

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11196 of 2019
Date of Decision: 01.05.2019

HSIIDC

... Petitioner

VS.

Om Parkash Yadav & Ors.

... Respondents

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

Present: Mr. Sudeep Mahajan, Advocate for the petitioner

G.S. SANDHAWALIA, J. (Oral)

(1) The challenge in the present writ petition filed under Articles 226/227 of the Constitution of India is to the order passed by the Land Acquisition Collector, Gurugram dated 16.07.2018 (P5) whereby compensation @ ₹ 47,60,000/- per acre has been granted for the land falling in village Harsaru, Tehsil and District Gurugram, for the notification under Section 4 dated 29.01.2003.

(2) Mr. Mahajan has tried to convince this Court that the order was not justified as it was a second petition under Section 28 of the Land Acquisition Act, 1894 and the same would not be maintainable. The argument is ill-founded and based upon the wrong factual matrix. Rather the Corporation is not acting with clean hands and had never brought to the notice of the Land Acquisition Collector on an earlier occasion on 25.06.2015 that the Apex Court had fixed the market value on 31.03.2015 (P2) as to what was the market value of the land for the notification in question. Resultantly, the landowners had to resort to the remedies under the Act to get the matter remanded to the Land Acquisition Collector so that they can get the same amount of compensation as has been granted to other landowners by the Apex Court. The said act of HSIIDC would have entailed

cost but since this Court is dismissing this petition *in limine* and refrains from imposing any costs.

(3) The factual narration of the case is that vide award dated 27.01.2016 the Land Acquisition Collector has granted ₹ 12,50,000/- per acre. The Reference Court had enhanced it to ₹ 31,50,000/- on 17.05.2012. On the basis of the said enhancement, the landowners filed application under Section 28A within the prescribed period. At that stage this Court had enhanced the compensation to ₹ 40.80 lakhs by granting 40% cut on the sale exemplars relied upon. Thereafter the matter was taken to the Apex Court in **Sachin vs. State of Haryana, (2016) 5 SCALE 598 (P2)** whereby the cut was reduced to 30% and resultantly, the market value was enhanced to ₹ 47.60 lakhs.

(4) Instead of bringing this fact to the notice of the Land Acquisition Collector, the petitioner-Corporation allowed the matter to be decided on the strength of the compensation as granted by the Reference Court i.e. ₹ 31,50,000/-. The landowners realizing that the market value had been enhanced filed an application under Section 28(3) not being satisfied with the Award and thus placed reliance upon **Sachin's** case (supra). The matter being referred to the Additional District Judge, Gurugram was remanded to the Land Acquisition Collector for fresh consideration vide order dated 28.02.2018 (P4) and in such circumstances the fresh order has been passed.

(5) It is settled principle that all landowners are entitled for the same amount of compensation and for the State to contest such litigation forces the landowners to unnecessarily defend this litigation is absolutely

uncalled for. Reliance can be placed upon judgment in **Narendra & Ors. vs. State of UP (2017) 9 SCC 426** wherein it has been held as under:-

“The purpose and objective behind the aforesaid provision is salutary in nature. It is kept in mind that those land owners who are agriculturist in most of the cases, and whose land is acquired for public purpose should get fair compensation. Once a particular rate of compensation is judicially determined, which becomes a fair compensation, benefit thereof is to be given even to those who could not approach the court. It is with this aim the aforesaid provision is incorporated by the Legislature. Once we keep the aforesaid purpose in mind, the mere fact that the compensation which was claimed by some of the villagers was at lesser rate than the compensation which is ultimately determined to be fair compensation, should not be a ground to deny such persons appropriate and fair compensation on the ground that they claimed compensation at a lesser rate. In such cases, strict rule of pleadings are not be made applicable and rendering substantial justice to the parties has to be the paramount consideration. It is to be kept in mind that in the matter of compulsory acquisition of lands by the Government, the villagers whose land gets acquired are not willing parties. It was not their voluntary act to sell of their land. They were compelled to give the land to the State for public purpose. For this purpose, the consideration which is to be paid to them is also not of their choice. On the contrary, as per the scheme of the Act, the rate at which compensation should be paid to the persons divested of their land is determined by the Land Acquisition Collector. Scheme further provides that his determination is subject to judicial scrutiny in the form of reference to the District Judge and appeal to the High Court etc. In order to ensure that the land owners are given proper compensation, the Act provides for ‘fair compensation’. Once such a fair compensation is determined judicially, all land

owners whose land was taken away by the same Notification should become the beneficiary thereof. Not only it is an aspect of good governance, failing to do so would also amount to discrimination by giving different treatment to the persons though identically situated. On technical grounds, like the one adopted by the High Court in the impugned judgment, this fair treatment cannot be denied to them.

No doubt the judicial system that prevails is based on adversarial form of adjudication. At the same time, recognising the demerits and limitations of adversarial litigation, elements of social context adjudication are brought into the decision making process, particularly, when it comes to administering justice to the marginalised section of the society.

(6) Accordingly, there is no merit in the present writ petition which is accordingly dismissed *in limine*.

01.05.2019

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(G.S. Sandhawalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No