IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA-2793-2016 (O&M)
Decided on: 20.03.2019

State of Haryana & others ....Appellants

Versus

Smt. Chattar Devi & others ...Respondents

Cases filed by the State	Cases filed by the landowners
RFA Nos.2793, 2794, 2795, 2796, 2797, 3047, 3048, 3051, 3052, 3053, 3054, 3055, 3056, 3057, 3058, 3059, 3060, 3061, 3062, 3063, 3064, 3065, 3066, 3067, 3068, 3069, 3070, 3071, 3072, 3074, 3075, 3076, 3077, 3078, 3079, 3080, 3081, 3082, 3106, 3107, 3108, 3109, 3110, 3121 of 2016	RFA Nos.1945, 2574, 2822, 4854, 4862, 4863, 4864, 4865, 4866, 4867, 4868 of 2016 and RFA Nos.116, 117, 209, 649, 720, 1370, 1476, 1477, 1478, 1488 1489, 1490, 1525, 1540, 1541, 1542, 1768, 2301, 2302, 2314, 2315, 2458, 2808, 3900 of 2017

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

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

Mr.Namit Gautam, Advocate
Mr.Pardeep Kumar, Advocate, for
Mr.Namit Khurana, Advocate for the landowners.

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G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 79 appeals, 44 cases filed by the State and 35 filed by the landowners, under Section 54 of the Land Acquisition Act, 1894 (for short, the 'Act'), against the awards dated 02.01.2015, 09.09.2015 and 01.10.2015, passed by the Reference Court, Karnal.

Vide the said awards, the Reference Court has fixed the

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market value @ Rs.29,04,000/- per acre (Rs.600/- per sq.yard), enhancing it from Rs.12,00,000/- per acre, as awarded by the Land Acquisition Collector. It is also pertinent to mention that initially a sum of Rs.8,00,000/- per acre was fixed vide award dated 18.11.2010 passed by the Land Acquisition Collector and the second award was passed on 20.05.2011. The land was acquired vide notification dated 09.01.2009 under Section 4, followed by notification under Section 6 dated 09.06.2009, for the land falling in the three villages, namely, Kaul Khera, Popran and Jhimri Khera, Hadbast No.57 to 59. The public purpose of acquisition was for the construction of Khanda Minor from RD 0-38400 tail to RD 3940/R Muana Distributory.

Land measuring 11.54 acres in Village Jhimri Khera, 8.71 acres in Village Popran and 2.22 acres in Kaul Khera had been acquired. The initial award of the Reference Court dated 02.01.2015 has been followed in principal in the subsequent awards and the basis of enhancement was the Collector's rate (Ex.P-1), for Asandh Sub-Division, which was found to be Rs.600/- sq.yard, for the residential area. Accordingly, on the said basis, the Reference Court had enhanced the market value of the land, by holding out that as per the share of the landowners which was less than 2 kanals in some cases and if they had sold their shares in the land, the sale deeds would have been got executed for at least the value of Rs.600/- sq.yard. The claim for severance on account of Khanda Minor was rejected on the ground that the appellants had not led any cogent evidence to prove that their land had been severed due to the acquisition and there was no material on the case file that the

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acquired land passed through the middle of the land of the landowners and that due to the acquisition, they were left with land on both sides of the acquired land. The landowners had also relied upon 3 awards which were rejected on various counts by the Reference Court, mainly on the ground that it did not pertain to the village in question and the land of the said awards was situated at a far off distance from the acquired land. The market value of the said 3 awards in question ranged from Rs.400/- to Rs.822/- per sq.yard and the period of notifications ranged from the year 2007 to 03.06.2010.

Mr.Mahajan, Addl. Advocate General, has seriously opposed the enhancement which has been done, on the ground that there was a misreading of the evidence and the Collector's rate, as such, did not show that the market value for the land, which was totally agricultural in nature, falling in the villages in question, could be valued @ Rs.600/- per sq.yard. It is, accordingly, submitted that the rate was fixed for the residential area and as per Ex.P-1 at Sr.No.28, the market value for Nehri and Chahi land was only Rs.6,00,000/- per acre (Rs.124/- per sq.yard) for residential portion and nothing has been brought on record to show that the land was of such nature, i.e., residential which would be covered under the Collector's rate whereby the prescribed rate was Rs.600/- per sq.yard.

Mr.Namit Gautam, counsel for the landowners, on the other hand, has defended the rate which was fixed and submitted that further enhancement was liable to be done as the land acquired had great potential.

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After a perusal of the record, this Court is of the opinion that there is merit in the argument which has been raised by Mr.Mahajan. In the present cases, the landowners have been totally lax in leading evidence, to prove the market value in question. It is settled principle that the market value is to be settled on the basis of sale exemplars of similarly situated land. The criteria being what a willing purchaser would pay to a willing vendor on the date of the Section 4 notification. The transaction has to be *bona fide* and entered into with due regard to the prevalent market conditions and proximate in time to the relevant date under Section 23. The potentiality of the land in question is to be assessed whether it abuts the road and whether it has the potential to be developed into commercial or residential purposes, which are the factors which are to be kept in mind. The principles have been settled in **Dollar Company, Madras Vs. Collector of Madras 1975 (2) SCC 730** and **Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona 1988 (3) SCC 751**. The minus factors which have been highlighted are largeness of area, remoteness from the developed localities, lower levels requiring the depressed portion to be filled up, narrow strip of land with very small frontage compared to depth, situation in the interior at a distance from the road.

For the landowners to get the benefit of the plus factors which are frontage on the road, nearness to developed area, levelled portion of the land with proximity to the road, it is but necessary for the them to lead necessary evidence. In the present case, it is surprising to note that the landowners did not even bother to bring on record any site-

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plan to show as to where their land was situated and whether it was close to the land acquired and adjoining the land of the same District, as such, which was subject matter of other awards. It is not disputed that the awards also do not pertain to the villages in question. The least the landowners could have done is that by way of site-plan, shown that the land acquired in the Villages Taraori, Ballah and Asandh were in close proximity, so that the Reference Court could have the benefit of location and assess the market value on the principle of the value of the adjoining villages. In the absence of having done so, the onus lay heavily upon them which was not discharged.

The Apex Court in **'Special Land Acquisition Officer Vs. Karigowda and others' 2010 (5) SCC 708** has held that proper and cogent evidence should be led in support of the claim, which is the duty of the landowner for computing compensation. Reliance was accordingly placed upon the earlier judgments. The relevant portion reads as under:-

> "21.We may notice that Part III provides for procedure and rights of the claimants to receive compensation for acquisition of their land and also states various legal remedies which are available to them under the scheme of the Act. Under Section 18 of the Act, the Reference Court determines the quantum of compensation payable to the claimants. Section 23 provides guidelines, which would be taken into consideration by the court of competent jurisdiction while determining the compensation to be awarded for the acquired land. Section 24 of the Act is a negative provision and states what should not be considered by the court while determining the compensation. In other words, Sections 23 and 24 of the Act provide a complete scheme which can safely be termed as statutory guidelines

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and factors which are to be considered or not to be considered by the Court while determining the market value of the acquired land. These provisions provide a limitation within which the court has to exercise its judicial discretion while ensuring that the claimants get a fair market value of the acquired land with statutory and permissible benefits. Keeping in view the scheme of the Act and the interpretation which these provisions have received in the past, it is difficult even to comprehend that there is possibility of providing any straitjacket formula which can be treated as panacea to resolve all controversies uniformly, in relation to determination of the value of the acquired land. This essentially must depend upon the facts and circumstances of each case. It is settled principle of law that, the onus to prove entitlement to receive higher compensation is upon the claimants. In the case of Basant Kumar and Ors. v. Union of India and Ors. [(1996) 11 SCC 542], this Court held that the claimants are expected to lead cogent and proper evidence in support of their claim. Onus primarily is on the claimant, which they can discharge while placing and proving on record sale instances and/or such other evidences as they deem proper, keeping in mind the method of computation for awarding of compensation which they rely upon. In this very case, this Court stated the principles of awarding compensation and placed the matter beyond ambiguity, while also capsulating the factors regulating the discretion of the Court while awarding the compensation. This principle was reiterated by this Court even in the case of Gafar v. Moradabad Development Authority [(2007) 7 SCC 614] and the Court held as under:

> "As held by this Court in various decisions, the burden is on the claimants to establish that the amounts awarded to them by the Land Acquisition Officer are inadequate and that they are entitled to more. That burden had to be discharged by the claimants and only if the initial burden

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> in that behalf was discharged, the burden shifted to the State to justify the award."
>
> Thus, the onus being primarily upon the claimants, they are expected to lead evidence to revert the same, if they so desire. In other words, it cannot be said that there is no onus whatsoever upon the State in such reference proceedings. The Court cannot lose sight of the facts and clear position of documents, that obligation to pay fair compensation is on the State in its absolute terms. Every case has to be examined on its own facts and the Courts are expected to scrutinize the evidence led by the parties in such proceedings."

The said exercise having not been done in proper earnestness and the relevant sale deeds having not produced, this Court has no option, but to carefully examine the record that whether the market value as fixed by the Reference Court is justified in the facts and circumstances. As noticed reliance has been placed primarily on Ex.P1 which is the rate list of the Collector rate of Asandh Sub-Division for the year 2008-2009.

A perusal of the said document would go on to show that the market rate was fixed @ Rs.16,50,000/- for the land which was Nehri/Chahi which fell on the Asandh-Karnal Road, Asandh-Jind Road, Asandh-Kaithal Road, Asandh-Safidon Road, Asandh-Kohand Road and which land was within the municipal limits of Asandh upto the distance of 2 acres on both sides at Serial no.24. Similarly, at Serial No.28, the three villages had also been mentioned, whereby the market value was fixed @ Rs.6 lakhs per acre for Nehri/Chahi land and Rs.600/- was the rate of residential land. In the note it had been mentioned that for "Gair Mumkin" land measuring 2 kanals or less, the rate would not be less than

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Rs.600/- per square yard, which has been wrongly applied in the present facts and circumstances. Reliance can be placed upon the observations of the Apex Court in **Lal Chand Vs. Union of India 2009 (15) SCC 769**, wherein it was specifically held that the circle rate/guidelines rate can be relied upon provided the same had been fixed by any statutorily appointed Expert Committees in accordance with the prescribed assessment procedure, which is either street-wise, or road-wise, or area-wise, or village-wise. The relevant portion of the said judgment reads as under:-

> "16. It should however be noted that as contrasted from the assessment of market value contained in non-statutory Basic Value Registers, the position may be different, where the guideline market values are determined by Expert Committees constituted under the State Stamp Law, by following the detailed procedure laid down under the relevant rules, and are published in the State Gazette. Such state stamp Acts and the Rules thereunder, provide for scientific and methodical assessment of market value in different areas by Expert Committees. These statutes provide that such committees will be constituted with officers from the Department of Revenue, Public Works, Survey & Settlement, Local Authority and an expert in the field of valuation of properties, with the sub-registrar of the sub-registration district as the member secretary. They also provide for different methods of valuation for lands, plots, houses and other buildings. They require determination of the market value of agricultural lands by classifying them with reference to soil, rate of revenue assessment, value of lands in the vicinity and locality, nature of crop yield for specified number of years, and situation (with reference to roads, markets etc.). The rates assessed by the committee are required to be published inviting objections/suggestions

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from the members of public. After considering such objections/suggestions, the final rates are published in the Gazette. Such published rates are revised and updated periodically. When the guideline market values, that is, minimum rates for registration of properties, are so evaluated and determined by expert committees as per statutory procedure, there is no reason why such rates should not be a relevant piece of evidence for determination of market value. One of the recognised methods for determination of market value is with reference to opinion of experts. The estimation of market value by such statutorily constituted expert committees, as expert evidence can therefore form the basis for determining the market value in land acquisition cases, as a relevant piece of evidence. It will be however open to either party to place evidence to dislodge the presumption that may flow from such guideline market value. We however hasten to add that the guideline market value can be a relevant piece of evidence only if they are assessed by statutorily appointed Expert Committees, in accordance with the prescribed assessment procedure (either street-wise, or road-wise, or area-wise, or village-wise) and finalised after inviting objections and published in the Gazette. Be that as it may. We have referred to this aspect only to show that there are different categories of Basic Valuation Registers in different states and what is stated with reference to the stamp law in Andhra Pradesh or Uttar Pradesh, may not apply with reference to other states where state stamp laws have prescribed the procedure for determination of market value, referred to above.

17. In this case, there is nothing to show the circle rates have been determined by any statutorily appointed committee by adopting scientific basis. Hence, the principle in Jawajee Naganatham will apply and they will not be of any assistance for determining the market value.

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> Further, they do not purport to be the market value for lands in rural areas on the outskirts of Delhi, nor the market values relating to Rithala village. The circle rates relate to urban/city areas in Delhi and are wholly irrelevant. Whether the award relating to acquisition on 24.10.1961 is relevant."

As noticed above in the present case rate had been specifically fixed for the area in question road-wise and village-wise, but in the absence of any evidence having led to show the exact location and whether it fell on the said roads, the Reference Court was not justified in placing blind reliance upon the Collector rate as such to grant exorbitant enhancement as has been done by more than doubling the market value.

The Awards of the Collector would go on to show that for village Kaul Khera out of 17 kanals 2 marlas of land, 16 kanals 19 marlas of land was Chahi and Gair Mumkin was only 3 marlas. Similarly, for village Popran Chahi land was 69 kanals 16 marlas, whereas Gair Mumkin was 2 kanals 3 marlas out of 71 kanals 19 marlas. For village Jhimri Khera 88 kanals 4 marlas land was Chahi and Gair Mumkin was 5 kanals 1 marla land out of 93 kanals 5 marlas. Thus, the total land of "Gair Mumkin" category, as mentioned in the note, would only be 7 kanals 7 marlas.

The Reference Court itself had noted that the land is primarily agricultural in nature, but in spite of that went on to grant the rate which was fixed for residential area which is misreading of the evidence on the face of the record and the enhancement as such cannot be sustained in the peculiar facts and circumstances. Needless to say that

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this Court has also examined the Awards which had also been placed on record to come to the conclusion that whether any benefit as such can be granted to the landowners.

The Award passed in the LA Case No.13 of 2011 *'Dalip Singh Vs. The State of Haryana and another'* decided on 05.04.2014 (Ex.P6) pertains to notification dated 03.06.2010, which was issued for construction of New Water Works for augmentation of existing water supply from 65 LPCD to 135 LPCD to Asandh, whereby market value had been enhanced from Rs.12 lakhs per acre to Rs.39,81,706.67 per acre (Rs.822.66 per square yard), on the basis of a sale deed Ex.PW9/F. Similarly in the Award dated 13.11.2013 passed in LA Case No.14 of 2010 'Shiv Kumar Vs. The State of Haryana and others' (Mark B) was pertaining to the notification dated 3.1.2007, which was for development and utilization as residential, commercial area for Sector 1, Taraori, whereby the land was acquired @ Rs.24 lakhs per acre for A-Class land and Rs.20 lakhs per acre for remaining land. The same was enhanced by the Reference Court to Rs.39,81,706.67 per acre (Rs.822.66 per square yard) for A-Class land and Rs.33,18,088.89 per acre (Rs.685.55 per square yard) for remaining land, on the basis of the sale deed (Ex.P-7). Similarly, the Award dated 25.02.2011 passed in 'Sube Singh Vs. State of Haryana and others' (Mark C) for the notification dated 06.02.2007, whereby the land was acquired for the purpose of Approach Road from Karnal-Munak, Salwan Asandh to Tehsil Building Ballah. Rs.10 lakhs per acre had been awarded by the Land Acquisition Collector and the same had been enhanced to Rs.400/- per square yard, by noting that the

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land acquired in the "Abadi" area and could be compared favourably with Ex. P-5/B, a sale exemplar.

As noticed earlier nothing has been brought on record to show that the land in the said awards are the adjoining village and it is settled principle that market value has to be awarded on the basis of the sale exemplars and resultantly, the said awards can be of no benefit to the landowners not being of the adjoining villages .

Even on the issue of severance, there is absence of pleadings and material evidence as the landowners have also not stepped into the witness-box to plead and lead evidence to this effect that how much land was left on one side and what difficulty they had faced. Nothing has been brought on record to show the size of the Minor and therefore, the Reference Court was correct in declining the benefit of severance, in the absence of any proper pleadings.

Resultantly, the present appeals, filed by the State, are allowed and the award passed by the Land Acquisition Collector is upheld, to the extent of the land which is Nehri and Chahi. It is, however, clarified that land measuring 7 kanals 7 marlas which is Gair Mumkin in nature, will get Rs.600/- per sq.yard, which is the Collector's rate, as per Ex.P-1 with all statutory benefits. The appeals filed by the landowners are disposed of, accordingly.

20.03.2019 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No

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