IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.2386 of 2018 (O&M) & other connected cases
Date of Decision:28.05.2018

State of Haryana and others ...Appellant(s)

Versus

Sumer Singh and another ...Respondent(s)

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

Present: Ms. Safia Gupta, AAG, Haryana.
for the appellant(s).

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G.S. SANDHAWALIA, J. (ORAL)

The present order shall dispose of RFA Nos.2386 to 2433 of 2018. The facts have been taken from RFA No.2386 of 2018 as common questions of law and facts are involved.

Exemption applications:

Applications for exemption from filing the certified copy of judgment dated 30.11.2016, are allowed subject to just all exceptions.

CMs stand disposed of.

Delay applications and main case:

The present appeals are also barred by limitation on account of delay of 411/412 days in filing and applications seeking condonation of delay, have accordingly been moved.

The present appeals are directed against the award dated 30.11.2016 of the Reference Court, Narnaul wherein enhancement on the market value of the acquired land has been done from Rs.30,00,000/- per acre to Rs.38,73,392/- per acre. The purpose of acquisition of the land measuring 342 kanals 5 marlas was set in motion on 22.03.2011 under

Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act') falling in village Nangal Sirohi, District Mohindergarh for the construction of road (widnening/four lane etc.) from Narnaul to Khudana, District Mohindergarh. The Land Acquisition Collector vide award dated 27.12.2012 had granted compensation of Rs.30,00,000/- per acre. The Reference Court has relied upon the sale deed of the same village dated 28.01.2011 (Ex.P4) for 1 kanal 3 marlas for which the rate has been calculated per acre @ Rs.48,41,739/-.

Keeping in view the facts that the acquisition was for a larger area and on account of smallness of the plot (Ex.P4), 20% cut was applied to assess the market value @ Rs.38,73,392/- per acre.

Counsel for the State has primarily argued on the principle that percentage of cut should be more and the sale deeds of the State Ex.RW1/B to RW1/H were not taken into consideration primarily on the ground that the rate per acre for those sale deeds varied between Rs.6,00,000/- per acre to Rs.14,53,000/- per acre and that was less than the compensation awarded by the Collector himself.

It is pertinent to notice that there was another sale deed Ex.P5 dated 28.04.2011 which was proximately a month later for 1 kanal 7 marlas and for the said sale deed also the sale consideration worked out proximately in the range of Rs.48,41,481/- per acre. The said sale deed was not taken into consideration. Another sale deed (Ex.P3) dated 25.11.2010 of land measuring 18 marlas which is just short of 1 kanal shows that the value was Rs.48,00,000/- per acre. These three sale deeds cumulatively examined would also go on to show that proximately value was in the range of around Rs.48,00,000/- per acre.

In such circumstances, no fault can be found with the assessment of market value. In fact deducting 20% cut which though is on the ground of development cut but can be taken as on account of smallness of those plot since admittedly the acquisition is for the purpose of construction of the road.

The Apex Court in **'*Nelson Fernandes and others Vs. Special Land Acquisition Office, South Goa and others' 2007 (9) SCC 447*, *'Atma Singh (died) through L.Rs. and others Vs. 2008 (2) SCC 568*, *'Himmat Singh and others Vs. State of M.P. and others' 2013 (6) SCC 392*** *and in* ***'Indraj Singh (Dead) through L.Rs. and others Vs. State of Haryana and others' 2013 (14) SCC 491*** while dealing with the acquisition of land which was for the purpose of construction of a sector road under the Bahadurgarh Scheme, applied deduction of 10% only. The relevant portion of the judgment passed in **Indraj Singh (supra)** reads as under:-

> "*9.The High Court was of the view that the land in question as near to the land abutting two main roads. The High Court also took into consideration the rapid development in the vicinity and therefore, increased the value of the land in question after considering the principles on which lands are valued for the purpose of awarding compensation under the Act.*
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> *10. The High Court also decided to decrease the value of the land by 1/3rd of its value as the land in question was little away from the main road.*
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> *11. The submissions made on behalf of the appellants were to the effect that deduction of 1/3rd value of the land would be very harsh on the appellants because the appellants would be getting substantially less compensation on account of the said deduction. It was also submitted that the High Court had taken note of the fact that the land in question was very much within the developed area. If the land was within the developed area, the High Court should not have deducted 1/3rd of the value of the land in question.*

12. The learned Additional Solicitor General appearing for the State had tried to support the judgment by submitting that the deduction of 1/3rd of the value of the land was just and proper as observed by the High Court.

13. Upon hearing the learned counsel and upon perusal of the 3 of 5 *impugned judgment and relevant records, we are of the view that the appellants should have been awarded more compensation. Deduction to the extent of 1/3rd of the value of the land is definitely harsh even as per the observations made by the High Court as the land in question is very much in the developed area. The area has been developed by the HUDA and therefore, the deduction of 1/3rd of the value of the land is not justified.*

14. Upon considering all relevant facts, in our opinion, it would be absolutely just if 10% value of the land is deducted instead of 1/3rd because the land is forming part of a well developed area.

15. The High Court, after deduction of 1/3rd of the amount of the value has awarded Rs.7,43,000/- per acre for irrigated and non-irrigated land. The said value is after deduction of $1/3^{rd}$ *amount of total valuation of the land. The High Court has, thus, in fact, determined the market value of the land at Rs.11,15,000/- per acre and after deducting 1/3rd of the said amount, it has awarded Rs. 7,43,000/- per acre, after rounding off the figure.*

16. The market value of the land in question, as determined by the High Court, is Rs. 11.15 lacs per acre and instead of taking 1/3rd, we direct that 10% of the said value shall be deducted. The claimants shall be entitled to other statutory benefits like solatium, interest etc. on the enhanced compensation."

Resultantly, this Court is of the opinion that the market value which has been fixed is by following the proper procedure and the settled principles have not been violated in any manner. The sale deeds of the State as noticed are of lesser value than what was awarded by the Collector and Section 25 would come into play. Even otherwise it was for the purpose of construction/widening of road from Narnaul to Khudana and for four laning the road the land was falling on the highway. Therefore, the value of such land would be considered more than the sale deeds the State was relying upon. The settled principle is that land falling on the highway road have higher market value.

The applications for condonation of delay of 411/412 days also do not have merit and are liable to be dismissed. Admittedtly, the award was passed on 30.11.2016 and the District Attorney has sent his comments to the LR Haryana on 03.01.2017 who issued directions to file appeals vide letter dated 19.01.2017. The Office of the Advocate General vetted the appeals on 08.05.2017 which were finally filed on 15.05.2018. The intervening delay for the period of one year has not been explained in any manner and which cannot be said as such to be nominal. In view of lack of explanation no sufficient cause is made out by the State to condone the delay as the State can not be allowed to go into a slumber after having got necessary instructions and taking a decision to file the appeals. The landowners as such can not be asked after such a long time to contest the litigation on account of lapse of the State. Resultantly, the present appeals are dismissed along with applications for condonation of delay.

Since the main appeals have been dismissed, the stay applications are also stand dismissed and no separate orders are required to be passed. Nothing said herein will prejudice the landowners qua their rights to enhancement in their set of appeals if they so choose to file then.

(G.S. SANDHAWALIA)

28.05.2018 **JUDGE**

pvd

Whether speaking/reasoned Yes/No

Whether reportable Yes/No