab and another.***

The present set of appeals under Section 54 of the Land Acquisition Act, 1894 (in short 'the Act') is directed against the award dated 15.07.2013 passed by the Reference Court, Patiala whereby, compensation has been enhanced from Rs.30,00,000/- per acre as awarded by the Land Acquisition Collector to Rs.36,30,000/- per acre (Rs.750/- per sq. yd.). The basis of enhancement is on the ground that the land measuring 6 kanals and 9 marlas situated in village Sher Majra, Tehsil and District Patiala was acquired vide notification dated 29.03.2010 for setting up a Sewerage Treatment Plant and on an earlier occasion, the land of the said village was acquired for the construction of southern by-pass for which notification was issued on 09.04.2001 and the award was passed on 12.06.2012 (Ex.P-9) by the Reference Court and the market value was assessed at Rs.500/- per sq.

yd. Resultantly, keeping in view the fact that one end of the land acquired also abuts the by-pass and the acquisition had taken place 9 years later, compensation was assessed at Rs.750/- per sq. yard. The beneficiary for whom the land was acquired namely the Water Supply and Sewerage Board, Patiala had filed appeals, which were dismissed on 11.12.2013 bearing RFA No. 7382 of 2013 and it was observed that the land owners would not be prejudiced by the dismissal and their appeals would be considered on their own merits.

Counsel for the appellants-land owners has argued that in connected RFA No. 2741 of 2012, Gurpreet Singh vs. State of Punjab and others, compensation has been enhanced qua the award dated 12.06.2012 in as much as the amount has been enhanced to Rs.1,400/- per sq. yd. (Rs.67,76,000/- per acre) and, therefore, similar benefit should also be granted as it would be relevant piece of evidence as such.

The said argument is only to be noticed and rejected. It is settled principle that market value is to be assessed on the basis of the evidence which is brought on record regarding the price which is to be paid by a willing seller and a purchaser on one hand. Nothing could be brought to the notice of this Court that there was any such sale deed on record pertaining to the revenue estate of village Sher Majra which would help this Court assess the correct market value. It has also come on record that the acquired land is not situated within the municipal limits of Patiala, which has been admitted by Anil Kumar, PW-4. Merely because for the acquisition of 2001 for the construction of the southern by-pass, a sum of Rs.500/- per square yard had been assessed as market value, the principle that the present appellants would also be entitled for a suitable increase as awarded in that set of cases has not been approved by the Apex Court in ***CA-13132-13141-2017 titled Manoj Kumar & others Vs. State of Haryana & others***, decided on 13.09.2017. It has been held that once there is difference of more than 5 years between the awards as such, the earlier award is not a safe exemplar on which blanket reliance can be placed.

The Apex Court set aside the judgment of this Court pertaining to Jagadhri and has held that though awards are relevant piece of evidence but sale deeds had far more evidentiary value and the comparable sale deeds are more reliable and binding upon the Courts to determine the value of the property. The relevant portion of the said judgment reads as under:-

> *"14. In our opinion, the High Court could not have placed an outright reliance on the decision of Swaran Singh's case, without considering the nature of transaction relied upon in the said decision. The decision could not have been applied ipso facto to the facts of the instant case. In such cases, where such judgments/awards are relied on as evidence, though they are relevant, but cannot be said to be binding with respect to the determination of the price, that has to depend on the evidence adduced in the case. However, in the instant case, it appears that the land in Swaran Singh's case was situated just across the road as observed by the High Court as such it is relevant evidence but not binding. As such it could have been taken into consideration due to the nearness of the area, but at the same time what was the nature of the transaction relied upon in the said case was also required to be looked into in an objective manner. Such decisions in other cases cannot be adopted without examining the basis for determining compensation whether sale transaction referred to therein can be relied upon or not and what was the distance, size and also bonafide nature of transaction before such judgments/awards are relied on for deciding*

the subsequent cases. It is not open to accepting determination in a mechanical manner without considering the merit. Such determination cannot be said to be binding. We have come across several decisions where the High Court is adopting the previous decisions as binding. The determination of compensation in each case depends upon the nature of land and what is the evidence adduced in each case, may be that better evidence has been adduced in later case regarding the actual value of property and subsequent sale deeds after the award and before preliminary notification under section 4 are also to be considered, if filed. It is not proper to ignore the evidence adduced in the case at hand. The compensation cannot be determined by blindly following the previous award/judgment. It has to be considered only a piece of evidence not beyond that. Court has to apply the judicial mind and is supposed not to follow the previous awards without due consideration of the facts and circumstances and evidence adduced in the case in question. The current value reflected by comparable sale deeds is more reliable and binding for determination of compensation in such cases award/judgment relating to an acquisition made before 5 to 10 years cannot form the safe basis for determining compensation.

15. The awards and judgment in the cases of others not being inter parties are not binding as precedents. Recently, we have seen the trend of the courts to follow them blindly probably under the misconception of the concept of equality and fair treatment. The courts are being swayed away and this approach in the absence of and similar nature and situation of land is causing more injustice and tantamount to giving equal treatment in the case of unequal's. As per situation of a village, nature of land its value differ from the distance to distance even two to three-kilometer distance may also make the material difference *in value. Land abutting Highway may fetch higher value but not land situated in interior villages.*

16. The previous awards/judgments are the only piece of evidence at par with comparative sale transactions. The similarity of the land covered by previous judgment/award is required to be proved like any other comparative exemplar. In case previous award/judgment is based on exemplar, which is not similar or acceptable, previous award/judgment of court cannot be said to be binding. Such determination has to be out rightly rejected. In case some mistake has been done in awarding compensation, it cannot be followed on the ground of parity an illegality cannot be perpetuated. Such award/judgment would be wholly irrelevant.

17. There is yet another serious infirmity seen in following the judgment or award passed in acquisition made before 10 to 12 years and price is being determined on that basis by giving either flat increase or cumulative increase as per the choice of individual Judge without going into the factual scenario. The said method of determining compensation is available only when there is absence of sale transaction before issuance of notification under section 4 of the Act and for giving annual increase, evidence should reflect that price of land had appreciated regularly and did not remain static. The Recent trend for last several years indicates that price of land is more or less static if it has not gone down. At present, there is no appreciation of value. Thus, in our opinion, it is not a very safe method of determining compensation.

18. To base determination of compensation on a previous award/ judgment, the evidence considered in the previous judgment/ award and its acceptability on judicial parameters has to be necessarily gone into, otherwise, /gross injustice may be caused to any of the parties. In case some gross mistake or illegality has been committed in

> *previous award/judgment of not making deduction etc. and/or sufficient evidence had not been adduced and better evidence is adduced in case at hand, previous award/judgment being not inter-parties cannot be followed and if land is not similar in nature in all aspects it has to be out-rightly rejected as done in the case of comparative exemplars. Sale deeds are at par for evidentiary value with such awards of the court as court bases its conclusions on such transaction only, to ultimately determine the value of the property."*

In similar circumstances, in **CA-17790-17801-2017 titled *State of Haryana Vs. Chetin Kaur,*** decided on 26.09.2017, a similar view was taken and the enhancement on the basis of 12% cumulative increase, was set aside, on the ground that the facts and evidence have to be seen and accordingly, the market value has to be determined. The notification in the said case was also of the year 2002 and the enhancement was on the basis of award of 1994, by following the said principle, which was not approved.

In the present case, there is a 9 years' difference as such between the two awards and, therefore, in the absence of any specific sale deeds showing the market value of the land of the village, the claim for enhancement on this ground would not be justified and it would not be safe for this Court to assess the market value only on that basis.

It is settled principle that the onus of establishing the market value is on the land owners, as had been held by the Apex Court in ***Special Land Acquisition Officer Vs. Karigowda & others 2010 (5) SCC 708.*** The relevant observations read thus:-

> *"21..........This essentially must depend upon the facts and circumstances of each case. It is settled principle of law that, the onus to prove entitlement to receive higher compensation is upon the claimants. In*

the case of Basant Kumar and Ors. v. Union of India and Ors. [(1996) 11 SCC 542], this Court held that the claimants are expected to lead cogent and proper evidence in support of their claim. Onus primarily is on the claimant, which they can discharge while placing and proving on record sale instances and/or such other evidences as they deem proper, keeping in mind the method of computation for awarding of compensation which they rely upon. In this very case, this Court stated the principles of awarding compensation and placed the matter beyond ambiguity, while also capsulating the factors regulating the discretion of the Court while awarding the compensation. This principle was reiterated by this Court even in the case of Gafar v. Moradabad Development Authority [(2007) 7 SCC 614] and the Court held as under:

> *"As held by this Court in various decisions, the burden is on the claimants to establish that the amounts awarded to them by the Land Acquisition Officer are inadequate and that they are entitled to more. That burden had to be discharged by the claimants and only if the initial burden in that behalf was discharged, the burden shifted to the State to justify the award."*

Thus, the onus being primarily upon the claimants, they are expected to lead evidence to revert the same, if they so desire. In other words, it cannot be said that there is no onus whatsoever upon the State in such reference proceedings. The Court cannot lose sight of the facts and clear position of documents, that obligation to pay fair compensation is on the State in its absolute terms. Every case has to be examined on its own facts and the Courts are expected to scrutinize the evidence led by the parties in such proceedings.

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> *24. Where a statutory provision confers rights and also states mandatory or implied conditions which would have to be satisfied before the claim, can culminate into a relief, such considerations or conditions are relevant for the purposes of interpretation as well. A power conferred by the statute, often contains an express condition for its exercise and, in absence of, or in addition to the express condition, there are also implied conditions for exercise of power. Exercise of statutory power in breach of express or implied conditions will be illegal, if the conditions breached are mandatory. This principle, to a large extent, is applicable to exercise of rights arising from beneficial legislations, when an owner claims benefits under statutory provisions, it is for him to show that what is contemplated under the conditions attached thereto has been satisfied, particularly when such legislative intent is clear from the bare reading of the provisions. Like the cases in hand, it is for the claimants to show that, to award the compensation payable under the statutory provisions, they have brought on record, evidence to satisfy the criterion and conditions required to be fulfilled for such a claim."*

In the absence of any such exemplar that the value of the land is more than Rs.36,30,000/- per acre, this Court does not find any ground to allow these appeals to grant further enhancement.

Accordingly, the present set of appeals are dismissed.

In RFA No. 7834 of 2013 pertaining to Anil Kumar, counsel has been able to bring to the notice of this Court that a specific plea as such was taken of severance in as much as the land of Anil Kumar-appellant was acquired to the tune of 8 kanals and it has been averred that it had been bifurcated in two parts in the reference petition in such a manner that the remaining land could not be used in any manner.

In response, the said fact had been denied by the Board. Issue No. 2 was also framed qua this aspect but there is no finding as such by the Reference Court on the same.

A perusal of the evidence would go on to show that in the affidavit filed by the land owner, he has stated that 2 kanals and 4 marlas of land after acquisition has become useless and he could not use the same as it was adjoining to the sewerage treatment plant. He could not raise any construction or make use of the land in any manner and he had no objection if the land was acquired and he be paid compensation at the same rate. He admitted in his cross examination that the land acquired was being used for agricultural purposes and it did not fall within the municipal limits. He denied the suggestion that he was still sowing the crops in the land left from the acquisition. He, however, admitted that there was no severance in the agricultural land. He was not cross examined on this aspect as to whether he was in a position as such to use the land.

Rather, counsel for the appellant has referred to the statement of PW-2 Sukhpal Singh, Patwari who deposed that 2 kanals and 4 marlas had been left under the ownership of Anil Kumar and no passage had been provided for the said land. Earlier passage was there in existence but due to the acquisition of land, the passage was also acquired. In cross examination, it has, thus, been elicited that there is no passage to the land of the said appellant.

In such circumstances, this Court is of the opinion that the said land owner is entitled for an additional amount of compensation on account of clauses (3) and (4) of Section 23 of the Land Acquisition Act, 1894 whereby, on account of severance and the acquisition injuriously affecting the other property, an additional amount qua the said entitlement would arise.

In view of the law laid down in ***State of Haryana v. Rajinder Kumar 2000 (1) All India Land Acquisition & Compensation Cases, 360; Punjab State v. Gurbachan Singh and others 1988 P.L.J.490; Smt.Narinder Kaur v. The State of Punjab and others 1980 P.L.R 473; State of Punjab through Collector, Hoshiarpur and another v. Gopal Singh (2002-2) P.L.R. 843 and State of Punjab through Collector, Hoshiarpur v. Radha Krishan 1989 All India Land Acquisition and compensation Cases 667, Tehal Singh and others v. The State of Punjab and another 1987 All India Land Acquisition & Compensation Cases 491 and Bishan Dass v. State of Punjab 1997 (2) P.L.J. 416*** and ***Chanan Singh vs. State of Punjab, 2010 (5) RCR (Civil) 283,*** for the 2 kanals and 4 marlas of land, the appellant in RFA No. 7834 of 2013 shall be entitled for 50% of the compensation in addition to what has been granted to him by the Reference Court and accordingly, the appeal is partly allowed to that extent whereas, it is dismissed regarding further enhancement of the balance amount.

24.04.2018 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No