

(2015) 02 SC CK 0003

In the Supreme Court Of India

Case No : C.A. Nos. 2231-2242 of 2015 (Arising out of SLP(C) Nos. 26432-26443 of 2013), 2243-2249 of 2015 (Arising out of SLP(C) Nos. 28337-28343 of 2013), 2250-2253 of 2015 (Arising out of SLP(C) Nos. 29595-29598 of 2013), 2254 of 2015 (Arising out of SLP(C) Nos.

Ashok Kumar and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-02-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 5A, 6

Citation : (2015) 3 SCALE 242

Hon'ble Judges : H.L. Dattu, C.J.; Arun Mishra, J.; Arjan Kumar Sikri, J.

Bench : Full Bench

Final Decision : Allowed

Judgement

1. Delay, in filing the application(s) for substitution, if any, is condoned. Application(s) for substitution, if any, is/are allowed.
2. Delay, if any, in filing the special leave petitions is condoned.
3. Leave granted.
4. These appeals are directed against the judgment(s) and order(s) passed by the High Court of Punjab and Haryana in a batch of Regular First Appeals, whereby and whereunder, the High Court had disposed of all the matters in light of its judgment and order in R.F.A. No. 2695 of 2002 and connected matters dated 05.11.2012.
5. The lis in this batch pertains to acquisition of various lands situated principally in villages Fatehpur, Maheshpur, Kundli and Railley by the Respondent-State under three different Notifications issued Under Section 4 of the Land Acquisition Act, 1984 (for short, "the Act") in 29.01.1990, 21.12.1994 and 26.04.1995. Since the impugned judgment(s) and order(s) in all the matters have either

followed or relied upon the impugned judgment and order passed by the High Court in R.F.A. No. 2695 of 2002 (S.L.P. (C) Nos. 26432-26443 of 2013 before this Court), for the sake of convenient disposal of this case, we would only notice the facts in S.L.P. (C) Nos. 26432-26443 of 2013.

6. Brief facts of the leas case are: The Respondent-State had issued a Notification Under Section 4 of the Act to acquire certain lands in the aforesaid villages for the public purpose of development and utilization of land of Panchkula by Haryana Urban Development Authority under the Haryana Urban Development Authority Act, 1977, dated 29.01.1990. After due consideration of the objections filed by the land-loosers Under Section 5-A of the Act, the acquiring authority had recommended issuance of a notification Under Section 6 of the Act to the State Government. Accordingly, the State Government had issued a Notification, declaring that the said land would be acquired for the notified public purpose, dated 25.01.1991.

7. The Land Acquisition Collector (for short, "the LAC"), by an award dated 11.10.1991, awarded the compensation at the rate of Rs. 1 lakh per acre in respect of the claimants land.

8. The claimants, not being satisfied with the compensation so awarded by the LAO, approached the latter and sought for a reference Under Section 18 of the Act to the Civil Court for determination of the actual market value of the land acquired by the State Government. The LAC had referred the case of the land-loosers to the Reference Court. The Reference Court determined the market value of the acquired lands at Rs. 160/- per square yard, by award dated 20.12.2001.

9. Dissatisfied by the aforesaid award, claimants and the Respondent-State filed Regular First Appeals before the High Court.

10. The High Court remanded the said appeals to the Reference Court for fresh adjudication of the market value of the acquired lands by order dated 08.11.2006.

11. Since all the matters were remanded to the Reference Court, it would be appropriate to notice the compensation awarded by the various awards passed by the Reference Court in respect to the lands acquired in the four villages with the common thread of reasoning. The awards dated 10.12.2008, 10.02.2009 and 16.02.2009 qua the properties acquired through notification, dated 29.01.1990, determined the compensation at the rate of Rs. 394/- per sq. yd., while the awards dated 16.04.2002 and 30.04.2005, qua the properties acquired through notification, dated 26.04.1995, determined the compensation at Rs. 350/- per sq. yd. and Rs. 256/- per sq. yd., respectively.

12. Aggrieved by the aforesaid, the claimants approached the High Court in Regular First Appeals for determination of compensation by way of enhancement over the compensation assessed by the Reference Court. Cross appeals were

filed by the Respondent-State against the judgment(s) and order(s) passed by the Reference Court.

13. The High Court delved into the basis and principles adopted for valuation of the acquired property by the Reference Court. The High Court has noticed that the aforesaid villages are in close proximity of each other. To assess the fair market value of the acquired lands, the High Court has relied upon the sale transactions in the villages to evaluate the true market value and adopted the principle of averaging to ensure that spikes in prices that are registered through certain transactions in same locality ought not affect the determination of market price for all the properties. Further, considering the fact that the property valuations have been taken up with reference to lands of various sizes and more particularly of smaller plots, the High Court has calculated a deduction at 33.5% towards development charges.

14. In light of the aforesaid, the High Court has taken the average value of the exemplar properties and arrived at the fair market value of Rs. 551/- per square yard and after deduction of 33.5% towards development charges ascertained the compensation payable at the rate of Rs. 366/- per square yard, in respect of the lands acquired vide notification dated 29.01.1990. In respect of the notification dated 24.04.1995, the High Court has considered that an escalation of 12% per year requires to be provided for such acquired lands because the properties enure benefit of being situated in an urban locality and proximity to Chandigarh and therefore, enhanced the compensation to Rs. 600/- per sq. yard. In the result, the High Court has dismissed the appeals filed by the claimants and allowed the cross appeals filed by the State and reduced the compensation awarded by the Reference Court to Rs. 366/- per square yard.

15. At this juncture it would be pertinent to notice that some of the cases in this batch of appeals relate to notification, dated 21.12.1994. These cases have been disposed of by the High Court in various judgment(s) and order(s) which have followed the decision of the High Court in RFA No. 1022 of 2012, dated 16.10.2012. In RFA No. 1022 of 2012, the High Court, by placing reliance on the judgment and order passed in RFA No. 2695 of 2002 and connected matters, has drawn parity in respect of acquisitions being from the same village and adopted the reasoning in the aforesaid decision. Thus, the High Court has observed that since the exemplar properties were acquired in 1995, the average value would be Rs. 710/- per square yard and upon 33.5% deduction would amount to Rs. 473/- per square yard. Taking note of the fact that the compensation awarded by the Reference Court is Rs. 500/- per square yard and higher than the aforesaid amount, the High Court has continued the said amount as compensation and dismissed the appeals.

16. Aggrieved by the aforesaid judgment(s) and order(s) passed by the High Court, the claimants are before us in these appeals.

17. Heard learned Counsel for the parties to the lis and also perused the

judgment(s) and order(s) passed by the Courts below.

18. Since all the cases question the reasoning adopted by the High Court in RFA No. 2695 of 2002 and connected matters, it would be apposite to consider the same only.

19. The Reference Court has considered the contiguity of villages where acquired lands are situated and thereafter considered that the sale transactions produced by the claimants are much prior in time than the award passed by Reference Court in Ravi Kumar v. State of Haryana, where lands in adjoining villages Judian and Kundi were acquired vide notification dated 02.07.1985. In our view, since the said notification is most proximate to the date of notification, that is, 29.01.1990, it would be the best piece of evidence in respect of assessment of fair market value of the lands acquired herein.

20. Further, to ascertain the escalation in prices since earlier notification, the Reference Court has relied upon the judgment of this Court in The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another, , wherein this Court has considered the quantum of such escalation per annum and whether it should be assessed at cumulative or flat rate. This Court therein has observed as follows:

"What should be the increase per annum?

15. 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 acquisitions), 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 precede the subject acquisition by only a few years, that is, up to 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 of 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.

16. Much more unsafe is the recent trend to determine the market value of acquired lands with reference to future sale transactions or acquisitions. To illustrate, if the market value of a land acquired in 1992 has to be determined and if there are no sale transactions/acquisitions of 1991 or 1992 (prior to the date of preliminary notification), the statistics relating to sales/acquisitions in future, say of the years 1994-1995 or 1995-1996 are taken as the base price

and the market value in 1992 is worked back by making deductions at the rate of 10% to 15% per annum. How far is this safe? One of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices. Let us illustrate. Let us assume there was no development activity in a particular area. The appreciation in market price in such area would be slow and minimal. But if some lands in that area are acquired for a residential/commercial/industrial layout, there will be all round development and improvement in the infrastructure/amenities/facilities in the next one or two years, as a result of which the surrounding lands will become more valuable. Even if there is no actual improvement in infrastructure, the potential and possibility of improvement on account of the proposed residential/commercial/industrial layout will result in a higher rate of escalation in prices. As a result, if the annual increase in market value was around 10% per annum before the acquisition, the annual increase of market value of lands in the areas neighbouring the acquired land, will become much more, say 20% to 30%, or even more on account of the development/proposed development. Therefore, if the percentage to be added with reference to previous acquisitions/sale transactions is 10% per annum, the percentage to be deducted to arrive at a market value with reference to future acquisitions/sale transactions should not be 10% per annum, but much more. The percentage of standard increase becomes unreliable. Courts should, therefore, avoid determination of market value with reference to subsequent/future transactions. Even if it becomes inevitable, there should be greater caution in applying the prices fetched for transactions in future. Be that as it may.

Whether the increase should be at a cumulative rate or a flat rate?

18. The increase in market value is calculated with reference to the market value during the immediate preceding year. When market value is sought to be ascertained with reference to a transaction which took place some years before the acquisition, the method adopted is to calculate the year to year increase. As the percentage of increase is always with reference to the previous year's market value, the appropriate method is to calculate the increase cumulatively and not applying a flat rate. The difference between the two methods is shown by the following illustration (with reference to a 10% increase over a basic price of Rs. 10 per square metre):

19. We may also point out that application of a flat rate will lead to anomalous results. This may be demonstrated with further reference to the above illustration. In regard to the sale transaction in 1987, where the price was Rs. 10 per square metre, if the annual increase to be applied is a flat rate of 10%, the increase will be Rs. 1 per annum during each of the five years 1988, 1989, 1990, 1991 and 1992. If the price increase is to be determined with reference to sale

transaction of the year 1989 when the price was Rs. 12 per square metre, the flat rate increase will be Rs. 1.20 per annum, for the years 1990, 1991 and 1992. If the price increase is determined with reference to a sale transaction of the year 1990 when the price was Rs. 13 per square metre, then the flat rate increase will be Rs. 1.30 per annum for the years 1991 and 1992. It will thus be seen that even if the percentage of increase is constant, the application of a flat rate leads to different amounts being added depending upon the market value in the base year. On the other hand, the cumulative rate method will lead to consistency and more realistic results. Whether the base price is Rs. 10 or Rs. 12.10 or Rs. 13.31, the increase will lead to the same result. The logical, practical and appropriate method is therefore to apply the increase cumulatively and not at a flat rate."

(emphasis supplied in italics)

21. In light of the aforesaid view of this Court, the Reference Court has correctly ascertained the premium to be paid at the rate of 12% per annum with cumulative effect from the date of earlier acquisition, dated 02.07.1985 to the acquisition herein, dated 29.01.1990 and therefore, determined the fair market value of acquired lands as Rs. 394/- per square yards.

22. In our view, the High Court has incorrectly relied upon the sale transactions which date much prior in time than the date of notification and thus, do not reflect the true market value. In the event of an award more proximate to the date of acquisition was available, it would have been proper for the High Court to consider the same as best evidence than the post-dated sale transactions. Thus, in our considered opinion, the judgment and order passed by the High Court does not fairly and adequately assess the compensation payable to the claimants and requires to be set aside and consequently, the judgment and order passed by the Reference Court requires to be restored.

23. Therefore, the judgment and order passed by the High Court is set aside and the judgment and order passed by the Reference Court is restored. In our considered opinion, we deem it appropriate to pass the following order:

WITH REGARD TO ACQUISITION OF 1990

The compensation awarded by the Reference Court i.e., Rs. 394/- per sq. yard per annum is restored with all statutory benefits on the enhanced amount as provided under the Act.

WITH REGARD TO ACQUISITIONS OF 1995 AND 1994

Taking the base of 1990 acquisition, we fix the compensation at Rs. 394/- per sq. yard per annum. We also grant 12% escalation to be calculated cumulatively as provided under the Act.

Ordered accordingly.