
(2018) 04 P&H CK 0406

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9816 Of 2017 (O&M)

Jai Kumar

APPELLANT

Vs

State of Haryana and other

RESPONDENT

Date of Decision : 24-04-2018

Acts Referred:

Land Acquisition Act 1894 — Section 4, 6, 18, 23(1A)
Constitution of India, 1950 — Article 226, 227

Citation : (2018) 04 P&H CK 0406

Hon'ble Judges : Ajay Kumar Mittal, J;Anupinder Singh Grewal, J

Bench : Division Bench

Advocate : M.L. Sharma, Sushil Kumar Sharma, Sandeep Moudgil, Deepak Sabharwal

Final Decision : Allowed

Judgement

1. This order shall dispose of a bunch of 32 petitions bearing CWP Nos.9816, 10059, 10197, 10209, 10368, 10437, 10807, 10810, 10933, 10996, 10997, 11112, 11216, 11458, 11462, 11650, 11652, 12064, 12251, 12262, 12458, 12505, 12606, 13038, 13063, 13077, 14971, 15317, 15536, 15715, 16521 and 20082 of 2017 as learned counsel for the parties are agreed that the issue involved in all these petitions is identical. However, the facts are being extracted from CWP No.9816 of 2017.

2. CWP No.9816 of 2017 has been preferred by the petitioner Jai Kumar under Articles 226/227 of the Constitution of India, praying for quashing the Letter of Intent dated 26.02.2014, Annexure P.11 vide which the prices have been fixed unreasonably and unfairly i.e. @ Rs. 6600/- per square meter, whereas the same should have been fixed @ Rs.1600/- per square meter for the allotment of residential plot No.49, Sector-56, Phase V, Kundli under Rehabilitation and Resettlement Policy (R&R Policy). Direction has also been sought to the respondents to demand the price of plot on the basis of actual cost of development by charging cost of acquisition and development charges, in view of

the fact that acquisition proceedings remained pending for a number of years and as a result, the compensation of the acquisition was increased by adding interest on the same, since the offer of the plot to the effected land owners was at subsidized rate. Further prayer has been made for a direction to the respondents to charge the prices from the oustees in view of the policy framed by the respondents dated 07.12.2007 and subsequently 09.12.2010 (R&R Policy) as the prices had to be 20% less than the price.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No.9816 of 2017 may be noticed. The petitioner is the owner of the land comprising in Khasra Nos.45//2/2 (1-12), 3(8-0),8(8-0), 9/1 (1-16) situated in the revenue estate of Village Sersa, Tehsil and District Sonapat. In pursuance to the notification under Section 4 of the Land Acquisition Act 1894 (in short, "the 1894 Act") followed by declaration under Section 6 of the 1894 Act dated 21.12.2006, land measuring 545 acres, 6 kanals, 8 marlas and 77 acres, 5 kanals 16 marlas, situated in the revenue estate of Village sersa and Kundli, Tehsil and District Sonapat was acquired for public purpose of development of Industrial Sectors 53 to 56. The award was announced by the Land Acquisition Collector on 05.07.2007. The market value of the land was assessed @ Rs.16 lacs per acre at a uniform rate. Besides the aforesaid market value, statutory benefits under Section 23 (1-A) and (B) of the 1894 Act were also given along with interest thereon. The land owners filed land references under Section 18 of the 1894 Act which were sent to the District Judge, Sonapat for determining the market value of the land. On evaluation of the evidence led by both the parties, the market value of the land was determined by the Reference Court @ Rs. 21 lacs per acre along with all the statutory benefits. On appeal filed by the land owners in this Court, the market value of the land for the acquisition dated 05.10.2005 and 21.12.2005 was determined @ Rs. 32 lacs per acre, vide judgement dated 03.11.2015, Annexure P.4. Against the said judgment, the petitioners filed SLP in the Hon'ble Supreme Court which is lying pending. The respondents made a policy dated 07.12.2007, according to which, all the oustees whose land had been acquired, were entitled to be allotted a plot with the terms and conditions mentioned in the R&R Policy. The aforesaid policy was superseded by latest policy dated 09.11.2010, according to which also the oustees were entitled for a plot. According to the petitioner, as per allotment letter and entitlement certificate, he was made entitled for a plot in the year 2013. Therefore, the policy which was in operation in 2013 shall govern the prices for allotment and not the policy which was superseded by the new policy. The petitioner asserts that if the policy of 2007 is made applicable, even then the price shall have to be 20% less than the general price i.e. Rs. 6600/- per square meter. Relying upon the judgment rendered by the Apex Court in Hans Raj H. Jain vs. State of Maharashtra, 1993 (3) SCC 634, the petitioner asserts that charging of price of Rs. 6600/- per square meter is exorbitant whereas cost comes to Rs. 1000/- per square meter including solatium and interest. The respondents made an advertisement for allotment of plots to the oustees in the

area of Kundli in lieu of acquisition of the land for residential and commercial purposes under the R&R policy. The petitioner made application dated 26.11.2010. After scrutinizing the application along with required documents, the petitioner was given certificate for entitlement for allotment of plot as per R&R Policy. The petitioner had been found eligible for residential/industrial/commercial plot measuring 10 marlas. Vide letter dated 02.12.2013, the petitioner was directed to deposit Rs. 1,66,500/- towards 10% of the total tentative price. The petitioner deposited the said amount on 30.01.2014, Annexure P.10 . The petitioner was allotted plot No.47, Sector-56, Phasve-V at Kundli under the R&R Policy dated 07.12.2007 and was given Letter of Intent on 26.02.2014. Thereafter, allotment letter, Annexure P.12 was issued to the petitioner. The petitioner gave acceptance in view of the said allotment letter. The total price was fixed @ Rs. 16,63,200/-. The petitioner made representation regarding the exorbitant price. It was pleaded that allotment of the plot should have been made @ Rs. 6600/- per square yard. The price of the plot should not have been more than Rs. 200/- per square meter. The petitioner again made representation on 26.03.2014 reiterating his stand. The petitioner deposited Rs. 2,49,300/- on 26.03.2014. Thus, a total amount of Rs. 4 lacs was deposited by the petitioner. According to the petitioner, the respondents are demanding more amount at an exorbitant rate and also along with interest which was accrued in the delay in finalization of the acquisition proceedings. The petitioner represented various times but nothing has been done so far. Hence, the instant writ petitions by the petitioners.

4. A short reply has been filed on behalf of the respondents by Sh. Sunil Sharma, HoD (Estate) HSIIDC, Panchkula. It has been inter alia stated that the State Government came up with the Rehabilitation and Resettlement Policy dated 07.12.2007 for the land owners whose land was acquired. The said policy was applicable for the land acquired on 05.03.2005. The petitioner's land was acquired in December 2005. As per R&R policy dated 07.12.2007 applicable to them, the pricing of the plot/guidelines was that the rates of residential plot reserved for allotment to land oustees would be as applicable at the time of inviting claim applications by the Corporation. The applications under R&R policy dated 07.12.2007 were invited through various newspapers between 27.08.2010 and 01.09.2010 when the sector was floated for the first time and according to the rate applicable in the year 2010-11 i.e. Rs. 6600 per square meter is rightly being charged from the petitioner oustee. It has been further stated that the date of passing of the award in the present case was 05.07.2007 and as such as per clause 3 of the R&R policy 2010, the said policy would not be applicable to the petitioner. The award having been passed on a date prior to 07.09.2010, the case of the petitioner would be covered under the 2007 policy and not 2010 policy.

5. We have heard learned counsel for the parties.

6. During the hearing today, learned counsel for the petitioner restricted his

prayer to 20% discount on the price of the plot in terms of the R&R policy dated 09.11.2010. He had given up all other prayers.

7. Reliance was placed on Allotment of 'oustee category' residential plots in cases of land acquisition for development of infrastructure HUDA, HSIIDC and the HSAMB in the policy of 09.11.2010. The relevant portion, thereof, reads thus:-

"Where the land is acquired for development of planned urban infrastructure by HUDA, or development of planned industrial infrastructure by the HSIIDC, or marketing infrastructure by the HSAMB, developed residential plots will be reserved for assured allotment to the land oustees as per the following scale:

Allotment of in cases where only land is acquired (Oustee Quota Plots)

Scheme applicable up to 06.09.2010

Scheme Revised w.e.f. 07.09.2010

Land/Area Acquired

Size of residential plot to be allotted

Land/Area acquired

Size of residential plot to be allotted

100 to 500 sq. yards

3 marla

100 to 500 sq. yards

90 sq. mtrs.

501 to 1000 sq. yards

4 marla

501 to 1000 sq. yards

150 sq. mtrs

1001 sq. yards to ½ acre

6 marla

1001 sq. yards to ½ acre

200 sq. mtrs.

Above ½ acre to ¾ acre

8 marla

Above ½ acre to ¾ acre

300 sq. mtrs.

Above $\frac{3}{4}$ acre to 1 acre

10 marla

Above $\frac{3}{4}$ acre to 1 acre

350 sq. mtrs.

One acre and above

14 marla

Above one acre

450 sq. mtrs.

(ii) The rates of residential plots reserved for allotment to the land oustees, in both the above categories, as per the scale prescribed, would be 20% lesser than the nodal price applicable for the general public at the time of first floatation in the case of HUDA and HSIIDC, in all other cases the rates of plots would be determined by the acquiring departments/ organizations based on the actual costs taking into account (a) the cost acquisition of land, (b) costs incurred on provision of minimum amenities/ services, and (c) loading of the areas under roads/ streets/ services and utilities on the plotted area."

It was claimed that under Clause (ii), the petitioners were liable to pay 20% lesser than the nodal price applicable for the general public. Accordingly, it was claimed that 20% rebate on rate of Rs. 6600 per square meter offered to general public is required to be bestowed on the petitioners. This prayer was opposed by learned counsel for the respondents by urging that both the categories referred herein relate to categories of land acquisition cases provided under Clause 6 of the said policy.

8. We do not find any substance in the submission of learned counsel for the respondents Clause 6 of the policy dated 09.11.2010 deals with categories of Land Acquisition cases and reads as under :-

"6. Categories of Land Acquisition Cases:

"It has been observed that the Government acquires land for various infrastructure projects, which could be broadly clubbed under the following two categories:

i. Projects where the urban/ industrial/ agriculture marketing infrastructure is developed in the form of large clusters by the state agencies i.e. the HUDA, the HSIIDC, and the HSAMB, for which comparatively large mass of land is acquired for development of planned infrastructure;

ii. Projects where the land is either acquired in smaller pockets (e.g. water works and STPs of the Public Health Engineering Departments or the Power Sub-stations set-up by the power utilities) or where the land is acquired in a linear/

strip form for construction of roads and canals etc.

Whereas it has been found feasible to grant certain benefits in respect of the cluster development projects, the same has not been found feasible in the second category cases."

9. Clause 6 relates to categories of Land Acquisition Cases. According to it, under Clause (i) it had been decided to grant certain benefits in respect of the cluster development projects whereas under second category, it had not been found feasible to give those benefits to the land owners. In other words, clause (ii) disentitles a land owner for allotment of plot under oustee category. Further, it nowhere, deals with the rate applicable for allotment of plots under the oustees category.

10. It was not disputed that the petitioner was entitled for allotment of plot and had been allotted plot No. 47, Sector 56, Phase V at Kundli. The plain reading of clause (ii) of Allotment of 'oustee category' residential plots in cases of land acquisition for development of infrastructure HUDA, HSIIDC and the HSAMB clearly stipulates that the rates of residential plots reserved for allotment to the land oustees, in both the above categories i.e. Scheme applicable upto 06.09.2010 and Scheme revised w.e.f. 07.09.2010 would be as per scale prescribed which shall be 20% less than the nodal price applicable for general public at the time of first floatation in the case of HUDA and HSIIDC, and in all other cases, the rates of plots would be calculated by the acquiring departments/ organisations based on the actual costs after taking into consideration (a) the cost of acquisition of land; (b) costs incurred on the provision on minimum amenities/services, and (c) loading of the areas under roads/streets/services and utilities on the plotted area. Undisputedly, the rate fixed by the respondents in the present case was Rs. 6600 per square meter from the general public. Therefore, the respondents could not validly deny the benefit of 20% to the petitioners on the said amount of Rs. 6600 per square meter who are oustees here.

11. In view of the above, the writ petitions are allowed to the extent that the rates of residential plots reserved for allotment to the land oustees would be 20% lesser than the nodal price applicable for the general public i.e. Rs. 6600 per square meter less 20% thereon. Accordingly, the writ petitioners shall be liable to pay in terms of the decision recorded hereinabove in accordance with law.