IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No. 1512 of 2015 (O&M)
Date of decision: 3.4.2019

Union of India and others
...Appellants
Versus
Soma Devi and others
...Respondents

(2) FAO No. 3074 of 2015 (O&M)

Union of India and others
...Appellants
Versus
Parkash Chand and others
...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. R.S. Madan, Advocate,
for the appellants.

Mr. Ishpuneet Singh, Advocate,
for the appellants in FAO 3074 of 2015.

Mr. Sarbjit Singh Khaira, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. This order shall dispose of the above mentioned First Appeal against Order, as they arise out of the similar set of facts and involving similar question of law. The appeals have been filed seeking to challenge the impugned judgment dated 9.1.2015 passed by the Additional District Judge, Jalandhar, whereby the objection petition filed under Section 34 of the Arbitration and Conciliation Act (for short **'the Act')** against the award of the Arbitrator dated 1.7.2013 has been dismissed.

2. A few facts need to be noticed in the instant appeal, which is being taken from FAO No. 1512 of 2015. The land of the respondents situated in village Jahangirpur, Tehsil and District Gurdaspur, was acquired for the public purpose of widening and four laning, maintenance, management and operation etc. of National Highway No.15 under Section 3-A of the National Highway Act, 1956 (for short **'the 1956 Act')**, vide Notification which was published on 23.5.2008. The Competent Authority determined the compensation to be paid to the land owners for acquired land at market rate on 5.10.2005, after getting approval from the Commissioner, Jalandhar Division. The land was classified as residential land and the same was assessed at the rate of ₹30,000/- per marla. Since the claimants were dissatisfied with the award, they preferred an application under Section 3 (A to G) of the Act for enhancement of compensation in respect of their land. The Arbitrator, vide his award dated 1.7.2013 enhanced the compensation and awarded a sum of ₹1,70,000/- per marla. Aggrieved against the said award, the appellants, namely, Union of India, filed objections under Section 34 of the Act, challenging the compensation so enhanced on the ground that the Arbitrator had wrongly assessed the compensation without there being any basis, while also arguing that he had wrongly awarded interest at the rate of 12% under Section 23-A of the Land Acquisition Act and interest at the rate of 9% and 15% provided under Section 34 of the Land Acquisition Act which was clearly not applicable to the proceedings that initiated under the 1956 Act. The Additional District Judge, vide his judgment dated 9.1.2015 dismissed the objections, which has led to the filing of the instant appeals.

3. Learned counsel for the appellants contends that other than sale deed No. 1218 of Village Jahangirpur dated 23.6.2006 pertaining to 4 marlas land, which was sold for ₹1,80,000/- i.e. ₹45,000/- per marla, no other evidence is available on record to allow compensation at the rate of ₹1,70,000/- per marla. It is argued that the Arbitrator despite noticing that the claimants failed to produce evidence in support of increase of compensation other than one sale deed, still has arbitrarily and without any evidence assessed the compensation at the rate of ₹1,70,000/- per marla. It was observed that land rate in Dasuya and Tanda in the year 2004 was at ₹2.50 lac per marla. Thus, while again stating that in the absence of any proof in this case, the Arbitrator allowed the same rate to Village Jahangirpur land with 5% increase from 2004 onwards. It is also argued that the Arbitrator has erred in granting 10% ease money as well as 30% solatium under the provisions of the Land Acquisition Act, which would not be applicable to the proceedings initiated under the 1956 Act.

4. Per contra, learned counsel appearing on behalf of the respondents, while supporting the impugned award as well as the judgment passed by the Additional District Judge, Jalandhar, submits that Arbitrator has considered the evidence brought on record in right perspective and only then awarded the compensation at the rate of ₹1,70,000/- per marla, which is just and fair and there is ground to interfere with the same by this Court.

5. I have heard learned counsel for the parties and have also perused the award of the Arbitrator as well as the petition filed under Section 34 of the Act. As noticed above, the dispute pertains to the amount of compensation that is to be awarded for the acquisition of the land by the

appellants for the purpose of widening of National Highway No. 15 by Notification under Section 3-A of the National Highway Act. The compensation was initially assessed by the Competent Authority payable at the rate of ₹30,000/- per marla and on reference the Arbitrator enhanced the compensation at the rate of ₹1,70,000/- per marla. Needless to say that the best piece of evidence for determination of compensation payable in land acquisition cases is by taking into consideration the sale instances of the land situated in the same village and if none is available then those of the adjoining villages. In the instant case, there is only one sale instance available of the land that was sold in 2006 at the rate of ₹45,000/- per marla, as has rightly been noticed by the Arbitrator. Once sale deed is available of the same village, the Arbitrator ought not to have looked into any other sale deed executed in the adjoining village, as been done in the present case. Other than the sale deed available on the record, there is no valuation report placed by the claimants to show and reflect the market value of the acquired land. The Arbitrator, while allowing the increase, has taken into account that a sum of ₹1.50 lacs per marla has been allowed for acquisition in 2004 for the land situated in Dasuya and Tanda. However, reliance cannot be placed upon this piece of evidence or sale instance for awarding compensation, on account of the fact that the land acquired in Dasuya and Tanda was for widening of National Highway No. 1-A , and the present land was acquired for the purpose of widening of road of National Highway No. 15. The location of the two (lands) is not within the same vicinity. In fact, the land acquired in Dasuya/Tanda is at a distance of almost 50 kilometers from the land acquired. Even otherwise there is a patent error on the record since the Arbitrator has taken the value of the land at ₹1.50 lacs per marla as the same had been allowed for acquisition in 2004 for the land situated in Dasuya and Tanda and allowed a further increase of 5 % per year till the year 2010, despite the fact that land stood acquired in the year 2008. Even otherwise, there is an apparent error in the award in so far as the Arbitrator has allowed 10% ease money which is contradictory to the settled principal that once 30% solatium is being awarded there is no requirement to award 10% ease money as well. Solatium is basically awarded as compensation for the compulsorily nature of the acquisition leaving the landowner no choice as would the be the nature of "Ease money". Reference can be made to the judgment rendered by this Court in **FAO No 2131 of 2014 Union Of India and others Vs Sarabjit Singh and Others decided on 12.11.2018.**

6. The objection that has been raised by the learned counsel for the respondents that the award of the Arbitrator should not be interfered is to be noted only to reject being without merit. In **ONGC Ltd v Saw Pipes Ltd**. **AIR 2003 SC 2629,** it has been held that in case an award of an Arbitrator is against the public policy and it shocks the conscience of the Court, then the Court can interfere in the same in the award so passed.

7. In the instant appeals, this Court cannot ignore that the land was acquired for the public purpose for widening of National Highway and compensation has been assessed without taking into consideration the sale instance which was available on the record pertaining to the same village where the present land was situated. Even the competent authority while awarding compensation took into account the sale deed as produced by the

appellant and thereafter also referred to two sale deeds of the neighboring village to settle the compensation.

8. Consequently, the present appeals are allowed. The impugned judgment of the Additional District Judge, dismissing the objection filed by the Appellants under Section 34 of the Act is set aside and the impugned award passed by the Arbitrator is modified to the extent that the claimants/respondents would be entitled to compensation at the rate of ₹54,000/- per marla along with the benefits as allowed under Section 23(2) and 28 of the Land Acquisition Act 1849.

3.4.2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No