

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

X Objections No. 55-CI of 2017 (O & M) in/and
RFA No. 3719 of 2015
Date of decision: 30.04.2018

State of Haryana and othersAppellant(s)

Versus

Chattar Singh
...Respondent(s)

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

Present: Mr. Sudeep Mahajan, Addl. A.G., Haryana,
for the appellants.

Mr. K.S. Chaudhary, Advocate,
for the respondent-X-Objector.

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 5 appeals i.e. RFA Nos. 3718 to 3722 of 2015, filed by the State of Haryana and the X Objections filed in these appeals by the land owners as common questions of law and facts are involved in all the appeals. Reference is being made to ***RFA No. 3719 of 2015, State of Haryana and others vs. Chattar Singh.***

C.M. No. 7855-CI of 2017
in X Obj. No. 55-CI of 2017 in RFA No. 3719 of 2015

Application for condonation of delay of 555 days in filing the cross objections is allowed, in view of the averments made in the application supported by affidavit.

Delay condoned.

C.M. No. 7856-CI of 2017
in X Obj. No. 55-CI of 2017 in RFA No. 3719 of 2015

Application for affixing the necessary court fee on cross objections is allowed, in view of the averments made in the application

supported by affidavit.

C.M. No. 7857-CI of 2017

in X Obj. No. 55-CI of 2017 in RFA No. 3719 of 2015

Application for placing on record X-Objections in the appeal and for exemption from filing certified copies of grounds of appeal and award dated 23.01.2015 is allowed, subject to all just exceptions.

RFA No. 3719 of 2015

The State is in appeal under Section 54 of the Land Acquisition Act, 1894 (in short 'the Act') against the award of the Reference Court, Panchkula dated 23.01.2015 whereby, the Reference Court has fixed the market value at Rs.26,54,400/- per acre and rounded off to Rs.26,50,000/- per acre whereas, the land owners have filed cross objections for further enhancement of the amount.

The State is mainly aggrieved on two accounts against the award, on account of enhancement granted and that 12% interest was granted on the market value of the land acquired from 01.06.1980 to 31.08.2006 since the later date was the date of Section 4 notification. Counsel for the State has accordingly argued that the sale exemplars in question were dated 03.06.2008 (Ex.PW1/B) for 8 biswas (1210 sq. yds.). Similarly, the sale deed dated 13.05.2008 (Ex.PW1/C) of 10 biswas of land (1512 sq. yds.) for which market value was calculated at Rs.28,80,000/- per acre were taken into consideration and keeping in view the fact that it was post notification, a backward cut of 21% was applied by taking out an average of the two sale deeds (Rs.33,60,000/-) to come to the market value at Rs.26,50,000/- per acre. The other argument, thus, raised by the State was that in view of the judgments of the Apex Court in ***R.L. Jain (D) by***

L.Rs. vs. DDA and others, (2004) 4 SCC 79 and *Special Land Acquisition Officer vs. Karigowda and others, 2010 (5) SCC 708*, interest could not have been granted from the date of taking of the possession of the land which had been admitted by the respondent to be the of the year 1980.

Counsel for the land owners, on the other hand, justified the award and placed reliance upon the judgment of the Apex Court in *Madishetti Bala Ramul (D) by L.Rs. vs. The Land Acquisition Officer, 2007 (9) SCC 650*. Counsel has also placed reliance upon another judgment of the Apex Court in *Civil Appeal No. 10665 of 2010, M. Buggappa (D) through L.Rs. And others vs. Land Acquisition Officer-cum-Mandal* dated 13.12.2010.

The claim of the land owners, in their reference petition under Section 18 of the Act was that possession of the land had been taken in the year 1972 by the PWD (B&R) Department for construction of the link road from Panchkula-Morni road to village Khertia. The notification had only been issued on 31.08.2006, which was followed up by Section 6 notification on 09.01.2007 and eventually, vide award dated 09.07.2008, the market value was assessed at Rs.16,00,000/- per acre by the Land Acquisition Collector. As per the award, the acquisition of 1.90 acres of land in Bhoj Nhita of Hadbast No. 319, Sub Tehsil Morni, District Panchkula was for the public purpose for the construction of the link road, as noticed above. The claim was that the land was of higher value and adjacent to the main road of Panchkula-Morni road and was most valuable land of the area. The tourist place Morni was also not far away from the acquired land. The same was fertile and yielding good crops and the link road also ran through the village *abadi*. The land of the claimants had been bifurcated and the possession of

the acquired land had been taken without awarding compensation. The market value was to be assessed at Rs.80,00,000/- per acre.

The stand of the respondents was that the road was constructed with the consent of the villagers for the benefit of the inhabitants of the village and it was denied that the land in question was very fertile. It was pleaded that there was no irrigation source and the land was *banjar*.

The site plan is Ex.PW2/A, which depicts the area of the acquired land and is shown as red. The certified copies of the sale deeds, as noticed above, were placed on record alongwith the affidavit of PW-1 Chattar Singh, who stood by the earlier claim made in Section 18 petition. He admitted that with the construction of the road, the value of the land had drastically increased and before the construction of the road, no *pacca* road was available paving the ways to their fields. He further admitted that they had not taken any objection regarding the possession of 1980. An admission was made that the land acquired was purely agricultural land and they were dependent upon the natural water resource like *chasma* and there was no manual resources like rain or tubewell installed in the said land. He denied the suggestion that the land shown in Exs. PW1/B and PW1/C was far away from the land in question and the fact that the land was not strategically situated and was far away from Mauli (sic. Morni) town and that it was not adjacent to the road.

Similarly, PW-2 Kaka Ram proved the site plan Ex.PW2/A which is not upto any standard scale which has also come in cross examination.

The official witness namely Sh. Amit Malik-SDE admitted that the land measuring 1.90 acres was acquired vide the award dated

09.07.2008 and compensation was awarded as per the floor rates fixed for acquisition. He further admitted that the possession of the acquired land was taken in the year 1980 but no compensation as such was paid for the period from 1980 to 2006. He denied the suggestion that the possession was taken in the year 1972.

A perusal of the site plan would go on to show that the road branches out from the Panchkula-Morni road and Ex.PW1/B pertains to village Bhoj Dharti which is of Hadbast No. 318. On the site plan also, the area of the said village is shown which is far away from the main Panchkula-Morni road. The other sale deed Ex.PW1/C which is of village Bhoj Nhita could not be as such correlated from the site plan as the revenue estate of the said village is not depicted as such though it is qua the same Hadbast No. 319 which is of the same village of which the land has been acquired.

The Reference Court was well justified as such, in such circumstances, to fall back on a certain element of guess work keeping in view the judgment of the Apex Court in ***Ram Kanwar vs. State of Haryana 2015 (1) RCR (Civil) 234***. It would also be clear from evidence that the land is not irrigated and is hilly in nature which has led to the appreciation of value on account of the construction of the road also in that area. It is, in such circumstances, backward principle which has been applied for the post notification sale deeds of two years cannot as such be strictly faulted as getting sale exemplars in such revenue estate which is hilly in nature and where sale transactions do not take place on a regular basis is not easy. However, this Court is of the opinion that the reduction as such of 21% for the intervening 21 months @ 12% was not justified. The reduction should

have been at a higher percentage of 15% and resultantly, keeping in view the intervening 22 months, the reduction at 15% would work out and come to Rs.24,36,000/- per acre and, therefore, this Court is of the conclusion that the value as such which was fixed at Rs. 26,54,400/- was on a higher side.

The percentage of cut on the sale deed as such which has not been applied was justified by the Reference Court keeping in view the principle that the land was acquired for a link road and there was no development cut to be imposed and reliance was placed upon ***Nelson Fernandes vs. Special Land Acquisition Officer, South Goa, 2007 (2) RCR (Civil) 508***. The said view has also been followed in cases of land having acquired for purposes of a railway line in ***Himmat Singh and others Vs. State of M.P. and others, 2013 (6) SCC 392*** and the same principle would apply. In ***C.R. Nagaraja Shetty Vs. Special Land Acquisition Officer and Estate Officer and another, 2009 (11) SCC 75*** case, the Apex Court has also followed the same principle where land was acquired for the purpose of road to hold that in the absence of any evidence, no development cut can be put. The relevant observations read thus:-

“7. That leaves us with the other question of deduction ordered by the High Court.

8. The High Court has directed the deduction of Rs. 25/- per square feet. Unfortunately, the High Court has not discussed the reason for this deduction of Rs. 25/- per square feet nor has the High Court relied on any piece of evidence for that purpose. It is true that where the lands are acquired for public purpose like setting up of industries or setting up of housing colonies or other such allied purposes, the acquiring body would be entitled to deduct some amount from the payable compensation on account of development charges,

however, it has to be established by positive evidence that such development charges are justified. The evidence must come for the need of development contemplated and the possible expenditure for such development. We do not find any such discussion in the order of the High Court. As if this is not sufficient, when we see the judgment of the Principal Civil Judge (Sr. Division), Bangalore, Rural District, Bangalore in Reference proceedings, we find that there is no deduction ordered for the so-called development charges. We are, therefore, not in a position to understand as to from where such development charges sprang up. The Learned Counsel appearing on behalf of the respondents was also unable to point out any such evidence regarding the proposed development. We cannot ignore the fact that the land is acquired only for widening of the National Highway. There would, therefore, be no question of any such development or any costs therefor. In the reported judgment in Nelson Fernandes and Others v. Special Land Acquisition Officer, South Goa and Others in 2007(2) RCR(Civil) 508 : 2007(2) RAJ 463 : 2007(9) SCC 447, this Court has discussed the question of development charges. That was a case, where, the acquisition was for laying a Railway line. This Court found that the land under acquisition was situated in an area, which was adjacent to the land already acquired for the same purpose, i.e., for laying Railway line. In paragraph 29, the Court observed that the Land Acquisition Officer, the District Judge and the High Court had failed to notice that the purpose of acquisition was for Railways and that the purpose is a relevant factor to be taken into consideration for fixing the compensation. The Court relied on judgment in Viluben Jhalejar Contractor v.

State of Gujarat, reported in 2005(2) RCR(Civil) 492 : 2005(4) SCC 789, where it was held that the purpose for which the land is acquired, must also be taken into consideration in fixing the market value and the deduction of development charges. Further, in paragraph 30, the Court specifically referred to the deduction for the development charges and observed :-

"30. We are not, however, oblivious of the fact that normally rd deduction of further amount of $\frac{1}{3}$ compensation has been directed in some cases. However, the purpose for which the land is acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways..... In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise."

The Court made a reference to two other cases, viz., Hasanali Khanbhai & Sons v. State of Gujarat, 1995(3) RRR 283 : 1995(5) SCC 422 and Land Acquisition Officer v. Nookala Rajamallu, reported in 2004(1) RCR(Civil) 293 : 2003(12) SCC 334 respectively, where, the deduction by way development charges, was held permissible. The situation is no different in the present case. All that the acquiring body has to achieve is to widen the National Highway. There is no further question of any development. We again, even at the cost of repetition, reiterate that no evidence was shown before us in support of the plea of the proposed development. We, therefore, hold that the High Court has erred in directing the deduction on account of the developmental charges at the rate of Rs. 25/- per square feet out of the ordered compensation at the rate of Rs.

75/- per square feet. We set aside the judgment to that extent. The claimant would, therefore, be entitled to the compensation at the rate of Rs. 75/- per square feet with all the statutory benefits like solatium under Section 23(2), 12% interest under Section 23 (1- A) on the enhanced market value and interest at 9% and 15% as provided under Section 34 of the Act for one year and the rest of the period from the date of taking possession till the date of payment of the compensation awarded in favour of the claimant. With this, we partly allow the appeal and modify the order of the High Court.

Appeal partly allowed.”

Accordingly, the market value as such per acre is fixed at Rs.24,36,000/- alongwith all statutory benefits.

Coming to the second issue as to whether the grant of 12% on the market value of the acquired land from 01.06.1980 to 31.08.2006 is justified, the State has placed reliance upon *R.L. Jain and Karigowda's case (supra)*. However, counsel is well justified in placing reliance upon the judgment in *M. Buggappa's case (supra)* to submit that at this stage, to relegate the land owners to another round of litigation before the Land Acquisition Collector, would not be justified specially since it is the admitted case that the possession was taken of the land in the year 1980 and a period of 38 years has gone by. It is submitted that even in *M. Buggappa's case (supra)* also, on this account while noticing *R.L. Jain and Karigowda's cases*, the Apex Court thought it wise to award damages @ 6% on the market value as determined from the date of taking possession. The relevant portion in *M. Buggappa's case (supra)* reads thus:-

“8. We are of the view that having regard to the fact that the possession of the land was taken as long

back in 1977, that is 33 years ago, it would not be just and proper to remand the matter to the Collector at this stage for determination of compensation for wrongful use at this stage. Award of 6% per annum on the compensation amount, as damages for use and occupation from the date of dispossession (17.11.1977) to date of preliminary notification (3.7.1990) in addition to what has been awarded by the High Court would serve the interest of justice.

9. Learned counsel for the appellant submitted that in Madishetti Bala Ramul (supra) this Court had awarded damages at the rate of 15% per annum (on the market value determined) and, therefore, we should award damages at that rate. We find that award of damages at 15% on the compensation on the peculiar facts and circumstances of the case, and not on account of any principle evolved. Further, the market value as on 17.11.1977 when possession was taken would have been much less than the market value as on 3.7.1990. Therefore, if damages is awarded at 6% per annum on the market value determined as on 3.7.1990, the actual rate of damages with reference to the market value as on 17.11.1977 will be much more. In the circumstances, we are of the view that the damages for dispossession without initiating acquisition proceedings, when expressed in terms of a percentage of the compensation determined with reference to the market value more a decade later should not be more than 6% per annum. Where of course the preliminary notification is issued within one or two years from the date of taking possession, the court may award damages even at 8% to 10% of the market value determined depending upon the facts and circumstances.

10. We accordingly allow the appeal in part, and award in addition to what has been awarded by the High Court, damages at 6% per annum from 17.11.1977 to 3.7.1990, on the market value determined as on 3.7.1990. The amount so due as damages shall carry interest at 6% per annum from the date of award (21.3.1991) to date of payment. The amount awarded as damages shall not carry any additional amount or solatium.”

Resultantly, the second issue is also decided in favour of the State partly to the extent that the damages are granted @ 6% from 01.06.1980 to 31.08.2006. Further interest is granted @ 6% per annum from the date of the award i.e. 09.07.2008 to the date of payment and the amount awarded as damages would not carry any additional amount of solatium. Resultantly, the cross objections filed by the land owners are dismissed whereas, the appeals of the State are partly allowed for assessing market value at Rs.24,36,000/- per acre alongwith all statutory benefits and grant of interest @ 6%, as mentioned above.

30.04.2018
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No