IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15045-2009
along with other connected cases
Decided on : 25.02.2019

Improvement Trust, Gurdaspur ... Petitioner

Versus

Kashmir Singh & others ... Respondents

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

Present : Mr.Amit Singh Sethi, Advocate, for the Improvement Trust.

Mr.Vipin Mahajan, Advocate,
Mr.Ishan Kaushal, Advocate, for
Mr.K.S.Khehar, Advocate, for the landowners.

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G.S. Sandhawalia, J. (Oral)

The present judgment shall dispose of 17 writ petitions out of which, 8 bearing CWP Nos.15045, 15053, 15063, 15109, 15115, 15159, 15185 and 15287 of 2009 have been filed by the Improvement Trust, Gurdaspur and remaining 9 bearing CWP Nos.19168, 19574, 19585, 19764, 19785, 20125, 20351 & 20393 of 2009 and CWP No.939 of 2010 have been filed by the landowners. The facts are being taken from **CWP No.15045 of 2009 'Improvement Trust Gurdaspur Vs. Kashmir Singh and others'**.

Challenge in the present writ petitions is to the award passed by the Land Acquisition Tribunal, Gurdaspur dated 25.03.2008 (Annexure P-3) whereby the market value, as such, was fixed @ Rs.3,58,400/- per acre (Rs.2240 per marla). The same was enhanced from Rs.2 lakhs per acre (Rs.1250 per marla) for the land falling in Village Litter, as assessed by the Land Acquisition Collector for the 34 acres of land acquired for Development Scheme No.5, under the Punjab Town Improvement Trust Act, 1922. The ground for enhancement was on account of having taken into consideration an award dated 08.12.2000 (Ext.A-18), which pertained to the notification dated 04.04.1995 whereby land of Village Bariar was acquired and the market value had been fixed @ Rs.6,40,000/- per acre. On the amount which had been awarded in the said award, 10% deduction was made for 2 years each, by applying reverse cut and thereafter, 30% further cut was put on account of better location of the land, as it was stated to be on the GT road/National Highway. The sale deeds which had been produced by the landowners were rejected on two grounds, namely, either they were of much prior point of time from the date of Section 36 notification, which was 07.05.1993 or were post notification and were small in size, ranging from 1 marla to 16 marlas.

Counsel for the landowners, Mr.Vipin Mahajan has, thus, submitted that the award was of a different village and was not to be taken into consideration once the sale exemplars of the village in question had been brought on record and appropriate cut could have been put on account of smallness. Similarly, qua compensation for the structures, it was submitted that no increase has been granted inspite of the fact that evidence had been brought on record and no evidence had been brought on record by the Improvement Trust by examining any valuer. It is submitted that the sale deeds (Exts.R-1 to R-16) did not pertain to the village in question and are pertaining to the adjoining village Babowal and had been rightly rejected, though on the ground that they were small pieces of land and they were either close or very far away and just before the material date.

Mr.Amit Sethi, appearing for the Improvement Trust, on the other hand, justified the order passed by the Tribunal and further submits that the proceedings had been got stayed by the landowners from the period between 05.05.1997 to 24.10.1998 and therefore, the landowners were not entitled for the interest on the enhanced compensation, if any, to be granted. They themselves had relied upon the award (Ext A-18) themselves and therefore, now, could not turn around and contend that the award was not relevant. Reliance was, accordingly, placed upon Exts.R-1 to R-16 to submit that market value was on the lower side and the value was ranging between Rs.60,000/- to Rs.70,000/- per acre and therefore, the amount awarded of Rs.2 lakhs per acre was not liable to be interfered with and the Tribunal had wrongly granted enhancement.

A perusal of the record would go on to show that it was the specific case, as such, of the landowners that the land was situated in such a locality which was known for good location for raising residential accommodation. Gurdaspur city was spreading towards the side of Village Litter and was having good potential. Plots had already been cut and the potential value of the acquired land had been taken into question and were being sold @ Rs.40,000/- per marla. In support of the potentiality of the land, the landowners also exhibited site-plans (Exts.A-12 to A-14). Apart from the said fact, the Registration Clerk, Subhash

Chander was examined as AW-2, to bring on record sale deeds as per the table reproduced below:

S. No.	Sale Deeds	Date	Area (K-M)	Price/marla (in Rs.)	Price/acre (in Rs.)
1.	Ex A-5	7.3.84 (prior)	0-1	6,000/-	9,60,000/-
2.	Ex A-6	5.3.84 (prior)	0-8	3,000/-	4,80,000/-
3.	Ex A-7	30.9.92 (prior)	0-10	10,000/-	16,00,000/-
4.	Ex A-8	20.1.93 (prior)	0-5	5,000/-	8,00,000/-
5.	Ex A-9	12.2.93 (prior)	0-15	5,250/-	8,40,000/-
6.	Ex A-10	29.12.93 (post)	0-16	5,000/-	8,00,000/-

Harsh Kumar, Patwari was examined as AW-4 who deposed that possession was taken on 08.07.1996, as per the entry in Roznamcha (Ext.A-11). He also deposed that abutting the land was abadi and in the acquired land there were residential houses, shops, atta chaki and a saw mill. The land was stated to be on the Jail Road, Gurdaspur and within the Municipal limits of Gurdaspur. The office of the Executive Engineer, Irrigation was situated at 100 meters from the acquired land and the District Court was 600 meters away. The abadi of Village Mirpur abutted the acquired land and the shops and residential houses were adjoining the acquired land. The abadi of Arya Nagar was covered under the acquired land. The office of the SSP was 80 meters from the acquired land and the resident of the Deputy Commissioner was 100 meters and the residences of the SSP and Deputy Commissioner were also in close vicinity and the official complex of the Punjab State Electricity Board was situated next door whereas the colony of Irrigation Department was 150 meters from the acquired land. In cross-examination, it further transpired that the acquired land was at a distance of 2 Kilometers from the Central Town of Gurdaspur.

Harbhajan Singh appearing as AW-7, also stated in the same terms that the acquired land was on the Gurdaspur-Dina Nagar road and was within the Municipal limits and the residence of the Executive Engineer was just opposite the acquired land whereas the SSP's residence was adjoining the house of the said official. Circuit House Complex was under construction in between the residence of the SSP and Little Flower School building, which was also in close vicinity. He stated that the rate of the land in the locality was Rs.15,000-20,000/- per marla and they had sold the land as per Ext.A-7, in that locality. In open auction, the Improvement Trust had auctioned land two or three months back @ Rs.75,000/- per marla. The level of the acquired land was also as per the level of the road and therefore, challenge had been made to the market value. In cross-examination, it transpired that Village Mirpur was at a distance of 1 km from Village Babowal and the cremation ground of Babowal was at a distance of 2 kanals after the end of the acquired land touching Village Babowal.

As per the statement of AW-8, Darshan Singh, they had constructed residential house consisting of five rooms and had installed saw mill, rice sheller and flour mill and had constructed five shops and machinery were worth Rs.4-50 lakhs. The land owned was facing the main road of Jail Road, as per Ext.A-13 and Ext.A-6 showed that the land had been sold @ Rs.3,000/- per marla in the year 1984 and the rate at the time of acquisition was Rs.30,000-40,000/- per marla.

Similarly, AW-9, Kashmir Singh also stated that he had sold land vide Exts.A-8 to A-10 to different persons and the price was much lower than the price charged, which was ranging between Rs.15,000-20,000/- per marla.

AW-10, Major (Retired) Surinder Singh Kundal deposed that 75 kanals 11 marlas was owned by him along with other co-sharers, facing the 2 roads, i.e., Jail Road and Link Road of Villages Babowal and Mirpur and stressed on the great potentiality of the land for construction of residential as well as commercial buildings. He had stated that there was one tubewell installed as per the site-plan (Ext.A-17). Beant Singh Engineering College was at a distance of 5 kms from the land and was on the scheduled road, compensation of which had been granted, vide Ext. A-18. Resultantly, it was stated that the land price varied between Rs.8-10 lakhs per acre.

No evidence was produced on behalf of the Improvement Trust except for tendering into documents which included sale deeds and thus, it is to be noticed that neither any witness was examined nor any site-plan was brought on record to show the location of the said sale deeds and whether they were in close vicinity of the acquired land.

Keeping in view the above facts, this Court is of the firm opinion that the Tribunal fell in grave error while relying upon Ext.A-18, which is pertaining to another land, acquisition of which was post the notification and it is not even situated close by and in the near vicinity.

As noticed, it was stated to be on the scheduled road at a distance of 5 kms and therefore, could not be, as such, compared with the land falling within the Municipal limits. It is settled principle that once sale deeds are available of the same revenue estate, which are relevant piece of evidence, falling back on the award, as such, would not be justified, which was of a different village and the land was not in the Municipal Limits being on the G.T. Road. More so, the fact remains that as noticed above, no site-plan was also produced by the Improvement Trust to show that the said sale deeds which had been relied upon by it, i.e., Exts.R-1 to R-16, were located close to the land acquired or of the village concerned. Reliance can be made to **Manoj Kumar & others Vs. State of Haryana & others 2018 (2) RCR (Civil) 815** wherein it has been held as under:

> "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.
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> 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.”

The said view was followed in **Loveleen Kumar & others Vs. State of Haryana & others 2018 (7) Scale 596** wherein it has been held as under:

> "7. Having gone through the material on record and after considering the arguments of the advocates, we are of the opinion that the Reference Court, as well as the High Court, have not considered the sale deeds produced on behalf of the State for determination of compensation. A chart of the sale deeds on record filed before us by the learned advocates appearing on behalf of the State reveals prima facie the value of certain lands involved in those sale deeds. The site plan of the village Hansi depicts such sold patches as being in the middle of the acquired land. The lands in all the sale deeds shown alongside the plan are in close proximity and adjoining to the land acquired under the Section 4 notification of the present case. There is no reason as to why the High Court, while coming to its conclusion, has not referred to the sale statistics. If the sale statistics are to be ignored, the High Court should have furnished reasons for doing so."

It is to be noticed from the site-plan that the acquired land is situated in a very potential location, in as much as it is abutting the Jail Road and the land of Village Mirpur and Babowal fall beyond the said land. Village Babowal does not have the same benefit of access of the Jail Road. In **Union of India Vs. Harpat Singh & others (2009) 14 SCC 375**, the Apex Court noticed that where the land was situated in close vicinity of Delhi and building activity was going on and once the lands were capable of being developed, the compensation was liable to be enhanced. The relevant portion reads as under:

> "24. The fact that the lands acquired were capable of being

developed cannot be disputed. But, as indicated hereinbefore, the Division Bench of the High Court proceeded on the basis that the colonies at NOIDA were already developed, the development having commenced prior to 1980. The High Court did not stop there. It proceeded on the basis that the lands situated in village Dallupura are similar to the lands in question in respect whereof only in Ratan Lal the fair market value was assessed at Rs.345/- per square yard in terms of a judgment dated 24.8.2001 since reported in [(2001) 94 DLT 378]. The High Court, in paragraph 18 of its judgment, found no difference in the location, situation, potentiality, advantage attached and other relevant factors between the lands in question and those acquired in village Dallupura and furthermore opined that there was no material or evidence brought on record even to contradict the stand of the appellant as regards benefits of the lands situated in village Chilla Saroda Bangar and the lands of village Dallupura but proceeded to ignore its own judgment in Karan Singh and Bali Ram Sharma wherefor no reason was assigned.

25. We, however, cannot ignore the fact that some construction activities had already started in the village in question by the DDA itself. Some amenities, although the village might not have been fully developed but road, electricity, water, sewerage were there, whereas the lands situated in Kondli and those others were agricultural lands. We, therefore, are of the opinion that keeping in view its proximity to Delhi, and as the appellant itself had conceded that the minimum compensation be calculated at the rate of Rs.76.55 per sq. yard, that the interest of justice shall be subserved if the market value is raised to 10% thereover. Correspondingly, the other statutory benefits including interest must be awarded."

The sale deeds, as shown in the chart above, would show Exts.A-5 & A-6, pertained to the year 1984 and were rightly distinguished on the ground that they were of the period much prior in point of time, 9 years prior to the acquisition. The sale deed dated 30.09.1992 (Ext.A-7) has also rightly been not relied upon whereby 10 marlas of land was sold @ Rs.10,000/- per marla. The statement of Balbir Singh, AW-5 validates the fact that the plot was purchased on account of the need for construction of a house and thus, the price had been paid for the said plot, which was far over and above the prevalent market value. The plot can also be located on Ext.A-12 and shows that it is closer to the town and also in abadi area, which was fully developed already.

Exts. P-8 to P-10 would go on to show that the price was hovering between Rs.5000/- to Rs.5,200/- per marla between 20.01.1993 to 29.12.1993 and they were not varying in contrast to Ext.A-7, which had been produced by Balbir Singh, who was the Branch Manager of the Punjab National Bank and from his deposition, it would be clear that the plot was 200 meters inside the village from the Jail Road and was at a distance of 4-5 acres from the acquired land. The witness had stated that he had constructed a residential house on the plot purchased by him and there was residential abadi where the plot was situated and the same extends upto the acquired land.

Thus, it is apparent that the plot in question (Ext.A-7) had all the benefits of a developed patch of land and therefore, it could fetch a higher sale price in comparison to the other plots which were sold much later but had a consistent value ranging from Rs.5000-5250/- per marla.

The price of the said plots would work out to Rs.8,00,000-8,40,000/- per acre, if Exts.A-8 & A-9 are taken into consideration which are of 5 marlas and 15 marlas respectively, having been executed on 20.01.1993 and 12.02.1993, both of them being prior to the Section 36 notification which was issued on 07.05.1993.

The reasoning, as such, which was given by the Tribunal is not justified in the facts and circumstances as the value of small pieces of land can be taken into consideration by applying appropriate cut. It is to be noticed that the land falls within the Municipal limits and therefore, it would not be possible to get the market value of a larger piece of land once the land is being sold in the shapes of a plot being close to the hub of activity. Reliance can be placed upon the judgment of the Apex Court in **H.P. Housing Board Vs. Bharat S.Negi & others 2004 (4) SCC 184**, wherein 40% deduction was made on account of largeness of the land which was reduced to 1/3rd by the Apex Court.

Similarly, in **Ram Kanwar & others Vs. State of Haryana & another 2015 (1) RCR (Civil) 234**, it was held that prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at the time of preliminary notification are the best evidence of the market value. It was, accordingly, held that the market value would mean the price a willing purchaser would pay to a willing seller for a property, having due regard to the existing conditions and existing advantages.

The Apex Court in **'Trishala Jain and another Vs. State of**

Uttaranchal and another' 2011 (6) SCC 47 has discussed the issue of reduction and has held that sales of small chunks could be considered for determining the market value of larger chunk of land with some deductions.

In **'Mehrawal Khewaji Trust (Regd.), Faridkot and others Vs. State of Punjab and others' (2012) 5 SSC 432** it has been held that averaging is not to be resorted to and benefit of highest sale exemplar is to be granted. Relevant portion of the said judgment reads as under:-

> "15) It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation."

Accordingly, this Court is of the opinion that best sale exemplar in the present case would be Ext.A9, which was the largest chunk of land measuring 15 marlas and, therefore, the benefit as such of the same has to be given and the market value would work out @

Rs.8,40,000/- per acre and after applying 1/3rd consolidated cut of Rs.2,80,000/-, for smallness of plot and development cut, the market value would work out to Rs.5,60,000/- per acre alongwith all statutory benefits. Resultantly, the findings of the Tribunal, as such, are liable to be modified.

The argument as such which has been raised that proceedings were stayed from 05.5.1997 till 24.10.1998 would also not merit much consideration, keeping in view the fact that the landowners had raised challenge to the very acquisition proceedings. The Court had, in its wisdom, thought it fit to stay the proceedings on 05.05.1997 but that would not deprive the landowners as such of the statutory benefits as they had already lost the possession, as such, prior to that on 08.07.1996 and were neither given the benefit of compensation and therefore cannot be denied the benefit of interest. It is settled principle that the act of the Court will harm no one and reference can be made to the maxim "actus curiae neminem gravabit".

With regard to the super-structure which was available on the spot, the landowners as such have produced the report of the Draftsman, whereby Rs.4,88,800/- has been claimed by Darshan Singh and for Gurbax Kaur @ Rs.27,40,740/-. The same has been discarded on the ground that no person from the office of the Improvement Trust had been associated to the spot on 7.11.1994 and the said report had not been relied upon before the Land Acquisition Collector. In such circumstances, the blind reliance upon the report as such cannot be made.

Counsel for the petitioner, however, is well justified in falling back on the judgment of this Court passed in **Romal Singh & another Vs. Punjab State & others 2017 (4) Law Herald 3231** whereby 25% increase was granted on value of super-structure as assessed by the Collector as a thumb rule on the ground of rough estimate. Accordingly, the amount of compensation as awarded by the Land Acquisition Collector on the basis of the super-structure is enhanced by 25%.

It is, however, made clear that benefit of solatium and additional market value under Section 23 (1A) and Section 23 (2) will not be granted to the landowners on the said element in view of the judgment of the Apex Court passed in **'State of Punjab Vs. Amarjit Singh', 2011 (4) SCC 734,** whereas the other statutory benefits would be applicable to the market value which has been assessed @ ₹5,60,000/- per acre.

Accordingly, writ petitions are allowed qua the landowners and those of the Improvement Trust are dismissed.

FEBRUARY 25th, 2019 **(G.S.SANDHAWALIA)**
sailesh **JUDGE**

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*