(2016) 05 P&H CK 0201

In the Punjab And Haryana At Chandigarh

Case No : RFA No. 903 of 2015 ((O&M) and other connected cases)

Bimla Devi and others — APPELLANT

Vs

State of Haryana and others — RESPONDENT

Date of Decision : 28-05-2016

Acts Referred:
Land Acquisition Act, 1894 — Section 23, 4, 6

Citation : (2016) 2 LAR 206

Hon'ble Judges : Mr. Rameshwar Singh Malik, J.

Bench : Single Bench

Advocate : Mr. Shailendra Jain, Senior Advocate with Mr. Sanjeev Gupta, Advocate. in RFA Nos. 6997 to 7008 of 2012, 606 to 608 of 2015 and in XOBJR No. 47-CI-2013 in RFA No. 624 of 2013, Mr. Ashok Arora, Advocate. in RFA No. 504 of 2013, Mr. Sandeep Kumar Loura, Adv

Final Decision : Disposed Off

Judgement

Rameshwar Singh Malik, J.(Oral) - This bunch of 37 Regular First Appeals, out of which 19 appeals bearing RFA Nos. 6997 to 7008 of 2012, 504, 2308, 2635 of 2013, 606 to 608 and 903 of 2015, filed by the landowners and 18 appeals bearing RFA Nos. 610 to 627 of 2013 filed by the State of Haryana and Cross Objection No. 47-CI-2013, is being decided vide this common order, as all these appeals arise out of the same acquisition and raise identical questions of law and facts. However, with the consent of learned counsel for the parties and for facility of reference, facts are being culled out from RFA No. 903 of 2015 (Bimla Devi and others v. State of Haryana and others).

2. Briefly put, facts of the case are that State of Haryana sought to acquire land measuring 89 kanal 12 marla out of the revenue estate of Hansi, at public expenses for public purpose namely; for Disposal Works and Sewerage Treatment Plant. Vide same notification and for the same purpose, however, at a distance of about half kilometer, land measuring 529 kanal 14 marla was also acquired. Accordingly, notification under Section 4 of the Land Acquisition Act,

1894 (''the Act'' for short) was issued on 3.12.2009 for the land measuring 529 kanal 14 marla and for land measuring 89 kanal 12 marla, it was same notification dated 3.12.2009, which was followed by notifications dated 2.3.2010 and 22.3.2010 respectively, issued under Section 6 of the Act.

3. The Land Acquisition Collector, (''LAC'' for short), announced his different awards for both these pieces of land. Vide his award No. 11-H dated 16.9.2010 for land measuring 529 kanal 14 marla, LAC assessed the market value @ Rs. 17 lacs per acre up to depth of two acres of Kutubpur Dhanni-Hansi Road and Rs. 10 lacs per acre for other land. Similarly, vide his award No. 13-H dated 15.11.2010, LAC assessed the market value of the land measuring 89 kanal 12 marla @ Rs. 18 lacs per acre up to depth of 2 acres for the land which was abutting link road and Rs. 17 lacs per acre for other land.

4. Dissatisfied with the assessment of market value at the hands of LAC, landowners filed their objections under Section 18 of the Act and as a consequence thereof, land references were forwarded to the learned reference court for decision. The learned reference court, vide impugned award dated 27.8.2012, decided as many as 18 land references, assessing the market value of the land measuring 529 Kanal 14 marla @ Rs. 18 lacs per acre up to depth of 2 acres for the land abutting the link road and Rs. 17 lacs for remaining land. Similarly, vide a separate impugned award dated 29.10.2014, learned reference court assessed the market value of the acquired land measuring 89 kanal 12 marla, @ Rs. 805 per square yard. However, for this land measuring 89 kanal 12 marla, the learned reference court done away with the belting system adopted by the LAC.

5. Both the parties felt aggrieved against both the impugned awards dated 27.8.2012 and 29.10.2014. Landowners have approached this Court against both the impugned awards passed by the learned reference court, seeking further enhancement in the amount of compensation for their acquired land whereas the State of Haryana is seeking reduction in the amount of compensation awarded to the landowners. That is how, all these 37 appeals are being decided together.

6. Having heard learned counsel for the parties at considerable length, after careful perusal of record of the cases and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that appeals filed by the State of Haryana are bereft of merit and the same are liable to be dismissed, whereas the appeals filed by the landowners deserve to be partly allowed, suitably enhancing the compensation for their acquired land. To say so, reasons are more than one, which are being recorded hereinafter.

7. So far as location and potentiality of the acquired land is concerned, perusal of the site plan (Ex.P6), available on lower court record (''LCR'' for short), would make it clear that the acquired land was situated just outside the residential area of Hansi. It is submitted by the learned counsel for the State that the acquired land was outside the municipal area. Since some part of the acquired land was

abutting the metalled road and residential areas as well as commercial establishments were also situated in the close vicinity of the acquired land, it was no more a simple agricultural land at the time of its acquisition. Since the acquired land was already semi urban land, it was having immense potentiality.

8. Before proceeding further, it is pertinent to note here that State of Haryana did not produce any evidence in support of its case. The landowners placed reliance on very many sale examplers. Sale deed Ex.P2 dated 12.2.2008, whereby the land measuring 16 kanal 5 marla was sold out of the revenue estate of Hansi @ Rs. 4900 per square yard, has been found to be the best sale deed because the biggest chunk of land was sold vide this sale deed. Owing to the distance between the land acquired in the year 1995 for auto market situated at GT road, award passed therein cannot be made safe basis for assessing the market value of the acquired land, particularly when the sale deed from the revenue estate of Hansi itself is available in the form of Ex.P-2.

9. It has been repeatedly held by the Hon''ble Supreme Court that the landowners are entitled to receive the best price for their acquired land. Reference in this regard can be made to the judgment of the Hon''ble Supreme Court in Mehrawal Khewaji Trust (Registered), Faridkot and others v. State of Punjab and others, (2012) 5 SCC 432.

10. The Hon''ble Supreme Court in para 17 and 18 of its judgment in Udho Dass v. State of Haryana, 2010 (12) SCC 51, held as under:-

"Although, in the present matter, sale instances around or near abouts the date of Notification of the present acquisition are available yet these cannot justify or explain the potential of a particular piece of land on the date of acquisition as the potential can be recognised only some time in the future and it is open to a landowner claimant to contend that the potential can be examined first at the time of the Section 18 Reference, the first Appeal in the High Court or in the Supreme Court in appeal as well. We must also highlight that Collectors, as agents of the State Government, are extraordinarily chary in awarding compensation and the land owners have to fight for decades before they are able to get their due. We take the present case as an example. The land was notified for acquisition in May 1990. The collector rendered his award in May 1990 awarding a sum of Rs. 2,00,000/- per acre. The Reference Court by its award dated January 2001 increased the compensation to Rs. 125 per square yard for the land of the road behind the ECE factory and Rs. 150 per square yard for the land abutting the road which would come to Rs. 6,05,000/- and Rs. 7,26,000/- respectively for the two pieces of land. This itself is a huge increase vis-a-vis the Collector''s award. The High Court in First Appeal by its judgment of 24th September 2007 enhanced the compensation for the two categories to Rs. 135 and 160 respectively making it Rs. 6,53,400/- and Rs. 7,74,400/-. In other words, this is the compensation which ought to have been awarded by the Collector at the time of his award on 12th May 1993. This has, however, come to the land owner for the first time as a result of the judgment of the High Court which is under challenge in this appeal; in other words, a full 17 years from the date of Notification under Section 4 and 14 years from the date of the award of the Collector on which date the possession of the land must have been taken from the landowner. Concededly, the Act also provides for the payment of the solatium, interest and an additional amount but we are of the opinion, and it is common knowledge, that even these payments do not keep pace with the astronomical rise in prices in many parts of India, and most certainly in North India, in the land price and cannot fully compensate for the acquisition of the land and the payment of the compensation in driblets. The 12% per annum increase which Courts have often found to be adequate in compensation matters hardly does justice to those land owners whose land have been acquired as judicial notice can be taken of the fact that the increase is not 10 or 12 or 15% per year but is often upto 100% a year for land which has the potential of being urbanized and commercialized such as in the present case. Be that as it may, we must assume that the landowners were entitled to the compensation fixed by the High Court on the date of the award of the Collector and had this amount been made available to the landowners on that date, it would have been possible for them to rehabilitate their holdings in some other place. This exercise has been defeated for the simple reason that the payment of compensation has been spread over almost two decades. In this view of the matter, we are of the opinion that a landowner is entitled to say that if the compensation proceedings continued over a period of almost 20 years as in the present case, the potential of the land acquired from him must also be adjudged keeping in view the development in the area spread over the period of 20 years if the evidence so permits and cannot be limited to the near future alone. We, therefore, feel that in the circumstances, the appellants herein were fully entitled to say that the potential of the acquired land had not been fully recognised by the High Court or by the Reference Court. We must add a word of caution here and emphasise that this broad principle would be applicable where the possession of the land has been taken pursuant to proceedings under an acquiring Act and not to those cases where land is already in possession of the Government and is subsequently acquired.

There is another unfortunate aspect which is for all to see and to which the Courts turn a Nelson''s eye and pretend as if the problem does not exist. This is a factor which creates an extremely grim situation in a case of compensation based exclusively on sale instances. This is the wide spread tendency to under value sale prices. The provision of Collector''s rates has only marginally corrected the anomaly, as these rates are also abnormally low and do not reflect the true value. Where does all this leave a landowner whose land is being compulsorily acquired as he has no control over the price on which some other landowner sells his property which is often the basis for compensation?

11. Further, in its recent judgment in the case of Ashok Kumar and another etc. v. State of Haryana, (Civil Appeal No(s). 2714-2721 of 2012), decided on 18.2.2016, the Hon''ble Supreme Court, while interpreting the scope of Section

25 of the Act and duty cast on the courts to grant just and reasonable compensation to the landowners for their acquired land, even more than what was claimed by them, observed as under:-

"Learned counsel appearing for the appellants however points out that in the matter of fixation of just and fair compensation, the Court is not bound by claim made by the owner. It is for the Court, in the facts and circumstances of each case, to award just and fair compensation.

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The pre-amended provision put a cap on the maximum; the compensation by court should not be beyond the amount claimed. The amendment in 1984, on the contrary, put a cap on the minimum; compensation cannot be less than what was awarded by the Land Acquisition Collector. The cap on maximum having been expressly omitted, and the cap that is put is only on minimum, it is clear that the amount of compensation that a court can award is no longer restricted to the amount claimed by the applicant. It is the duty of the Court to award just and fair compensation taking into consideration the true market value and other relevant factors, irrespective of the claim made by the owner.

Although in the context of the Motor Vehicles Act, 1988, this Court in Sanjay Batham v. Munna Lal Parihar held that

"17. It is true that in the petition filed by him under Section 166 of the Act, the Appellant had claimed compensation of Rs. 4,20,000/- only, but as held in Nagappa v. Gurudayal Singh, (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."

In Bhag Singh and Others v. Union Territory of Chandigarh, this Court held that there may be situations where the amount higher than claimed may be awarded to the claimant. The Court observed ?

"3. ? It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where, as for instance, under'' agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution, be deprived of land which is not being personally cultivated by him or which is in excess of the ceiling area with payment of little compensation or no compensation at all, but where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms, declares that he shall be paid such market value. ?"

In Krishi Utpadan Mandi Samiti v. Kanhaiya Lal, this Court held that under the amended provisions of Section 25 of the Act, the Court can grant a higher compensation than claimed by the applicant in his pleadings ?

"17. Award being in this case between the dates 30th April, 1982 and 24th September, 1984 and as per the Union of India and Anr. v. Raghubir Singh (Dead) by LRs. etc. (Supra), the amended provisions would be applicable under which there is no restriction that award could only be upto the amount claimed by the claimant. Hence High Court order granting compensation more than what is claimed cannot be said to be illegal or contrary to the provisions of the Act. Hence the review itself, as is confined for the aforesaid reasons, has no merit."

11. Further, in Bhimasha v. Special Land Acquisition Officer and others, a three-Judge bench reiterated the principle in Bhag Singh (supra) and rejected the contention that a higher compensation than claimed by the owner in his pleadings cannot be awarded by the Court. In that case, the High Court had concluded that although the market price of the land was Rs 66,550/- per acre, since the appellant had only claimed compensation at the rate of Rs. 58,500/- per acre in his pleadings, therefore he could only be awarded compensation limited to his claim. This Court, while reversing the decision of the High Court, awarded the petitioner the market value, i.e., Rs. 66,550/- per acre thereby holding that the award would not be limited to the claim made by him."

12. In this regard, it is also relevant to refer to the new Land Acquisition Act known as ''The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short ''the New Act''). The legislature has found the Land Acquisition Act, 1894 (for short `the Old Act'') to be an outdated law, because of which it was thought appropriate to bring the new piece of legislation in the form of the New Act. The statement of objects and reasons for framing the New Act are not being reproduced here for the sake of brevity and only highlights thereof would suffice, which read as under:-

"HIGHLIGHTS OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABIITATION AND RESETTLEMENT ACT, 2013 (30 OF 2013)

- Payment of compensation upto four times the market value in rural area and two times the market value in urban areas.

- To address historical injustices, the Law applies retrospectively to cases where no land acquisition award has been made.

- No one shall be dispossessed until and unless all payments are made and alternative sites for the resettlement and rehabilitation have been prepared.

- Compensation to those who are dependent on the land being acquired for their livelihood.

- In cases where Public-Private Partnership PPP projects are involved or acquisition is taking place for private companies, the Act requires the consent of not less than 70 per cent and 80 per cent respectively (in both cases) of those whose land is sought to be acquired.

- To safeguard Food Security and to prevent arbitrary acquisition, the Act directs States to impose limits on the area under agricultural cultivation that can be acquired.

- In case, land remains unutilized after acquisition, the new Act empowers State to return the land either to the owner or to the State Land Bank.

- No income-tax shall be levied and no stamp duty shall be charged on any amount that accrues to an individual as a result of the provisions of the new Law.

- Where acquired land is sold to a third party for a higher price then 40 percent of the appreciated land value (or profit) will be shared with the original owners.

- The Act requires a Social Impact Assessment study to be conducted for every acquisition of land."

13. The only argument raised by learned counsel for the State is that the buyers of sale deed Ex.P2 were uninformed buyers and because of this reason, this sale deed would not disclose realistic market value of the land in the area. In this regard, he placed reliance on a judgment of the Hon''ble Supreme Court in Krishan Kumar v. Union of India and another, 2015 (2) RCR (civil) 597. However, when confronted with the undisputed fact situation obtaining in the present case that State of Haryana did not lead any evidence, whatsoever, and no efforts were made to lay down even any factual foundation, raising the objection about the genuineness of sale deed Ex.P2, learned counsel for the State had no answer and rightly so, it being a matter of record. In this view of the matter, the judgment relied upon by learned counsel for the State in Krishan Kumar''s case (supra), would be of no help to the State. It is so said because each case is to be decided as per its own peculiar fact situation. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon''ble Supreme Court in Padmasundara Rao (Dead) v. State of Tamil Nadu and others, 2002 (3) SCC 533.

14. In the absence of any better evidence available on record, Ex.P-2 dated 12.2.2008 has been found to be the best piece of evidence and the same can be safely made the basis for assessing the market value of the acquired land. As noticed herein above, vide sale deed Ex.P2, land measuring 16 kanal 14 marlas was sold @ Rs. 4900 per square yard, out of the revenue estate of Hansi itself. However, there was a time gap of 1 year and 10 months between this sale deed and date of notification under Section 4 of the Act. Although the acquired land was of semi urban nature and the landowners would be entitled for 15% annual increase on the above said market price, in view of the law laid down by the Hon''ble Supreme Court in The General Manager, Oil and Natural Gas Corporation Limited v. Rameshbhai Jivanbhai Patel and another, (2008) 14 SCC 745, yet keeping in view the peculiar facts and circumstances of the present case, 12% annual increase will meet the ends of justice. Granting the benefit of 12% annual increase on cumulative basis for the time gap of 1 year and 10 months, amount comes to Rs. 6036.80/- per square yard.

15. However, since the land sold by way of this sale deed Ex.P2 was situated on the GT Road and was at some distance from the acquired land, it would be appropriate to apply 25% cut on the above said market value of Rs. 6036.80/- per square yard. After applying 25% cut on the above said market value, the amount comes to Rs. 4527/- per square yard. Looking to the location and potentiality of the acquired land, any higher percentage of cut would not be just and reasonable. Accordingly, the landowners are held entitled to receive the compensation at uniform rate of Rs. 4527/- per square yard from the date of notification under Section 4 of the Act.

16. That brings this Court to the next question equally important question of law, as to whether the learned reference court was justified in maintaining the belting system adopted by LAC qua the land measuring 529 kanal 14 marla. As noticed above, learned reference court has done away with the belting system in later award dated 29.10.2014, while deciding the land references for land measuring 89 kanal 12 marla. Since the purpose of the acquisition was same and entire acquired land was going to be put to the same use, belting system was illegally adopted by LAC which was wrongly maintained by the learned reference court for the land measuring 529 kanal 14 marla. In such a situation, exact location of any particular piece of land out of the acquired land, would be hardly of any consequence. In fact, belting system was not warranted in the present set of cases. The findings recorded by the learned reference court, maintaining the belting system adopted by LAC, have been found patently illegal and the same are hereby set aside.

17. The above said view taken by this Court on the belting system, also finds support from more than one following judgments of the Hon''ble Supreme Court as well as of this Court:-

(1) Union of India v. Harinder Pal Singh and others, 2005 (12) SCC 564 (SC)

(2) Udho Dass v. State of Haryana, 2010 (12) SCC 51 (SC)

(3) Ashrafi and others v. State of Haryana, 2013 (5) SCC 527 (SC)

(4) Kehar Singh v. State of Punjab, 1992(1) R.R.R. 81 (P&H)

(5) Harinderpal Singh v. Punjab State through the Collector, Amritsar, 1997 (3) RCR (civil) 431 (P&H)

(6) Union of India v. Dr. Balbir Singh, 1999 (2) RCR (civil) 546 (P&H)

(7) Pawan Kumar and another v. Land Acquisition Collector and others, 2001 (1) RCR (civil) 598 (P&H)

(8) Harjit Singh @ Kaka Singh v. State of Punjab and another, 2004 (1) RCR (civil) 484 (P&H)

(9) Smt. Mahabiri Devi and others v. State of Haryana and another, 2005 (4) RCR (civil) 142 (P&H)

(10) Gulzar Singh v. State of Haryana 2006 (3) RCR (civil) 174 (P&H)

(11) Kashmira Singh and others v. Land Acquisition Tribunal Ludhiana Improvement Trust Ludhiana through its President and others, 2006 (2) LAR 69 (P&H)

(12) Gursher Singh and others v. President, Improvement Trust Tribunal, Jalandhar and others, 2007 (1) RCR (civil) 429 (P&H)

(13) Baru Ram and others v. State of Haryana and another, 2010 (3) RCR (civil) 754 (P&H)

18. Let it be specifically recorded here that no other better evidence or judicial precedents were pressed into service, nor any other argument was raised on behalf of either of the parties.

19. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that appeals filed by the State of Haryana have been found wholly misconceived, bereft of merit and without any substance, thus, these must fail and the same are hereby dismissed.

20. The appeals filed by the landowners deserve to be partly accepted and the same are allowed to the extent indicated above. The landowners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs. 4527 per square yard from the date of notification under Section 4 of the Act. Besides this, the landowners shall also be entitled for all the statutory benefits available to them under the relevant provisions of the Act.

21. Resultantly, with the observations made above, all these appeals and cross objection, stand disposed of in the above said terms, however, with no order as to costs.

