

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.5401 of 2015 (O&M)

Reserved on: 19.03.2019

Date of Decision: 03.04.2019

Om Lata

... Appellant

VS.

State of Haryana & Ors.

... Respondents

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

Present: Mr. VB Aggarwal, Advocate for the appellant(s)

Mr. Sudeep Mahajan, Addl. AG Haryana
Ms. Vibha Tewari, AAG Haryana

Mr. Pritam Saini, Advocate for HSIIDC

G.S. SANDHAWALIA, J. (Oral)

(1) This judgment shall dispose of RFA Nos.5401 of 2015; 4214 of 2016 (O&M) against Reference Court, Rohtak award dated 12.05.2015. The appeals under Section 54 of the Land Acquisition Act, 1894 have been filed by the landowner and the beneficiary-Corporation who are aggrieved against the enhancement of ₹ 3 lakhs awarded on the sum of ₹ 27 lakhs which was the market value fixed by the Land Acquisition Collector vide his award dated 13.08.2010.

(2) The reference Court has thus fixed the market value @ ₹ 30 lakhs apart from ₹ 6 lakhs which has been granted on account of severance. Similarly, ₹ 2,98,000/- was granted for structures which was consisting of a boundary wall and a room of a plot which was acquired measuring 12 kanals 2 marlas of land situated in village Bahu Jamalpur, Dist. Rohtak. The public purpose for acquisition was for construction of Water Works for Industrial Estate, Rohtak and the notification under Section 4 was issued on 13.11.2009, was for 14 kanals 6 marlas.

(3) The reasoning given by the Reference Court to the enhance compensation was that the land in question was falling on the National highway and the collector rate for the village Bahu Jamalpur has been fixed @ ₹ 27,30,000/- per acre. The reference was made to letter of Joint Commissioner, Municipal Corporation, Rohtak forwarded to Deputy Collector, Rohtak (Ex.R6) whereby the Joint Commissioner in the capacity of Enquiry Officer had inspected the land in question and report had been received from the Halqua Patwari that Collector rate of the land in question was ₹ 40 lakhs per acre in the year 2012. It was further noticed that as per Ex.P15 it had been mentioned that the rate was ₹ 30 lakhs for the land abutting the National Highway whereas the market rate was ₹ 20 lakhs per acre. It was noticed that the village in question was closer to Rohtak city and as per the report of Patwari, Bahu Akbarpur (Ex.P9), the land was at a distance of 1 - 1½ KM from village Bahu Akbarpur and the land of Bahu Jamalpur was below the level of road and further drain for dirty water adjoined the land in question. The Collector rate at the time of acquisition was ₹ 30 lakhs per acre as per Ex.P13 whereas for village in question it was ₹ 27,30,000/-. Resultantly, keeping in view the judgment of the Apex Court in V.Hanumantha Reddy vs. Land Acquisition Collector, (2003) 12 SCC 642 the valuation was done wherein it was held that the land abutting National Highway would fetch more price than the land lying interior.

(4) For purposes of granting ₹ 6 lakhs on account of severance, it was noticed that under clause (3) & (4) of Section 23(1), on account of severance the, damage, if any, sustained was to be kept in mind apart from the fact that the injurious effect on the other property is another aspect which is to be kept in mind. It was noticed that on account of acquisition, 2 kanals

14 marlas was being left behind in Rectangle No.48 Killa No.12/2 and 19/1. The said portion had only 9 karams of front facing NH-10 and depth of about 53 karams which left the said plot with no commercial viability and therefore while granting ₹ 6 lakhs on account of damages, the benefit of Section 23(2) was denied relying upon the Division Bench judgment in **State of Bihar vs Rameshwar Singh AIR 1973 (Patna) 123**. The compensation for the structures was granted on account of the fact that the valuation which had been done by the State @ ₹ 1,67,053/- while assessing the said benefit by virtue of supplementary award No.21 dated 30.03.2012 did not show any abstract of cost measurement statement etc. to justify the compensation for structures. Resultantly, the estimate (Ex.P5 & P6) prepared by the landowners was accepted.

(5) Counsel for the appellant-landowners has also filed two applications i.e. under Order 6 Rule 17 read with Section 151 CPC for amendment of application under Section 18 of the 1894 Act for reference of matter to the learned District Judge, Rohtak (CM-10054-CI-2018 in RFA-5401-2015 & CM-10189-CI-2018 IN RFA-4214-2016) pleading that there was a typographical mistake to the extent that in the application under Section 18, 12 kanals 2 marlas has been written instead of 14 kanals 6 marlas as it is evident from the notification u/s 4 as well as Award No.3 of 2010-2011 announced on 31.08.2010. The reason for amendment is that the department itself had mentioned that the land was measuring 12 kanals 2 marlas in various documents. The said application has been opposed by the Corporation by filing the reply that the amendments could have been permissible before the Reference Court and not before this Court and as such the typographical mistake could not be allowed to be corrected as the same

is neither inadvertent or *bona fide*. Counsel for the appellant has not pressed the application for amendment and they are accordingly dismissed as withdrawn.

(6) Similarly, CM-350-CI-2019 IN RFA-5401-2015 & CM-345-CI-2019 IN RFA-4214-2016 have been filed under Order 41 Rule 27 CPC whereby site plan (Annexure A1) was sought to be placed on record to show the location of the land which is sought to be acquired. The applications were ordered to be heard with the main case but no response thereto have been filed by the Corporation and are accordingly allowed being in consonance with the site plan already on record Ex.A5.

(7) Counsel for the landowners Mr. VB Aggarwal has accordingly argued that the market value should be assessed @ ₹ 40 lakhs as per the report of the Patwari (Ex.P8) and therefore submitted that the amount of compensation is liable to be enhanced. It is further submitted that on account of severance as such also was fixed wrongly at a sum of ₹ 6 lakhs per acre and should have been on the basis of percentage of the market value as has been held in **Smt. Bindu Garg vs. State of Haryana 1999(2) PLR 794** and therefore the award of Reference Court is liable to be modified to that extent.

(8) Mr. Pritam Saini, Advocate for HSIIDC on the other hand, submitted that the market value had been correctly fixed by the Land Acquisition Collector and merely on account of Collector rate, the Court was not justified in enhancing the compensation from ₹ 27 lakhs per acre to ₹ 30 lakhs per acre. It is submitted that the severance had also been wrongly granted, as no damage had been done and the balance land could be used.

(9) Firstly coming to the issue of compensation, the respondent-authorities had acquired land measuring 12 kanals 2 marlas of the petitioner as per the statement No.19 on record. However by award dated 31.08.2010, 14 kanals 6 marlas of total land was acquired of land of village Bahu Jamalpur Hadbast No.93 and compensation for land amounting to ₹ 48,26,250/- was paid plus solatium @ 30% ₹ 14,47,875/- plus additional charges of ₹ 4,61,389/- totaling to ₹ 67,35,514/-, was paid to the appellant.

(10) At an earlier instance, the letter dated 19.10.2011 had been issued by the District Revenue Officer (Ex.P10) that the land was not abutting the National Highway No.10. However on 12.12.2011 (Ex.P11) the clarification was issued that it was abutting the National Highway and the word 'Not' was mistakenly typed and accordingly corrigendum was issued (Ex.P12) which also mentioned that the village had been also wrongly mentioned as Bahu Akbarpur in place of Bahu Jamalpur. The said aspect has been examined in detail as such by the Reference Court. It is also to be noticed that thereafter on 25.04.2012 the supplementary award (Ex.R7) had been passed wherein a sum of ₹ 1,67,053/- was assessed for the boundary wall of the plot in question along with a room. The site plan (Ex.P5) would show that along with the valuation report (Ex.P6) the fact that the plot was bounded on 4 sides and had a room as such which had been duly valued by the appellant. As per Annexure A which has now been placed on record by the application for placing on record the same is in consonance with Ex.P5 which shows that the plot is adjoining the factory of Shree Hanumanji Chemicals. It is categorical case as such of the landowners also that the plot had immense potential and was situated at a distance of 3 km from the municipal limits of Rohtak and falling in village Bahu Jamalpur and was

closer than village Bahu Akbarpur. The State in comparison had not furnished any proof of having the construction as such valued and neither produced any expert as such to contradict the report produced by the landowners. Therefore the amount granted for construction as such is not liable to be interfered with at the instance of Corporation.

(11) The potentiality of the land in question thus stands duly verified that it was abutting the Highway which would be clear now from the site plan Ex.P5 and Annexure A produced on record. Similarly, there is sufficient material to show that the lower authorities themselves have brought to the notice of the higher authorities that the land was abutting the highway and corrigendum had been issued Ex.P12. The landowner's husband on the strength of power of attorney had appeared and stated that the land was at a distance of 7 km from Chhotu Ram Chowk, Rohtak and had potential of development though the land in question was being used for agricultural purposes when the same was acquired. It was 2 KM away from the municipal limits and was surrounded by factories and therefore could be treated as commercial in nature. Accordingly the claim of ₹ 2 crores per acre had been put. In cross-examination also, he had stood by his deposition to submit that the spot in question was at a distance of about 7 kms from Chhotu Ram Chowk, Rohtak. He denied the suggestion that the compensation had been paid in accordance with the rates scheduled for land falling within the NCR limits.

(12) The Corporation had produced RW1 Naveen Kumar, Assistant Manager, Industrial Area, HSIIDC who had bought on record the supplementary award. The said official had no personal knowledge as he was not posted at Rohtak. However, he admitted that the land abutted the

National Highway which goes from Rohtak to Hisar and was bounded by a boundary wall and a room had been constructed on the said land.

(13) Similarly, sale deeds of 2007 to 2010 Ex.R2 to R5 as such had been produced but the location as such regarding the said site plans could not be depicted by the Clerk of the Sub Registrar and therefore no reliance can be placed on the said sale deeds. The respondents have also not brought on record the site plan as such to show the location of the said sale deeds.

(14) Keeping in view the cumulative discussion above, it would be clear that the Reference Court has relied upon the Collector rates to enhance the compensation.

(15) The Apex Court in **Lal Chand vs. UOI (2009) 15 SCC 769** approved the said method as such to hold that the circle rates and guidelines can be relied upon and are a relevant piece of evidence if assessed by the statutory Expert Committee street-wise, or road-wise, or area-wise, or village-wise. The relevant portion 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 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.”

(16) Resultantly, keeping in view the above, the enhancement which has been granted after noticing the land falls on the National Highway and the value has been fixed @ ₹ 30 lakhs cannot be faulted with in any manner. The report of Patwari (Ex.P8) as such cannot be relied upon *ex facie* as such report cannot be the basis of fixing the market value of land. The best example for fixing the market value would have been to bring on record the sale deeds of area similarly placed which the landowners had failed to bring on record for the exorbitant claim of ₹ 2 crores. For the said proposition, the law laid down by the Apex Court in **P.Ram Reddy vs. Land Acquisition Officer, Hyderabad (1995) 2 SCC 305** can be relied upon. The relevant portion reads as under:-

“12. Then, comes the question of determining the market value of the acquired land with building potentiality. Undoubt- edly such market value of the acquired land with building potentiality comprises of the market value of the land having regard to the use to which it was put on the relevant date envisaged under [Section 4\(1\)](#) of the LA Act plus the increase in that market value because of the possibility of the acquired land being used for putting up buildings, in the immediate or near future. If there is any other land with building potentiality similar to the acquired land which had been sold for a price obtained by a willing seller from a willing purchaser, such price could be taken to be the market value of the acquired land, in that, it would have comprised of the market value of the land as was being actually used plus increase in price attributable to its building potentiality. If the prices fetched by sale of similar land with building potentiality in the neighbourhood or vicinity of the acquired lands with building

potentiality, as on the relevant date envisaged under [Section 4\(1\)](#) of the LA Act, are unavailable, it becomes necessary to find out whether any building plots laid out in a land similar to the acquired land had been sold by a willing seller to a willing buyer on or near about the relevant date under [Section 4\(1\)](#) when the acquired land had been proposed for acquisition and then to find out what would be the price which the acquired land would have fetched if had been sold by making it into building plots similar to those sold. In other words, an hypothetical lay- out of building plots in the acquired land similar to that of the layout of building plots actually made in the other similar land, has to be prepared, and the price fetched by sale of building plots in the lay-out actually made should form the basis for fixing the total price of the acquired land with building potentiality, to be got if plots similar to other plots had been made in the latter land and sold by taking into account plus factors and minus factors involved in the process.”

(17) It is well settled principle that the onus to prove the market value is always on the landowner. It is for the landowners to bring on record sufficient sale exemplars which are the best piece of evidence to submit that what a willing purchaser would pay to a person who is willing to sell. The said view was laid down in **Special Land Acquisition Officer vs. Karigowda (2010) 5 SCC 708**. 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 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 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."

(18) Resultantly, the landowners cannot turn around and submit that the market value is liable to be enhanced on the basis of a report of a lowly placed revenue officer.

(19) Coming on the issue of severance, there is merit in the argument of the landowners as such that as per the award 12 kanals 2 marlas of the land of the petitioner having been acquired and the claim as such is that the landowner was owner 14 kanals 6 marlas. Thus she has been left with only 2 kanals 14 marlas of land which has become useless having been truncated and not viable for development. In such circumstances, reliance upon **Bindu Garg's** case (supra) is justified that landowners have been left with paltry landholding which is no longer viable for the purposes of agriculture or for any commercial value as the lion's share as such has been acquired. Under clause (3) & (4) of Section 23(1) the landowner is thus to be granted necessary compensation as the witness had deposed regarding the

fact that the path and water course had also been demolished and the applicant have been left without amenities. Nothing as such was brought on record by the respondents to controvert this aspect.

(20) In similar circumstances the Division Bench in **State of Punjab vs. Gopal Singh 2002(2) PLR 843** came to the conclusion that the landowners could not access their land on account of the Dholbaha dam being built. Resultantly, 50% of the market value of the unacquired land on account of the damages for severance was granted. The relevant portion reads as under:-

*“9. Relying upon the judgment of this Court in **Narinder Kaur v. State of Punjab, 1980 Revenue Law Reporter 399**, it was further held by the learned Additional District Judge that the claimants of land reference other than the land reference Nos. 1 to 3 of the 1983, would be entitled to compensation at the rate of 50% of the market price of their unacquired land on account of damages for severance from the acquired land in addition to the market price of the acquired land, besides the usual solatium and interest. Claim of the respondents with regard to loss suffered on account of growing trees on the land was rejected.*

12. Coming to the merits of this case, we may observe that the learned Additional District Judge, while increasing market value of the land from the one awarded by the Land Acquisition Collector, solely placed reliance upon a judgment of the same very Court, vide which market value of the land, subject matter

*of the same award, was assessed. Findings regarding location of land subject matter of acquisition in this case and the one subject matter of decision in **Jamma Dass v. State of Punjab** have not been disputed before us. Categorical finding has been recorded by the learned Additional District Judge, that the land of the same common award is in a compact block. There is no scope whatsoever, again, in either rejecting altogether claim of the respondents on account of damages caused to them due to severance of their land which has now been inaccessible or even to reduce the compensation on that aunt. Again, it has remained undisputed that the unacquired land is on hilly tops and there is no access to the same. It has become totally useless for the respondents. Counsel representing the State, during the course of arguments, could not urge anything whatsoever that may detract from the findings of the learned Additional District Judge, reference of which has been given immediately above.”*

(21) Accordingly keeping in view the above, this Court is of the opinion that the landowners would be entitled for compensation @ 50% of the market value which has been correctly assessed @ ₹ 30 lakhs per acres for the unacquired portion of the land. Resultantly, the present appeals are disposed holding as follows:-

- (i) The market value of the land is assessed @ ₹ 30 lakhs per acre.
- (ii) On account of severance charges for the unacquired portion measuring 2 kanals 2 marlas, the market value would be based @ 50% of the ₹ 30 lakhs per acre.

(iii) The compensation as assessed for the structures @ ₹ 2,98,000/- is upheld. However on amount of severance and the value of structures, the landowners will not be granted the statutory benefits under Section 23(1A) and Section 23(2). The said benefits would only be payable on market value of the land which has been assessed, in view of the law laid down in **State of Punjab vs. Amarjit Singh & Anr, (2011) 2 SCALE 610.**

(22) Disposed of in above terms.

03.04.2019

vvishal

(G.S. Sandhawalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No