IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA-1306-2012 (O&M)
and other connected matters
Reserved on : 13.09.2019
Pronounced on: 27.09.2019

State of Haryana ....Appellant

Versus

Sushil Kumar & others ...Respondents

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

Present: Mr.Sudeep Mahajan, Addl.A.G, Haryana.
Ms.Vibha Tewari, AAG, Haryana.

Mr.R.D.Gupta, Advocate
Mr.Raghuvinder Singh, Advocate
Mr.Gaurav Gaur, Advocate
Mr.K.K.Chaudhary, Advocate, for
Mr.Sanjiv Gupta, Advocate, for the landowners.

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G.S. SANDHAWALIA, J.

The present set of 6 appeals, filed under Section 54 of the Land Acquisition Act, 1894 (for short, the 'Act'), by the landowners bearing RFA-1192, 2136 & 2137-2012 and by the State bearing RFA-1306 to 1308-2012, are directed against the award dated 22.12.2011, passed by the Reference Court, Sirsa. The Reference Court has granted Rs.520/- per sq.yard (Rs.25,16,800/- per acre) for the land in question, enhancing it from Rs.5 lakhs, as granted by the Land Acquisition Collector, vide award dated 11.07.2006. Unsatisfied by the enhancement, the landowners are claiming more whereas the State has attacked the award on the ground that the basis of enhancement is not legally tenable.

2. The notification under Section 4 of the Act in question is dated 08.10.2003, whereby the land was sought to be acquired to secure the northern portion of the District Jail and for the purposes of growing fresh succulent vegetables and food-grains for prisoners. Eventually, vide award No.11 of the LAC dated 11.07.2006, 8 acres 4 kanals 1 marla of land, falling in Village Vaidwala, Tehsil & District Sirsa, was acquired.

3. The basis for enhancement by the Reference Court is an earlier award passed of the adjoining Village Khairpur, District Sirsa whereby land was acquired in the year 1994 and this Court, in **RFA-3125-1999** titled *Diwan Chand Vs. State of Haryana* decided on 24.12.2009, had fixed the market value @ Rs.250/- per sq.yard. Keeping in view the fact that the difference was of 9 years between the two acquisitions, the Reference Court had granted an increase of 12% per annum, for 9 years, to add a sum of Rs.270/- per sq.yard and added it to Rs.250/- per sq.yard, as awarded, to assess the market value @ Rs.520/- per sq.yard. For the sale deeds (Exs.P-2 & P-12) there was no discussion, as such, and therefore, it can be held that the basis of enhancement, for the period of 9 years, is not sustainable. The objection by the State is well justified, in view of the law laid down by the Apex Court in **General Manager, Oil & Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel 2008 (4) RCR (Civil) 487** and **Loveleen Kumar and others Vs. State of Haryana and others 2018 (7) SCC 492**. Even otherwise, the Reference Court failed to take into consideration that for

the notification dated 19.12.2002, it had already awarded a sum of Rs.490/- per sq.yard, for the same village which was much closer in point of time and it would have been the correct award to rely upon rather than the award for the notification of the year 1994. There is no dispute regarding this proposition which the landowners also have not opposed seriously, as the law is clear that blind reliance upon a award, as such, should not be placed and enhancement on the basis of principle of cumulative increase, is not to be granted, beyond the period of 4-5 years. Relevant portion of **Rameshbhai Jivanbhai Patel** (supra) reads as under:

> "12. Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisition), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on-sale transactions/acquisitions precedes the subject acquisition by only a few years, that is upto four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the `rate' of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase.
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> 13. Much more unsafe is the recent trend to determine the market value of acquired lands with reference to future sale transactions or acquisitions. To illustrate, if the market value of a land acquired in 1992 has to be determined and if there

are no sale transactions/acquisitions of 1991 or 1992 (prior to the date of preliminary notification), the statistics relating to sales/acquisitions in future, say of the years 1994-95 or 1995-96 are taken as the base price and the market value in 1992 is worked back by making deductions at the rate of 10% to 15% per annum. How far is this safe? One of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices. Let us illustrate. Let us assume there was no development activity in a particular area. The appreciation in market price in such area would be slow and minimal. But if some lands in that area are acquired for a residential/commercial/industrial layout, there will be all round development and improvement in the infrastructure/ amenities/facilities in the next one or two years, as a result of which the surrounding lands will become more valuable. Even if there is no actual improvement in infrastructure, the potential and possibility of improvement on account of the proposed residential/commercial/ industrial layout will result in a higher rate of escalation in prices. As a result, if the annual increase in market value was around 10% per annum before the acquisition, the annual increase of market value of lands in the areas neighbouring the acquired land, will become much more, say 20% to 30%, or even more on account of the development/proposed development. Therefore, if the percentage to be added with reference to previous acquisitions/sale transactions is 10% per annum, the percentage to be deducted to arrive at a market value with reference to future acquisitions/sale transactions should not be 10% per annum, but much more. The percentage of standard increase becomes unreliable. Courts should therefore avoid determination of market value with reference to subsequent/future transactions. Even if it becomes inevitable, there should be greater caution in applying the prices fetched for transactions in future. Be that as it may."

4. The issue, in such circumstances, arises is as to how to assess the market value. Inspite of the onus being upon the landowners and they had produced as many as 11 sale deeds (Exs.P-2 to P-12) on record, which, as noticed, were not discussed by the Reference Court. The reason for not discussing the same by the Reference Court then and by this Court, now and not relying upon the said sale deeds is apparent that to the extent, the said sale deeds pertain to the years 2005 to 2007, which is much after the date of issuance of Section 4 notification i.e. 08.10.2003. Therefore, they would not be useful to assess the market value on the date when the Section 4 notification was issued, which is the determining date for assessing the market value, as per Section 23 of the Act. Therefore, no useful purpose would be served by discussing the said sale deeds and they are, accordingly, rejected. Similarly, the sale deeds (Exs.R-13 to R-21) also would go on to show that State had also produced sale deeds which are from the year 2005-2006, which were also post-notification and would be of no help. However, in the intervening period, the landowners have benefitted in as much as the market value has been finalized for the notification dated 19.12.2002 whereby land was acquired from the same Village i.e. Vaidwala also for the public purpose of development of Sectors 19 & 20 Part-II by HUDA, Sirsa, in close vicinity.

5. Resultantly, the landowners have filed applications for additional evidence. One such application being CM-8867-CI-2019 in RFA-2136-2012, was filed wherein the details, as such, were given. In

the application, it has been averred that vide award No.11 dated 16.12.2005, the LAC had fixed compensation @ Rs.6 lakhs for all kinds of land (Annexure A-3), for the notification which has been issued around 9 months earlier. The Reference Court had determined the market value @ Rs.490/- per sq.yard on 30.09.2011 (Annexure A-4). This Court in **RFA-5228-2011** titled *Savinder Singh @ Surender Singh & another Vs. State of Haryana & others*, decided on 02.09.2015 (Annexure A-5), enhanced the market price to Rs.612/- per sq.yard. Thereafter, the Apex Court has further enhanced the compensation in **CA-11005-11042-2016** titled *Piyara Singh & another Vs. State of Haryana & others* decided on 17.11.2016 (Annexure A-6). The site-plan showing the location of the lands and to show that they were in close vicinity, is appended as Annexure A-7. It has been, accordingly, averred that the property of the applicants is on the main Sirsa-Barnala Highway and opposite the Licensed Colony being developed by the ERA Group and was at a marginal distance from the acquired land, as per the site-plan. It was further averred that the documents were not in existence when the matter was being decided by the Reference Court and therefore, could not have been placed on record, earlier.

6. The application has been opposed by filing reply by the District Revenue Officer, on the ground that it is not maintainable and had been filed after more than 6 years of filing of the present appeals, which is time-barred. The acquisition which has been referred to is for public purpose of developing residential and commercial Sectors 19 & 20

Part-II. The land had been acquired @ Rs.6 lakhs per acre and for the public purpose of development by HUDA and in the present matter, for the use of District Jail. The land is agricultural and therefore, the said documents are not relevant for the case in hand.

7. The said land is in close vicinity, which would be even clear from the site-plan (Ex.A-7) which has been exhibited and thus, this Court is of the opinion that the award of the Reference Court, which has been impugned, was passed on 22.12.2011, before the judgment passed by this Court in **Savinder Singh @ Surender Singh** (supra) on 02.09.2015. Similarly, the judgment of the Apex Court, whereby the judgment of this Court had been modified, is dated 17.11.2016 (Annexure A-6). Therefore, the said judgments having not been passed at the time when the impugned award was passed by the Reference Court, would make sufficient grounds, as such, to allow the applications for additional evidence, as they could not have been brought on record, earlier. Reliance can be placed upon the judgment passed by this Court in **Swaran Kaur & others Vs. State of Haryana & others 2019 (1) RCR (Civil) 554**.

8. Even the defence of the State, as such, is that the land is going to be used for the purpose of Jail, would be of no help, as it is settled proposition under Section 24 of the Act that the purpose of acquisition is not to be seen as the landowners are only to get the market value of the land and not on account of which purpose the land might be acquired. In **Subh Ram & others Vs. State of Haryana & another**

(2010) 1 SCC 444, land was acquired for a Jail and it was held that the purpose of acquisition can never be a factor to increase the market value of the acquired land. It was further held that if the land was used for submergence of the Dam Project, would not mean that irrigated land would be awarded less compensation or equal to the value of the waste land. The quality or class and access to the land, which were relevant factors to determine the market value and not the usage. Relevant observations read as under:

> "21. The purpose of acquisition can never be a factor to increase the market value of the acquired land. We may give two examples. Where irrigated land belonging to `A' and dry land of `B' and waste land of `C' are acquired for purpose of submergence in a dam project, neither `B' nor `C' can contend that they are entitled to the same higher compensation which was awarded for the irrigated land, on the ground that all the lands were acquired for the same purpose. Nor can the Land Acquisition Collector hold that in case of acquisition for submergence in a dam project, irrigated land should be awarded lesser compensation equal to the value of waste land, on the ground that purpose of acquisition is the same in regard to both. The principle is that the quality (class) of land, the situation of the land, the access to the land are all relevant factors for determination of the market value."

9. Even otherwise, the said judgments would help this Court to pronounce judgment, as per the provisions of Order 41 Rule 27 CPC and it would be in the interest of justice, as such. Thus, the judgment of this Court and the Apex Court would be a relevant piece of evidence and resultantly, the applications for additional evidence are allowed and the said documents are taken on record as Annexures A-1 to A-7.

10. The landowners, in the petitions, filed under Section 18 of the Act, had averred that the land is situated on the Sirsa-Barnala road and the value, as such, was Rs.70 lakhs in the open market. Certain private builders had purchased land on higher rates on the opposite side of the land for developing residential colonies, which was at a walking distance from the land acquired. The land was adjoining the land of the Municipal limits and same had potential for developing residential colonies. It had further been averred that since Sirsa became a District Head Quarter, all the developemnt works were being made on this road as Mini Secretariat, Judicial Complex, Police Lines, Housing Board Colony, Sectors 20 & 20-A had been carved out by HUDA. HSEB had raised Power Stations, Chaudhary Devi Lal University, Chaudhary Devi Lal Dental College, Chaudhary Devi Lal Engineering College were situated near the land and on the one side, wall of Chaudhary Devi Lal Vidyapeeth touched the acquired land and certain industrial units were also near the acquired land.

11. In defence, the Jail Superintendent, Jail, on behalf of the Collector, had justified the rates fixed.

12. In the evidence led, it was averred that the land acquired was within the Municipal limits and that for the notification dated 19.12.2002, a sum of Rs.6 lakhs had been awarded which was away from the area whereas the acquired land was closer to the city. Site-plan was also brought on record as Ex.P-1. In cross-examination, it was admitted that the sale deeds were post-notification. The District Jail Superintendent, in

cross-examination, stated that the land was situated on the Sirsa-Barnala road and suitable for residential and commercial purposes. In cross-examination, he could not tell the limits of the Municipal Council, having been extended only on 30.06.2007. He only volunteered that he had made enquiry of the Municipal limits as to when the land was acquired and the certificate (Ex.P-22) also did not mention the limits of the Municipal Council in the year 2003. He denied whether any commercial centres and institutions were running opposite the District Jail. He admitted that the acquired land was just adjacent to the District Jail and at that point of time, Chaudhary Devi Lal Vidyapeeth was at a distance of about 200-300 yards from the District Jail and in the intervening area, there were shops and one factory between the two. He admitted that Chaudhary Devi Lal Vidyapeeth had a big chunk of land but he did not know where the Dental College was situated and other types of colleges. He admitted that the land of Era Group was situated opposite the District Jail, Sirsa and and there was a school towards the Sirsa City. He did not know when the Municipal limits had been extended but he admitted the correctness of the site-plan (Ex.P-1). He denied the knowledge that recommendation by Divisional Commissioner had been to the extent of Rs.50 lakhs per acre, for the acquired land. The Deputy Superintendent, District Jail, Sirsa, Shri Amait Kumar Bhadu, in his cross-examination also admitted that the site-plan was correct, as per the existing situation. He admitted that Ex.R-23, which had been issued, did not have any date of reference, in reply to which it had been issued by the Municipal authorities. It did not bear the seal of the issuing authority and was not on the letter-pad of the Municipal Council and he did not know the boundary of the Municipal Council, Sirsa at the spot. Ex.R-23 had been obtained from the Municipal Counsel Sirsa but he denied that the same was forged or fabricated.

13. A perusal of Ex.P-1 itself would show that the land which has been acquired has been shown in green colour and which is on the northern side of the District Jail. The tip of the land, as such, touches the Highway which is running from Sirsa to Barnala, which is on the said Highway. Adjacent to the Jail, is the Chaudhary Devi Lal Vidyapeeth and opposite the District Jail, is 30 acres of the Era Group of Private Builders. Further towards the Sirsa town, there are show-rooms which are shown in blue colour and thereafter, there is a 132 KV station. Right opposite is the Chaudhary Devi Lal Vidyapeeth which is of 22 acres and thereafter, there is another area of 26 acres, falling with the Era Group, which is falling in Sector 21. Right opposite is the other land which is the other part of the area of Village Vaidwala, which was acquired for the purpose of Sector 22 and thereafter, the land of Village Khairpur, which is falling on the Highway No.10, which goes from Sirsa to Hisar. PWD Rest House and the Judicial Complex, Police Lines are down south on the same Barnala road. As per the Index, the PWD Rest House was 2.5 kms whereas the Bus Stand on the National Highway No.10 is 3 kms. Similarly, the Mini Secretariat and Judicial Complex are at 1.5 kms and the Police Lines and Chaudhary Devi Lal University being at the same

distance.

14. Thus, it is apparent that the land which has been subject matter of acquisition on 19.12.2002 is in close vicinity. The only added advantage of the said land is that it is situated on the National Highway No.10 which would have more importance, as such, being on National Highway in comparison to the State Highway. The present land is located near the development having come up more on that side and therefore, the said judgment, as such, passed by this Court in **Swinder Singh** (supra) would be of great relevance and reliance. This Court, while dealing with the said acquisition, for notification dated 19.12.2002, for the land of Village Vaidwala, had noticed the potentiality of the land and the location as under:

> "6. Learned counsel for the landowners submitted that the learned court below has not awarded just and fair compensation for the acquired land keeping in view the location and potential value thereof. It is situated within the municipal limits of Sirsa town. Residential and commercial Sector-20, Part-I, Sirsa and HSIDC colony is also adjacent to the acquired land. Mini Secretariat, Judicial complex, banks, etc. are close to the acquired land. The basic amenities were available close to the acquired land. The distance between the acquired land and these places ranges from ½ KM to 2 Kms. The acquired land is sandwiched between Hisar-Sirsa road which is National Highway No. 10 and Sirsa-Barnala road leading to Punjab which is also a State highway. A road from D. C. Colony/ PWD rest house leading from Barnala road to Hisar road has been carved out underneath which is a minor and the acquired land abuts that road. Bus Stand, Sirsa, is also at a very small distance i.e. 2 kms away from the acquired

> land. Sahid Bhagat Singh Standium, Chaudhary Devi Lal University, Sirsa, are in the close vicinity of the acquired land. It is strategically located and had a great future potentiality.
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> xxxx xxxx xxxx xxxx
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> 15. It is admitted case of the parties that the acquired land is situated within the municipal limits of Sirsa town. Sector-20, Part-I, Sirsa and HSIDC colony are adjoining to the acquired land. Government offices like, Mini Secretariat, Court complex, banks, etc. are close to the acquired land. The basic amenities were available close to the acquired land. It is sandwiched between Hisar-Sirsa road (NH No. 10) and Sirsa-Barnala road leading to Punjab, a State highway. Bus Stand, Sirsa, Sahid Bhagat Singh Stadium, Chaudhary Devi Lal University, Sirsa, are in the vicinity of the acquired land."

15. Resultantly, 2 sale deeds had been relied upon as Exs.P-5 and P-6 of Village Kharipur, in **Savinder Singh's** case (supra) measuring 1 kanal each, executed on 15.11.2000, which had been sold @ Rs.823/- per sq.yard, 2 years prior to the notification in question. The Co-ordinate Bench had granted 24% increase and fixed the market value @ Rs.1020/- per sq.yard. Keeping in view the fact that the land acquired was of 305 acres, a cut of 40% had been applied, to fix the market value @ Rs.612/- per sq.yard. As noticed, the matter was taken to the Apex Court in **Piyara Singh** (supra) by the landowners. The Apex Court has further enhanced the value by firstly granting cumulative enhancement from Rs.823/- @ 12% from the year 2000 and also done away with the cut on the ground that the land acquired also of landowners was not more than 1 kanal to 1 acre per person. Therefore, there was no smallness versus large chunk of land and the fact that Exs.P-5 & P-6 were also for the same land which

had been acquired. Relevant portion reads as under:

> "Having heard learned counsel for the parties, we are of the view that the justice of these cases will be met if 12 per cent increase is granted cumulatively from the year 2000 itself and if no cut at all is applied. We are of this view inasmuch as the High Court itself recognizes the potential of this land which has been set out by us earlier in this judgment. Also, the reasoning of the High Court for applying a cut of 40 per cent does not commend itself with us for the simple reason that what has been acquired is only roughly 1 kanal to 1 acre per person which ultimately tortes up to 305 acres which is acquired by the State. Therefore, it is clear that there is no small versus large chunks of land on the facts of the present case. The Ex. P5 and P6 which are sale instances of one kanal, the same amount for the land as has been acquired will, therefore, have to be applied without applying any cut.
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> In the result, these appeals are allowed and a re-calculation will have to be made based upon what has been stated herein above. Needless to add, all statutory benefits will also follow. We may also hasten to add that our judgment will apply only to the appellants in the present case before us.
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> Appeals are disposed of accordingly."

16. As noticed from Ex.P-7, it is clear that the land is situated in close vicinity and would be at an equal distance from the PWD Rest House. However, the land for the notification dated 19.01.2002, to that extent, is on the said Highway and therefore, as per the judgment of the Apex Court, by following the said principle, the market value works out to Rs.1032/- per sq.yard. If a further enhancement is granted for the period of 9 months, the market value would work out @ Rs.1125/- per sq.yard (Rs.54,12,338/- per acre). However, keeping in view the fact that

the location of the land of the earlier notification is better being on the National Highway, while the present land is situated on the State Highway, this Court is of the opinion that the benefit of enhancement which is to be granted for the intervening period is not liable to be granted.

17. Resultantly, keeping in view the potentiality of the land and the fact that the private builders were also developing the land across and there would be no dearth of willing purchasers, this Court is of the opinion that it would be just and equitable that the market value is fixed @ Rs.1030/- per sq.yard (Rs.49,85,200/- per acre) along with statutory benefits. Resultantly, the appeals filed by the landowners are allowed and those filed by the State are dismissed.

27.09.2019 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No