IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No. 1100 of 2013 (O & M) and other connected cases
Reserved on: 14.10.2019
Date of decision: 18.10.2019

Subhash Chander and others ....Appellant(s)

Versus

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

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

Present: Mr. Shailender Jain, Sr. Advocate,
with Mr. Vikrant Rana, Advocate,
Ms. Anupama Arigala, Advocate,
Mr. Sidharth Goyal, Advocate,
Mr. Kamal Mor, Advocate,
Ms. Sunita Saini, Advocate,
for Mr. Aditya Jain, Advocate,
Mr. Ashok Tyagi, Advocate,
for the land owners.

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

G.S.SANDHAWALIA, J.

The present judgment shall dispose of 41 appeals i.e. RFA Nos. 1100, 1215, 1611 to 1614, 2455, 2456, 2869, 3332, 3333, 3334, 3360, 3361, 4731, 5589, 5726, 6360 of 2013; 1021, 1022 of 2014; 2350, 7075, 7103 of 2015 and 224 to 238 and 309, 732 and 1158 of 2016 as common question of law and facts are arising in all the appeals. For reference, ***RFA No. 1100 of 2013, Subhash Chander and others vs. State of Haryana and others*** is being taken up.

The present appeals have been filed by the land owners under Section 54 of the Land Acquisition Act, 1894 (in short 'the Act') against the awards dated 11.12.2012 and 26.08.2015 passed by the Reference Court, Gurugram. The Reference Court has enhanced the compensation for the notification dated 13.01.2010 issued under Section 4 of the Act for the land falling in village Kherki Majra to Rs.1,56,24,000/- per acre from Rs. 60,00,000/- per acre as awarded by the Land Acquisition Collector. Resultantly, the appeals have been filed. Vide the subsequent award dated 26.08.2015, the Reference Court chose to follow the earlier view taken.

The basis of enhancement is that on an earlier occasion for the notification dated 25.01.2008 for the same village, the Reference Court in an award dated 12.11.2012 (Ex.PX) titled as M/s. Ladle Propbuild Pvt. Ltd. vs. State had awarded a sum of Rs.1,26,00,000/- per acre. Resultantly, the increase has been granted of 12% per annum on the market value to fix the market value at Rs.1,56,24,000/- per acre alongwith all statutory benefits.

Counsel for the land owners has accordingly sought further enhancement on the ground that the market value for the earlier notification, on the basis of which the award had been passed, was enhanced by this Court and was further modified by the Apex Court to fix the market value at Rs.2,38,00,000/- per acre. It is accordingly submitted that the 12% cumulative increase will necessarily have to be granted on the said amount which would work out to Rs.2,98,54,720/- per acre.

A perusal of the record would go on to show that the land was acquired for the development and utilization of the sector roads 99 to 115 at Gurugram. The Land Acquisition Collector had awarded Rs.60,00,000/- per acre vide his award No. 81 dated 31.03.2010. Dissatisfied with the said award, the land owners had filed petitions under Section 18 of the Act. They examined as many as 8 witnesses to submit that the land was surrounded by various commercial, residential and institutional properties which had been developed by private builders and, therefore, claimed market value at Rs.50,000/- per square yard. The Development plan of Gurgaon Manesar Urban Complex 2021AD and 2025AD alongwith sectoral plans were also placed on record as Exs. P-1, P-2, P-21 and P-22. Sale deeds also were brought on record which have been reproduced by the Reference Court in para no. 16. The sale deeds which were proximate in location to the acquired land but being of the year 2008 were held not to be proximate in time to the acquired land since there was a difference of almost 2 years as such between the two Section 4 notifications.

The earlier notification dated 25.01.2008 which was for the development of 150 metres wide periphery road linking Dwarka Township Delhi from Haryana Boundary to NH-8 near village Kherki Daula at Gurgaon was relied upon. Vide the said award Ex.PX, *M/s. Ladle Propbuild Pvt. Ltd. (supra),* a sum of Rs.1,26,00,000/- per acre had been awarded on 12.11.2012. The Reference Court in the said award, to assess the market value, had relied upon sale deeds dated 24/25.01.2008 (Exs. P-1, P-2 and P-52) for land falling in village Kherki Majra @ Rs.2.80 crores per acre. Similarly, another sale deed dated 24.10.2008 (Ex.P-3) was also executed for the same price. The site plan (Ex.P-12) was examined to come to the conclusion that the acquired land was situated on the eastern side of the revenue estate of village Kherki Majra while the land sold was situated on the western side of the village. Therefore, it was situated within the more developed area and, thus, the Court came to the conclusion that the land sold vide sale deeds Exs. P-1, P-2 and P-52 was situated in the area more developed than the area of the acquired land. Resultantly, putting a deduction of 55% on the base price keeping in view the development expenditure and the development cut and waiting period inclusive of cut of 10% on account of the area sold, the market value had been fixed.

The Co-ordinate Bench of this Court in ***RFA No. 4475 of 2012, Ram Chander and another vs. State of Haryana and others*** decided on 20.05.2016, while dealing with the said award of the same village and the said sale deeds, had come to the conclusion that the sale deeds were of more than 4 acres of land and sold at a uniform rate and, thus, were a safe basis for assessing the market value without applying any cut thereon. Resultantly, compensation was enhanced to Rs.2,80,00,000/- per acre. Relevant portion reads thus:-

> *"It is pertinent to note here that sale-deed Ex.P1, Ex.P2 and Ex.52, all three were registered on 24-25/1/2008 out of the revenue estate of village Kherki Majra Dhankot itself. Area sold was more than four acres at the uniform rate of Rs.2,80,00,000/- per acre because of which these sale-deeds could have been safely made the basis for assessing the market value of the acquired land, without applying any cut thereon. In this view of the matter, no cut was warranted to be imposed, because neither area sold was smaller in size nor any kind of development was required, as the land acquired from the revenue estate of this village was situated in fully developed area, as per the site plans referred to hereinabove. Accordingly, the land owners of village Kherki Majra Dhankot are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.2,80,00,000/- per acre, from the date of notification under Section 4 of the Act."*

The matter was taken to the Apex Court in ***Civil Appeal Nos. 11814-11864 of 2017, State of Haryana and others vs. Ram Chander and***

another which was decided on 02.11.2017. The Apex Court reduced the amount awarded by putting a 15% cut to Rs.2,38,00,000/- keeping in view the development cut. The relevant portion reads thus:-

> *"10. In our opinion, the deduction of 15% towards development would have been sufficient, which ought to have been made in the instant cases, in the peculiar facts of the case, considering the potentiality of the area in question and the development which has taken place all around. This order not to be treated as a precedent in any other case. Thus, we modify the determination made by the High Court to the above extent only. Let deduction be made accordingly."*

The site plans exhibited in the present set of cases have also been examined by this Court and also the sale deeds which have been duly exhibited and reproduced in para no. 16 of the award. The said sale deeds are the same ones which have been discussed by this Court on an earlier occasion in *Ram Chander's case (supra)*. They are proximate in time to the present notification as there is only a difference of two years and, therefore, would be relevant sale exemplars. The said exercise has already been conducted to that extent and the Apex Court has approved the falling back on the said sale deeds.

The site plans (Ex.P-1 and Ex.P-2) have been examined to confirm that the sector roads which have now been carved out are in close proximity to the land which was earlier acquired and which was falling in the same village. The purpose has already been noted that the land is for the sector roads falling in Sectors 99 to 115. Sector 99 has been carved out of the land of village Kherki Majra and the said sector roads also open out on the earlier road which had been carved out and, therefore, there seems to be no plausible reasons why the earlier award should not be taken into consideration being a relevant piece of evidence. Even the award as such by the Land Acquisition Collector on an earlier occasion was of Rs.60,00,000/- per acre though there was an intervening period of two years.

Resultantly, this Court is of the opinion that the said sale exemplars can be successfully used as the basis for fixing the market value. The award having been modified for the notification of 2008, can also be utilized for fixing the market value for the present notification dated 13.01.2010 by giving 12% cumulative enhancement on Rs.2,38,00,000/- which has been awarded for the notification dated 25.01.2008.

A perusal of the chart reproduced in para no. 16 of the Reference Court award would show that the market value of the land went up to Rs.3,05,00,000/- on 13.02.2008 (Ex.P-4/A) within 15 days which shows a rising trend in prices and, therefore, the benefit of 12% increase can be granted.

The said principle has been laid down in ***General Manager, Oil & Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel, 2008 (4) RCR (Civil) 487*** which reads thus:-

> *"11. Primarily, the increase in land prices depends on four factors - situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster,*

where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during the nineties. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same.

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."*

It is also pertinent to notice that the State appeals bearing ***RFA Nos. 1728 to 1772 of 2013, State of Haryana through Collector Gurgaon vs. Inder Singh and others*** have already been dismissed qua the said village on 02.04.2013.

The market value is, thus, fixed at Rs.2,98,54,720/- per acre. Resultantly, the appeals of the land owners are allowed. The land owners will be entitled for the said market value alongwith all statutory benefits.

Miscellaneous applications, if any, in which no separate orders have been passed, also stand disposed of accordingly.

18.10.2019 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No