(2020) 01 P&H CK 0193

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1285 Of 2016

Chief Project Engineer (Now Chief Construction Engineer) Nuclear Power Corporation Of India Ltd. — APPELLANT

Vs

Shamsher Singh And Others — RESPONDENT

Date of Decision : 23-01-2020

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 9, 18, 25
Code Of Civil Procedure, 1908 — Order 41 Rule 27

Citation : (2020) 01 P&H CK 0193

Hon'ble Judges : G.S.Sandhawalia, J

Bench : Single Bench

Advocate : Aashish Chopra, Gagandeep Singh, M.L. Sharma, Ashish Gupta, Ashok Verma, Ashok Arora, Deepak Choudhary, Radhey Shyam Sharma, Sunil K.Sharma, Manpreet Ghuman, Sudeep Mahajan, Vibha Tewari

Final Decision : Disposed Of

Judgement

G.S.Sandhawalia, J

This order shall dispose of RFA Nos.1285 to 1306, 1358 to 1379, 1403 to 1440, 1575 to 1616, 2355 to 2357 of 2016 filed by the Nuclear Power Corporation of India Ltd. and Cross Objections No.341-C of 2016 in RFA No. 2357 of 2016, RFA Nos.1222, 1223, 1341 to 1345, 1355, 1395 to 1399, 1543, 1555 to 1557, 1651 to 1660, 1836 to 1853, 1884 to 1890, 1912, 1913, 1972, 2143, 2210, 2211, 2321, 2362, 2401, 2410, 2510, 2726, 2872, 2941, 3141 to 3146, 3151 to 3157, 3169 to 3188, 3390, 3391, 3398 to 3406, 3529, 3532 to 3540, 3935 and 4756 of 2016 filed by the landowners as common question of law and facts are involved in these appeals. However, the facts have been taken from RFA No.1285 of 2016.

The present set of appeals filed by the land owners and the Nuclear Power Corporation of India Ltd. (hereinafter referred to as " the NPCIL") are directed against the award dated 20.10.2015 passed by the Reference Court, Fatehabad.

The landowners seek enhancement from Rs. 29,04,000/- per acre which has been granted by the Reference Court, Fatehabad vide impugned award by enhancing it from Rs. 20,00,000/-per acre as awarded by the Land Acquisition Collector on 18.7.2012.

The appellant-Corporation is aggrieved against the enhancement granted for the land which was acquired vide Section 4 notification dated 29.7.2010.

The basis of enhancement as such by the Reference Court while deciding 127 References lead case of which was LAC No.46 of 2014-Shamsher Singh Vs. State of Haryana and others is that the Divisional Level Evaluation Committee found favour with the objections of the Corporation and it reduced the market value and fixed it at Rs. 20,00,000/-per acre considering average sale price of the land for the last one year and the Collector's rate etc. Accordingly, the Reference Court came to the conclusion that there seems to be no valid justification for reducing the rate as assessed for the mere reason that the representative of the NPCIL had objected that the market value assessed was excessive. Accordingly, reliance was placed upon the report of the Sub Divisional Officer qua the market value and therefore, the same was taken into consideration to assess the market value of the acquired land at the rate of Rs. 600/- per sq. yard for the land of three villages i.e. Gorakhpur, Badopal and Kajalheri.

A perusal of the record would go on to show that vide notification dated 29.7.2010 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") which was followed by the notification dated 25.7.2011 the following area of the land of the three villages was acquired:-

Name of village	Hadbast No.	Land
Gorakhpur	52	1312 Acres 6 Kanals 3 Marlas
Badopal	46	184 Acres 7 Kanals 3 Marlas
Kajalheri	51	4 Acres 3 Kanals 14 Marlas

The purpose for the acquisition of the land was for construction of Gorakhpur

Atomic Power Project by the NPCIL.

As noticed vide award Nos.7-F, 8-F and 9-F uniform compensation as such had been granted at the rate of Rs. 20,00,000/- per acre leading to the petitions being filed under Section 18 of the Act by the landowners claiming higher compensation to the tune of Rs. 1 crore per acre.

The same had been objected to on the ground that it was agricultural land and the compensation had been announced on the basis of rates fixed by the Divisional Level Evaluation Committee (hereinafter referred to as "the Committee") constituted by the Commissioner, Hisar Division, Hisar for considering the market value of the land. Compensation had been fixed at the rate of Rs. 20,00,000/- per acre as per the market value which was prevalent. Proper opportunity had been given and during the hearing under Section 9 of the Act and the landowners failed to produce evidence in support of their claim. It was stated that acquired land was situated on village Gorakhpur to Kajalheri road , 4 kilometers away from village Gorakhpur and 3 kilometers away from village Kajalheri and not on the National highway and State highway roads. The landowners had also produced the award of village Dhanger dated 16.8.2014 (Ex.P11) passed by the Reference Court, Fatehabad in RBT-09-LA of 2010-Ghamandi Lal and others Vs. State of Haryana and others which pertained to notification dated 12.2.2008 whereby compensation to the tune of Rs. 43,20,000/- per acre had been given and the land was acquired for the purpose of By Pass Road adjacent to Sectors 4, 5, 5-Part & 7-A Part, Fatehabad.

In Civil Misc. Application No.593-CI of 2020 in RFA No.1341 of 2016-Subeg Singh and others Vs. State of Haryana & others an application for additional evidence by way placing on record judgment passed by this Court in RFA No.9626 of 2014-Hanuman Singh Vs. State of Haryana and others (Annexure A-1) decided on 22.9.2015 has been filed whereby compensation had been enhanced to Rs. 50,00,000/- per acre which was upheld by the Supreme Court vide order dated 29.7.2016 passed in SLP (C) No.13677-13693 of 2016-Dholu Ram etc. Vs. State of Haryana and others (Annexure A/2) regarding the notification dated 12.2.2008.

The said award was not relied upon and the market value granted in the said case was not taken into consideration by the Reference Court on the ground that it was not similar and was for the By Pass Road adjacent to the Sectors 4,5,5 Part & 7-A Part, Fatehabad. The land of the said award was situated on the G.T.Road (NH-10) near Power House and residential colony surrounded by Mini Secretariat, residences of Deputy Commissioner, Superintendent of Police, Sessions House, commercial property and new vegetable market etc.

Similarly award dated 22.1.2015 (Ex. P19) pertaining to notification dated 6.8.2013 qua village Badopal which was under the National Highway Act, 1956 whereby land had been acquired at the rate of Rs. 52,00,000/- per acre for Nehri/ Chahi, Rs. 69,25,000/- per acre for Gair Mumkin residential and Rs. 1,40,00,000/- per acre for Gair Mumkin commercial, was not relied upon. The ground given was that it was post three years from the notification in question and that it was being acquired for building(widening/four-laning etc.) maintenance, management and operation of National Highway NH-10 on stretch of the land from Hisar-Dabwali Section of NH-10 though it was noticed that in the present case part of the acquired land was situated in village Badopal but there was considerable distance from National Highway(NH-10).

The sale exemplars which were produced were not of the same village except Ex. P9 which was dated 25.10.2012 for the land measuring 28 Kanals of Gorakhpur whereby land had been sold at the rate of Rs. 37,00,000/- per acre was also thus discarded being post notification. The other sale exemplars were of other villages and therefore, they were not considered helpful for determination of the market value. It was noticed that the land of village Matana was close to National Highway-10 and the same was purchased by colonizers for development of a colony adjacent to Fatehabad City. The sale exemplar (Ex. P7) was for the land measuring 3 Marla pertaining of Kumharia and being of a different village and also keeping in view the fact that the acquisition was of around 1500 acres of land, the said sale sale deed was also not taken into consideration by relying upon various citations. It was noticed that in the site plan (Ex. P6) it was not easy to locate and compare the sale instances as the same was prepared without assistance of any revenue official. The sale deed (Ex. P7) was also for only 3 Marlas of land.

The sale deeds of the Corporation Ex. R/7 to Ex. R/12 and Ex. R/19 to Ex. R/27 were held not relevant to be the basis for determination of the market value as they were ranging from Rs. 4,50,000/- to Rs. 7,50,000/-below the rates assessed by the Collector in view of the provisions of Section 25 of the Act.

Eventually the report of the Sub Divisional Officer (Civil), Fatehabad was culled out from the report of the Committee to assess the compensation as noticed above. The same reads as under:-

"Sr.No.

Villages

Kinds of land

Market value assessed

1.

Gorakhpur

Nahri

Chahi

Gair Mumkin

Rs. 25,00,000/- per Acre

Rs. 23,50,000/- per Acre

Rs. 500/- per Square yard

2.

Badopal

Nahri/Chahi

Taal

Tibba

Gair Mumkin

Rs. 20,00,000/- per Acre

Rs. 16,00,000/- per Acre

Rs. 14,00,000/- per Acre

Rs. 600/-per Square yard

3.

Kajalheri

Nahri/Chahi

Gair Mumkin

Rs. 20,00,000/- per Acre

Rs. 600/-per Square yard"

This Court has gone through the evidence as such produced on record and the statements of witnesses including both site plan and road map (Ex. P6 and Ex. R13 respectively) proved by the witnesses. A perusal of statement of PW-6 Mr. Krishan Panwar, Architect who proved site plan (Ex.P6) would go on to show that the site plan was not prepared with the assistance of any Revenue official/ Kanungo but on the physical inspection on the spot on 26.9.2014. In cross-examination it was stated that the National Highway was 1.5 Kilometers away from the spot. A perusal of the site plan does not show the location of the land falling in the revenue estate of village Badopal out of which as many as 184 Acres 7 Kanals 3 Marlas had been admittedly acquired. Neither the distance as such of village Badopal is shown from the main road and where the land acquired is situated nor the same was clearly depicted. The land which had been acquired has also been produced in an enhanced and magnified version on the site plan (Ex. P6). The site plan shows that it is falling on the Bhakra Canal main branch close to the Gorakhpur. The said map is not in consonance with the road map Ex. R13 produced by the State a perusal of which would show that the distance depicted from the National Highway and the State highway has been shown to be of 11 Kilometers.

The argument has thus been raised by the landowners that the market value as such of the land of adjoining villages can also be taken into consideration to submit that the villages Dhanger and Matana are the adjoining villages. Therefore variation as such between two villages in question cannot be to that extent wherein market value on the one hand for the notification dated 12.2.2008 was held at Rs. 50,00,000/- per acre two years earlier. Reliance has also been placed upon the judgment of the Apex Court in Ashrafi and others Vs. State of Haryana and others 2013(5) SCC 527 to submit that the notification dated 21.7.1993 qua village Basti Bhiwan Rs. 350/- per sq. yard was granted which translates to Rs. 16,94,000/-per acre. Similarly reliance was also placed upon another award as such of village Matana whereby the Apex Court in Civil Appeal No.6755-6762 of 2013-Bhavani Dass (D) by L.Rs and others etc. etc. Vs. State of Haryana and others decided on 25.2.2015(Annexure A/6) while deciding the market value for the notification dated 2.10.2001 qua Fatehabad for the building of the Police Station Sadar and District Police Line, Fatehabad enhanced the market value to Rs. 866/- per sq. yard which translates to Rs. 41,91,440/-per acre. Similarly the judgment in RFA No.5585 of 2014-Haryana Urban Development Authority and another Vs. Prem Chand Gupta and others decided on 22.07.2015 (Annexure A/4) which is also for the land acquired in village Basti Bhiwan and Matana for developing the residential and commercial Sectors 9,10,11 and 11-A at Fatehabad has been relied upon wherein for the notification dated 4.7.2006 market value had been granted at the rate of Rs. 1485/- per sq. yard which translates to Rs. 71,87,400/-per acre.

Accordingly, counsels for the landowners have stressed that the market value which has been granted is in pittance in comparison to the adjoining area. Thus the application for additional evidence is allowed as it is necessary for this Court to pronounce judgment and falls within the parameters of Order 41 Rule 27 CPC.

Counsel for the Corporation has also rightly pointed out that the report of the Sub Divisional Officer (Civil), Fatehabad on the basis of which enhancement had been granted is admittedly not on the record. It was only culled out from the report of the Committee. A perusal of the minutes of the meeting would go on to show that there was some reference to the rates which were proposed earlier for the acquired land which was stated to be higher by the representative of the NPCIL. Nothing had been brought on record as what was the proposed earlier rates to which the representative of the Corporation had objected. The minutes of the meeting which was held on 10.2.2012 under the Chairmanship of the Commissioner, Hisar Division, Hisar would also go on to show that the market value of the land as per the Collector rate for the subsequent period 2011-12 were Rs. 12,00,000/- per acre even for the Nehari and Chahi land. The rate of gair mumkin land of village Badopal and Kajalheri had also been noticed at the rate of Rs. 600/- per sq. yard.

Reliance has thus been placed upon the Apex Court judgment in Ramanlal

Deochand Shah Vs. State of Maharashtra and another 2013(14) SCC 50 by the counsels for the Corporation to submit that once the document had not been produced and not properly exhibited then the Reference Court is not justified in granting enhancement on the basis of the same. Relevant portion reads as under:-

"11. It was argued by learned counsel for the appellants that although no evidence was adduced by the claimants to prove that the market value of the acquired land was higher than what was awarded by the Land Acquisition Collector, the claimants could rely on the documents produced by the respondent-State before the Collector. If that be so, the Sale Deeds to which the Draft Award made a reference, could be referred to and relied upon. There is, in our opinion, no merit in that contention. While it is true that the claimant can always place reliance upon the evidence that may be adduced by a defendant in a suit to the extent the same helps the plaintiff, but the documents that have not been relied upon before the Court by the defendants cannot be referred to or treated as evidence without proper proof of the contents thereof. In the present case the defendants-respondents did not produce any documents before the Reference Court in support of its case. There was indeed no occasion for them to do so in the absence of affirmative evidence from the claimants. We specifically asked learned counsel for the respondents whether copies of any Sale Deeds had been produced by the defendants before the Reference Court. The answer was in the negative. That being so, it is difficult to appreciate how the appellants could have referred to a document not produced or relied upon by the defendants before the Reference Court. Even if the documents had been produced by the defendants, unless the same were either admitted by the plaintiff or properly proved and exhibited at the trial, the same could not by themselves constitute evidence except where such documents were public documents admissible by themselves under any provision. Sale Deeds executed between third parties do not qualify for such admission. The same had, therefore, to be formally proved unless the opposite party admitted the execution and contents, thereby, in which event no proof may have been necessary for what is admitted, need not be proved.

12. Suffice it to say that in the facts and circumstances of the present case no evidence having been adduced by the defendants-respondents, whether documentary or otherwise, there was no question of the appellant relying upon such non-existent evidence. Merely because some documents were referred to in the Draft Award by the Collector, did not make the said documents admissible by them to enable the plaintiffs to refer to or rely upon the same in support of a possible enhancement. If a document upon which the plaintiffs placed reliance was available, there was no reason why the same should not have been produced or relied upon. Inasmuch as no such attempt was made by the plaintiffs, they were not entitled to claim any enhancement."

The facts as such would be applicable to the facts of the present case also. It is also rightly submitted that the highest market value of Rs. 600/- for gair mumkin had been taken into consideration for assessing the market value. Once the land acquired was agricultural land measuring around 1500 acres, the market value of gair mumkin land could not have been the barometer to fix the market value and error is thus apparent. The relevant part of the report of the Committee dated 10.2.2012 (Ex. P18) reads as under:-

"The Collector Rates of above mentioned three villages for the year 2011-12 are as follows:-

"Sr.No.

Villages

Kinds of land

Market value assessed

1.

Gorakhpur

Nahri

Chahi Gair

Mumkin

Rs.25,00,000/- per Acre

Rs.23,50,000/- per Acre

Rs.500/- per Square yard

2.

Badopal

Nahri/Chahi

Taal

Tibba

Gair Mumkin

Rs.20,00,000/- per Acre

Rs.16,00,000/- per Acre

Rs.14,00,000/- per Acre

Rs.600/-per Square yard

3.

Kajalheri

Nahri/Chahi

Gair Mumkin

Rs.20,00,000/- per Acre

Rs.600/-per Square yard"

For registration of Vasika, the Collector rates have been fixed as mentioned above. Sub Divisional Officer (N), Fatehabad has made the spot inquiry of the land sought to be acquired. Sub Divisional Officer (N) Fatehabad has reported the market value of the acquired land in village Gorakhpur as Rs.25 lacs for Nehri, Rs.23,50,000/- per acre for Chahi and Rs.500/- per sq. yard for Gair Mumkin, market value in village Badhopal as Rs.20 lacs for Nehari/Chahi, Rs. 16 lacs for Taal, Rs.14 lacs per acre for Tibba and Rs.600/- per sq. yard for Gair Mumkin and the market value in village Kajalheri as Rs.20 lacs for Nehri/Chahi and Rs.600/-per sq. yard. Deputy Commissioner, Fatehabad has also conducted site inspection of the acquired land. All the land is joint/combined at the spot. The whole area is cultivable except leaving the passage Khaal etc. As per notification issued by Government of Haryana, Revenue Department dated 09-11-2010, the floor rate of Rs.12 lacs per acre has been fixed for all kind of lands in this area.

2. In the meeting, Sh. T.R.Arora, Chief Project Engineer has informed that his departmental committee has been constituted for affixing the rates, in which there are two other members apart from him. Due to the short notice, the other two members could not come. He has told that as per the opinion of the N.P.C.I.L., the rates which were proposed earlier for the acquired land are high and therefore, he is of the opinion that less rate should be fixed than the earlier proposed rates. Still the rates which would be determined/assessed by the Divisional Level Rate Determination/Assessment Committee, regarding that, they would discuss the same with their management.

3. Because the whole area, after leaving passage and khaal is in one block, the type of land is mostly the same and therefore, after due deliberations and keeping in mind the average sale price of last one year, market rate, collector rate and the opinion of the representative of N.P.C.I.L., Collector Rate of Rs.20 lacs per acre is fixed for acquiring all types of land in Village Gorakhpur, Badhopal and Kajalheri for the purpose of establishing Nuclear Power Project."

It is also pointed out that it could not be demonstrated as such to which part of the land was closer to the National Highway-10 and also how the market value assessed by the Sub Divisional Officer (Civil) in respect of land of Gorakhpur was @ Rs. 25 lakhs though the said village is the furthest away from NH-10 on which Badopal falls were value is fixed @ Rs. 20 lakhs. The sale deeds Ex. R7 to Ex.R12 and Ex. R12 to Ex. R27 also produced by the NPCIL could not have been brushed aside by the Reference Court on the ground that they were below the Collector's rate. The said sale deed only demonstrated the prevalent market price and to find out on what rate a willing buyer wanted to purchase the land in the area in question and for the assessing the market value.

It is also to be noticed that this Court in RFA No.4247 of 2016-State of Haryana and others Vs. Bhup Singh decided on 8.1.2020 while dealing with the land of village Dhanger where the land had been acquired for construction of Dhanger minor had upheld the market value at the rate of Rs. 58,08,000/- per acre for the notification dated 30.9.2013.

Counsels for the landowners in such circumstances have vehemently submitted that the market value on the National Highway as such was admittedly in the range of around Rs. 50,00,000/- as assessed by this Court and also for the notification 12.2.2008 two years earlier and therefore, the matter needs to be re-examined from a different prospective by keeping into account various other factors. It has also been discussed above as what illegality as such is apparent which has happened for enhancement of the market value on the basis of the illusionary report of the Sub Divisional Officer (Civil), Fatehabad in which there was some apparent error to which the Corporation did not get a chance to rebut the same as it was never produced on the record. Therefore, enhancement in such circumstances would not be justified on the basis of the same. Further it was also apparent that the market value in the adjoining villages as such was higher though distance had not been clarified by the witnesses and cogent evidence had not been produced in the form of a proper site plan etc. which had also hampered the Reference Court to not fall back on the criteria for granting the compensation on the basis of the value of land of adjoining villages.

On account of the cumulative discussion above, this Court is of the opinion that adequate opportunity is liable to be granted to the parties to produce proper evidence in support of their case. Even the Apex Court in Ramanlal Deochand Shah's case (supra) had also remanded the matter in the facts and circumstances of the case as no sale exemplar had been produced by the landowners. Therefore, this Court also remands the matter especially keeping in view the fact that the valuable land of the farmers had been acquired under the principle of 'eminent domain'. It is for the Court to assess the compensation objectively and it is settled principle that it is not a adversial form of litigation. The compensation is to be assessed in such a manner which is neither a case for unjust enrichment of the landowners but the Corporation has to pay the market value.

In such circumstances, this Court is of the opinion that both the parties should be given adequate opportunity to prove their case and produce additional evidence in support of their case before the Reference Court, if so required.

Accordingly, the Award dated 20.10.2015 is set aside and the matters are remanded to the Reference Court for a decision afresh.

Any amount which has been received by the landowners in pursuance to the interim orders of the Court will be subject to the final decision of the Reference

Court as recovery or re-deposit of the said amount would only lead to further litigation.

Needless to say that observations made herein are only for the purpose of remanding the matter and not on the expression of merits of the case or the market value which is liable to be assessed.

Parties shall put in appearance through their counsels before the District Judge, Fatehabad on 24.02.2020.

Resultantly, the present appeals are disposed of in the above said terms. Application for additional evidence also stands disposed of in the above terms.

