

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RA-RF No.8 of 2021 in
RFA No.4850 of 2014
Date of decision:22.03.2021

Ajit Singh and others

...Applicant-Appellants

Versus

Chief Manager, Projects, MDPL,
HPCL and others

...Non-applicant/ Respondents

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

Present: Mr. Raman Sharma, Advocate,
for the applicant-appellants.

(The proceedings are conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

This order shall dispose of 20 review applications bearing RA-RF-8-2021 in RFA-4850-2014, RA-RF-20-2021 in RFA-4855-2014, RA-RF-2-2021 in RFA-10805-2014, RA-RF-3-2021 in RFA-4860-2014, RA-RF-14-2021 in RFA-4862-2014, RA-RF-10-2021 in RFA-4858-2014, RA-RF-7-2021 in RFA-4854-2014, RA-RF-13-2021 in RFA-4863-2014, RA-RF-9-2021 in RFA-4867-2014, RA-RF-12-2021 in RFA-4864-2014, RA-RF-17-2021 in RFA-4856-2014, RA-RF-19-2021 in RFA-4857-2014, RA-RF-11-2021 in RFA-10810-2014, RA-RF-4-2021 in RFA-4852-2014, RA-RF-15-2021 in RFA-4865-2014, RA-RF-6-2021 in RFA-4866-2014, RA-RF-1-2021 in RFA-4851-2014, RA-RF-5-2021 in RFA-4853-2014, RA-RF-18-2021 in RFA-4861-2014 and RA-RF-16-2021 in RFA-4859-2014 as common questions of law and facts are involved in all these applications.

However, for the sake of convenience, the facts are being extracted from RA-RF-8-2021 in RFA-4850-2014.

The review of the order dated 07.02.2020 has been sought on the strength of the observations of the Apex Court, wherein certain factual errors were sought to be highlighted regarding distance of the acquired property with the other properties, in which, according to the learned Solicitor General, the distance of the acquired property, in comparison to the other properties, was incorrect. The said order of the Apex Court dated 04.01.2021 reads as under:-

“Mr. Tushar Mehta, learned Solicitor General appearing for the petitioner, has submitted that there are factual errors in the judgment of the High Court, specially with regard to distance of the property with other properties where earlier acquisition had been made, which according to him is incorrect. He thus prays that the petitioner be permitted to file an application for review of the impugned order. Prayer is granted. The Special Leave Petitions are dismissed as withdrawn with liberty aforesaid.”

Counsel for the applicant-appellants accordingly submits that Patwari Gaje Singh, while appearing as PW4, deposed that the distance between NH-10 and the acquired land was of 6-7 acres but inspite of that, a finding has been recorded, in paragraph 18 of the judgment, that the distance was of 250 meters. However, the said finding is on the strength of the site plan, which was produced by the landowners. The Court had also kept into consideration not only the statements of the landowners but also the statement of RW1 Bhagwan Dass, Manager, HPCL, from where it transpired that there was LPG Bottling Plant just abutting and adjoining the land acquired even before the date of notification, i.e. 16.11.2005. In his cross-examination, it also transpired that not only the industrial units like Swastik

Pipe Limited etc. were functioning but also the fact that the acquired land was situated between NH-10 and the Assauda-Kharkhoda-Sonepat road. Keeping in view the fact that the petrol pumps, colleges like Haryana Institute of Technology, PGDM College, Water Works, hostel and the police post were there on the NH-10 and the Railway Station, Assauda was on the northern side of the acquired land, the potentiality of the land had been considered while assessing the compensation.

It was also noticed that there was an another award pertaining to the notification dated 24.01.2001, wherein a sum of ₹14,56,000/- per acre was granted for village Jhakhoda, which was also part of the present acquisition. Keeping in view the fact that the said award was more than 4-½ years earlier, the same was not kept into consideration, though it was noticed that if the benefit of cumulative effect of 12% enhancement is given, the market value would move upto ₹19,03,958/- per acre.

Thus, the reliance has been placed upon the award in respect of the land acquired for the Kundli-Manesar-Palwal Expressway vide notification dated 29.09.2005 as it had come in evidence that the Kundli-Manesar-Palwal Expressway was passing in close vicinity of the area and the Apex Court itself had assessed the market value @ ₹32,62,500/- in the case of **Jag Mahender and another vs. State of Haryana and others**, SLP No.16063 of 2016, decided on 21.09.2017, which had been placed on record by way of an application for additional evidence filed under Order 41 Rule 27 CPC, along with the site plan.

Counsel for the applicant-appellants has now placed reliance upon the judgment of the Apex Court rendered in the case of **Land**

Acquisition Officer, City Improvement Trust Board, Bangalore v. H. Narayanaiah (1976) 4 SCC 9 to submit that opportunity should have been given to adduce evidence in rebuttal while deciding the application filed under Order 41 Rule 27 CPC. The said argument, as such, is also not liable to be accepted on account of the fact that the opportunity was given to the Corporation, as such, and the reasons for allowing the application find mention in paragraph 7 of the judgment, which reads as under:-

“7. Keeping in view the fact that the judgment of this Court and the Apex Court were passed on subsequent date after the award of the Reference Court, the application for additional evidence is liable to be allowed as it is a relevant piece of evidence and is of the same revenue estate. The application falls within the parameters of Order 41 Rule 27 and would also be helpful for this Court to pronounce judgment as per the said provisions. Reference can also be made to the judgments of the Apex Court in *Wadi vs. Amilal and others, 2002 (2) PLJ 230; K.R. Mohan Reddy vs. M/s. Net Work Inc Rep Tr. MD, 2007 (10) SCR 872; North Eastern Railway Administration, Gorakhpur vs. Bhagwan Dass (D) through L.Rs., 2008 (8) SCC 511* and *UOI vs. K.V. Lakshman and others, 2016 (13) SCC 124* regarding this aspect.”

It is settled principle that an application for additional evidence is to be decided at the time of hearing of the final appeal and the material, which is sought to be brought on record, is to be taken into consideration only if it is relevant for the purpose of deciding the appeal. The said exercise is to be done at the time of hearing the appeal itself, as per the settled principle of the Apex Court itself, as the Court has to see whether the evidence is relevant, as such, for deciding the appeal. This Court was of the opinion that the award, as upheld by the Apex Court held on 21.09.2017 in **Jag Mahender's case (supra)**, would be relevant piece of evidence and

especially having been rendered after the award of the Reference Court, which was dated 30.08.2013 and thus, there would be no useful purpose in remanding the matter. In such circumstances, the said award was preferred, over and above the 4- ½ years earlier award, as a more relevant piece of evidence. Even otherwise, a 20% cut was still applied on account of location of the land as it was closer to the railway line in comparison to the other tracts of land. However, as noticed, it was surrounded by the industrial units, which led to its acquisition.

The judgment, as such, was also dictated in the open Court which would clear from para no.1 of the judgment and, therefore, if there was any ambiguity or error in the factual matrix, it could always have been pointed out by the counsel but was not done. In such circumstances, this Court is of the opinion that no case for review is made out specially keeping in view the fact that the compensation cannot be assessed with exact mathematical precision and the principle of guesstimation has also been upheld by the Supreme Court in the case of **Trishala Jain and another vs. State of Uttaranchal and another**, 2011(6) SCC 47.

Thus, keeping in view the above, this Court is of the opinion that no case is made out for review of the order dated 07.02.2020 as no irregularity or illegality has been pointed out, which fall within the parameters of Order 47 Rule 1 read with Section 114 CPC.

Dismissed.

March 22, 2021
vinod*

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No