IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA-725-2016 (O&M)
along with other connected cases
Date of decision: 05.09.2019

State of Haryana & others ....Appellants

Versus

Sohan Lal & another ...Respondents

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

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

Mr.Prateek Mahajan, Advocate, for HPGCL.

Mr.Ajay Jain, Advocate
Mr.Arvind Rajotia, Advocate
Mr.Parveen Chauhan, Advocate
and Mr.Durgesh Aggarwal, Advocate
Mr.Aashutosh Jerath, Advocate
Ms.Anita Kumari, Advocate, for
Mr.Rose Gupta, Advocate, for the landowners.

G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of appeals, filed under Section 54 of the Land Acquisition Act, 1894, 31 appeals filed by the State, 15 appeals filed by the landowners along with 13 cross-objections, filed by the landowners.

Vide 2 notifications dated 04.04.2008 and 10.12.2008 (hereinafter referred to as the 'first notification and the second notification, respectively), issued under Section 4 of the Act, in question, land has been acquired of Village Barwala and therefore, the present judgment shall deal with the same. The awards of the Reference Court, Hisar are dated 05.11.2015 and 02.11.2016, respectively.

Facts of the first notification

Vide the first notification dated 04.04.2008, which was followed by the notification under Section 6 dated 09.05.2008, land measuring 12.87 acres was sought to be acquired for the construction of Rajiv Gandhi Khedar Thermal Feeder Channel. The Land Acquisition Collector, vide award No.20-H dated 17.11.2008, fixed the market value @ Rs.8 lakhs per acre for Nehri, Rs.10 lakhs per acre near National Highway and Rs.17 lakhs per acre, for the land near Railway track. In the petitions filed under Section 18 of the Act, the Reference Court, vide award dated 05.11.2015, while deciding 20 petitions, the main case being Smt. Bharpai Vs. State of Haryana, fixed the market value @ Rs.1095/- per sq.yard (Rs.52,98,667/- per acre). The basis of enhancement was the sale deed dated 24.09.2007, for land measuring 2 kanals, sold for Rs.19,87,000/-. Accordingly, the market value was assessed per acre @ Rs.79,48,000/- per acre and by granting 1/3rd cut, the value was reduced by Rs.19,86,000/- and the market value was accordingly assessed.

Facts of the second notification

The notification under Section 4 read with Section 17 was issued on 10.12.2008 and Section 6 notification was issued on the next day, i.e., 11.12.2008. The award was passed on 25.02.2009 @ Rs.8 lakhs per acre for all kinds of land, for 16.6 acres. The purpose of acquisition was for the construction of the Railway track for approach to Rajiv Gandhi Thermal Power Plant, Khedar (Hisar). The landowners, being dissatisfied with the compensation granted by the LAC, approached the Reference Court under Section 18 and the market value was assessed @ Rs.1100/- per sq.yard (Rs.53,24,000/- per acre). The Reference Court, while deciding the said issue, primarily relied upon the earlier award dated 05.11.2015, in the case of LAC-93-LA titled *Smt.Bharpai Vs. State of Haryna & others,* to grant the same amount of compensation. A finding was recorded that one of the landowners, Savitri, whose land was also acquired vide the first notification and falling in Rectangle Nos.518//23/2/1(1-2) and vide the second notification, the balance land of the said killa was acquired measuring 4 kanals 14 marlas. The claim for enhancement @ 12% was declined for the difference between the 2 notifications for the period of 8 months 6 days. The purpose of acquisition being for the infrastructure of the Thermal Plant and the earlier acquisition being for the Water Channel and the present one for the Railway activity, were the reasons why the market value in the same range was awarded @ Rs.1100/- per sq.yard. It was noticed that nothing had come on record that the price had increased during the vicinity of 8 months.

Counsels for the State and for the Power Generation Corporation Ltd., have objected to the enhancement on the ground that the sale exemplars, as such, were small in size and were only 2 kanals and the cut was on the lower side.

Mr.Sudeep Mahajan has also submitted that the land acquired for the Feeder Channel was going away from the National Highway and therefore, placed reliance upon judgment of the Apex Court in **Haridwar Development Authority, Haridwar vs. Raghubir Singh etc. (2010) 11 SCC 581**, to submit that the market value should be reduced, accordingly. State has also filed an application for additional evidence under Order 41 Rule 27 CPC, bearing CM-6027-CI-2016 in RFA-725-2016 and placed on record 2 sale deeds dated 10.10.2007, measuring 1 kanal 4 marlas, the market value of which would work out to Rs.34 lakhs and 24.12.2007, for 9 kanals 8 marlas, market value of which would work out to Rs.3,60,000/- per acre. Site-plan (Annexure A-3) was also placed on record showing the location of the said sale exemplars.

Mr.Prateek Mahajan, Advocate, appearing for the Corporation, has submitted that the land was on the other side of the

Railway track and therefore, the value, as such, should have been lesser and therefore, the market value @ Rs.1100/- per sq.yard, for the second notification, was not justified.

Counsels for the landowners, on the other hand, claim further enhancement and submit that the cut was not justified. The sale deeds were pertaining to the same rectangle No.568 and the sale instance was dated 24.09.2007, i.e., 7 months prior to the issuance of the Section 4 notification and therefore, could not be questioned. Neither any plea, as such, had been taken that the said sale exemplar was used for bolstering the sale instances of the land acquired and the cut, as such, was not justified.

In support of the second notification, counsels for the landowners have further submitted that there was a claim for severance also which has been totally ignored by the Reference Court. Once there was a Railway line set up and there was sufficient evidence, as per the statement of the witnesses and as per the award of the LAC dated 25.02.2009 to show that the landowners would be prejudiced on account of the Railway track cutting through their land, the element of severance should have been granted.

After hearing counsels for the parties, this Court is of the opinion that the sale deed, as such, which has been relied upon dated 24.09.2007 (Ex.P-1) has been noticed to be of Rectangle No.568 Killa No.6 and was purchased for Rs.19,87,000/-. The site-plan (Ex.PW3/A) clearly depicts the location of the said sale exemplar. The site-plan further goes on to show that the Feeder Channel is drawing water from one Bhadour Minor, where Rectangle No.569 is situated, which is on the extreme right of the site-plan and at the far end from the Plant. Rectangle Nos.568 and 567 are situated whereby the acquired land comes closer to the National Highway No.65, which is running from Hisar to Chandigarh. The Feeder Channel even crosses the National Highway upwards and then turns left, going away to Rectangle Nos.557, 558, 559, 560 and 518, while crossing the Railway track, which is going from Hisar to Ludhiana. Thus, it is apparent that the land acquired for the feeder channel is situated on both the sides of the Highway.

The argument, as such, which has been raised by Mr.Sudeep Mahajan that compensation should be granted in a decreasing manner for the land away from the Highway, in such facts and circumstances, is not justified. Rectangle No.568 is also situated at a distance of 7 acres from the Highway which is running on its left and therefore, the value, as such, of the land would be less than the one which would be smack on the National Highway and which would command much more premium. It can, thus, be safely said the average for the market value of the land on the extreme left and closest to the National Highway, which is at Rectangle No.567 whereas the market value for Rectangle No.569 on the extreme right would further decrease. Therefore, the value of Ex.P-1, which is in the centre, is the appropriate value and no reduction, as such, can be granted on the principles laid down in **Haridwar Development Authority** (supra).

In the said judgment, it has been categorically held that land falling next to the National Highway always commands higher value than the land which are further away. As noticed earlier also, by turn on the top of the Highway also away to the Railway track would, therefore, decrease the value which would keep on decreasing as one goes to Rectangle No.518 on extreme left from the National Highway. Therefore, the same principle would apply to the land of Rectangle No.557 on the top of National Highway would command more value in comparison to Rectangle No.518. Even the official witness, as such, did not make out a case that the sale exemplar (Ex.P-1) had been executed for the said purpose of increasing the market value. Rather it was submitted by the official witness, RW-1, the SDO that the affidavit was prepared as per the evidence on record and he was not aware of the facts of the case and had no personal knowledge.

Coming to the cut of 1/3rd, the same is justified, in the facts and circumstances. The land which has been acquired is 12.87 acres in the first instance and 16.6 acres in the second instance. It is settled principle that the sale deed, as such, is not of that large area which would depict the correct market value, as such. In **Trishla Jain & another Vs. State of Uttranchal (2011) 6 SCC 47**, **Chandershekhar (D) by LRs Vs. Land Acquisition Officer (2012) 1 SCC 390** and **Mehrawal Khewaji Trust (Regd.) Faridkot Vs. State of Punjab & others 2012 (4) SCR 24**, the Apex Court has held that cut is to be put on account of the area which has been acquired and keeping in view the smallness of the sale exemplar.

Coming to the issue of additional evidence, placing reliance upon sale deed dated 10.10.2007 and 24.12.2007, would be of no help to the State. The said sale deeds shows huge variance of market value of the land. As noticed, land has been sold @ Rs.34 lakhs per acre in the one instance and within a period of 2 months, in the second instance, @ Rs.3,60,000/- acre. In the application filed under Order 41 Rule 27 CPC, no ground has been made out as to on what reason the application is liable to be allowed and whether the State was stopped from producing the material documents on record or that the same was not available. The provisions of Order 41 Rule 27 are, thus, not satisfied and neither it is the case of the State that the matter cannot be decided and the said sale deeds are necessary for falling back on the same. Rather a perusal of the zimni orders would also go on to show that sufficient opportunities were granted to the State as the evidence of the landowners was closed on 11.11.2014 and the case was fixed for 09.01.2015 and thereafter, was adjourned to 02.03.2015, 12.03.2015, 08.04.2015, 27.05.2015 and eventually, the official witness was examined on 06.07.2015. No effort was made to produce the said sale deeds. Thereafter also, the case was pending for rebuttal evidence till its decision on 05.11.2015. A period of full one year was available to the State to produce the said sale deeds but it had failed to do so.

The Apex Court in **Satish Kumar Gupta and others Vs. State of Haryana and others AIR 2017 SC 1072** has held that provisions of Order 41 Rule 27 are not meant to fill up the lacuna to patch up the weak point of the case. Similar are the observations of the Apex Court in **Union of India Vs. Ibrahim Uddin & another 2012 (8) SCC 148** wherein it has been held that additional evidence is only to be allowed in exceptional circumstances, only when the conditions of Order 41 Rule 27 are found to exist. As noticed, it is not the case where the evidence is required to pronounce judgment and resultantly, this Court is of the opinion that the application for additional evidence is not liable to be allowed.

Coming to the award dated 02.11.2016, the Reference Court was well justified in placing reliance upon the earlier award. The site-plans (Exs.P-2 & P-3) would further go on to show that the Railway line is providing a connectivity to the Thermal Plant from the main Railway line running from Hisar to Ludhiana. Thus, it is for the same Thermal Plant, as such, which is also clear from the site-plan and also that the Rectangle No,518 is a common Rectangle which was falling in the acquired land of the earlier award belonging to Savitri, which was acquired in both the notifications. It is, thus, apparent that it is not the case of any blind reliance upon the earlier award. The land is situated in close vicinity. It is settled principle that the awards are relevant piece of evidence especially once they are pertaining to the same revenue estate and from the site-plan, it would be clear that there was a criss-cross, as such, in the Railway line and Thermal Feeder Channel.

The argument of Mr.Prateek Mahajan that the land was further away from the Highway and therefore, lessor value should have been granted, is not liable to be accepted. As noticed above, the LAC has recognized the fact that the land which is closer to the Railway track is more valuable and granted Rs.17 lakhs per acre, in comparison to the land which was away, @ Rs.10 lakhs and thus, recognizing the potentiality of the land. The Reference Court had also noticed that specific plea had been taken that the land was within the Municipal Limits and thus, it is apparent that it is on this account that the market value for the land closer to the Railway track was assessed at a higher value. Even from the evidence it would go on to show that Bhiwani Cotton Mill was situated in front of the acquired land, for the Railway line, as per the statement of various witnesses. It is, thus, apparent that there was immense potential in the land in question which has been pegged at a higher market value. Statement of RW-2 also shows that it was at a distance of 2 kms from the Bus-stand and Barwala town and 1 km from National Highway-65. It is, in such circumstances, the award which has been relied upon earlier, is on account of justified reasons. This Court has also examined the site-plans (Exs.P-2, P-3, P-9 etc.) and the facts are further verified as to the location of the Thermal Plan, as such and the land which has been acquired for the Feeder Channel and the Railway Line, vide both the notifications, which are falling in close vicinity.

Similarly, reliance upon Ex.R-2 to R-5 also cannot be made which are sale deeds showing market value ranging between Rs.4.21 lakhs to Rs.5.29 lakhs per acre, between February, 2008 to June, 2008, as the Reference Court has observed that the same are situated outside the Municipal limits.

The argument raised for severance on account of Water Channel, for the land acquired vide the first notification, is not justified. It is clear that the Water Channel is in a form of elevated concrete water channel running over the land which has been acquired and is 10 feet above the land as per the statement of PW-3, Sita Ram Jangra, the Draftsman and is raised by virtue of pillars and thus, access by the landowners to the other side would always be there.

Lastly, the issue comes of severance for the second notification. It has been specifically pleaded in the petition under Section 18 that the land has been severed on account of the Railway line, as such and that the Railway track had been running through the land and therefore, severance charge has been prayed for.

In reply also, it has been mentioned that the said issue has been considered in Issue No.(vi) of the award of the LAC. A perusal of the award dated 25.02.2009 in question would also go on to show that under Issue No.(iii), it was held that the demand of the landowners were genuine and it was ordered that till some arrangement is made to cross the Railway line on the said path by the concerned authorities by installation of manned or un-manned gate, the Railway track shall not be laid on the site. Similarly, on Issue No.(vi), it was decided that the Land Indenting Department shall take initiative either to provide approaches to the left portion of said khasra numbers or acquire th same at all within a period of maximum 3 months, failing which, the Department shall be responsible to face the consequences. Resultantly, even the LAC recognized that there was severance, as such. The Reference Court failed to address this part of the issue.

In such circumstances, this Court is of the opinion that for the second notification dated 10.12.2008, the landowners are entitled for an additional amount of 30% of the market value on account of severance, in view of third Clause of Section 23 of the Act. Accordingly, the appeals filed by the landowners are allowed for the second notification and severance at 30% of the market value is granted and State appeals are dismissed. Consequently, the appeals filed by the Corporation, the State and of the landowners, for the first notification, are dismissed.

05.09.2019 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*