
(2016) 06 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : RFA No. 6617 of 2012 (O&M) and other connected matters

Mohammad Yusuf

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 03-06-2016

Acts Referred:

Citation : (2016) 2 LAR 655 : (2016) 4 RCRCivil 47

Hon'ble Judges : Rameshwar Singh Malik, J.

Bench : Single Bench

Advocate : Arun Jain, Senior Advocate with Aditya Jain, Advocate, for the Appellant; Arun Beniwal, DAG, Haryana, for the Respondent

Final Decision : Disposed Off

Judgement

Rameshwar Singh Malik, J.—This batch of 33 appeals, out of which 21 appeals bearing Regular First Appeal No.3448 to 3468 of 2013, filed by the State of Haryana and remaining appeals bearing Regular First Appeal No.6611 to 6617, 7141, 7142 of 2012, 476, 2155, 5590 of 2013 and cross-objections Nos.50-CI, 51-CI, 52-CI, 53-CI, 58-CI and 59-CI of 2013 filed by the land owners, is being decided vide this common order, as all these appeals as well as cross-objections 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 the facility of reference, facts are being extracted from RFA No. 6617 of 2012 (Mohammad Yusuf and others v. State of Haryana and others).

2. Briefly put, facts necessary for disposal of the present set of appeals are that State of Haryana sought to acquire land measuring 372 kanal, 02 marla, at public expenses for public purpose namely; for Construction of Mini Secretariat at Nuh. The land was acquired out of the revenue estate of village Ferojpur Namak. Notification dated 18.10.2005 was issued under Section 4 of the Land Acquisition Act, 1894 ("Act" for short), which was followed by notification dated 25.05.2006 under Section 6 of the Act. Land Acquisition Collector ("LAC" for short), vide his award No.1 dated 05.11.2007, assessed the market value of the acquired land at

the uniform rate of Rs. 16 lacs per acre, without resorting to any belting system.

3. Dissatisfied with the market value assessed by LAC, land owners filed objections under Section 18 of the Act and as a consequence thereof, land references were forwarded to the learned reference Court, for its decision. Learned reference Court, vide its impugned award dated 28.08.2012, assessed the market value of the acquired land at the rate of Rs. 28,80,000/- per acre.

4. Both the parties felt aggrieved against the above said impugned award passed by the learned reference Court. State of Haryana is seeking reduction in the amount of compensation awarded by the learned reference Court, whereas the land owners are seeking further enhancement in the amount of compensation for their acquired land. That is how, all these appeals as well as cross-objections are being decided together.

5. Having heard the learned counsel for the parties at considerable length, after going through the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the appeals filed by the State of Haryana are without any merit and the same are liable to be dismissed. However, the appeals as well as cross-objections filed by the land owners deserve to be partly allowed, suitably enhancing the amount of compensation for the acquired land, for the following more than one reasons.

6. So far as the location and potentiality of the acquired land is concerned, learned reference Court in para 24 of the impugned award has discussed this aspect in detail and recorded cogent findings which deserve to be upheld. The relevant part of para 24 of the impugned award in this regard, reads as under :-

"In this regard, first of all, this court would like to refer to Akash Sijra Exhibit P22 of the acquired land, which clearly shows that the acquired land is comprised in rect. Nos.56, 57, 58, 63, 64, 65, 27 and 115. In the western side, it is connected with State Highway Delhi-Alwar road and in the eastern side, it is connected with Nuh-Palwal road. In this regard, it will be worthwhile to refer to the statement of PW2 Dariyao Singh, Clerk, Municipal Committee, Nuh, who produced in the court original Akash Sijra Exhibit P5 showing kilabandi of Nuh Hadbast No.103. As per this witness, the revenue estate of Nuh abuts the revenue estate of village Ferozpur Namak and some portion of village Ferozpur Namak also falls in Municipal Committee, Nuh. In this regard, he has relied upon the Akash Sijra Exhibit P5. From the statement of PW4 Ashok Kumar, Patwari Halqa, it is evident that the boundaries of Nuh town and Ferozpur Namak are adjacent to the acquired land situated on State Highway Delhi-Alwar road and on the eastern side, it abuts to Nuh-Palwal road. This witness further testified that in village Ferozpur Namak, JBT Training College and Women College are functional and the land of village Ferozpur Namak has also been acquired for Police Line and Jail Complex. He further testified that village Ferozpur Namak falls with the controlled area and newly constructed Medical College is at a distance of 3-4 kilometers from the acquired land. Further, the statement of PW5 Mohd. Arif, JE

from PWD (B&R) Nuh makes it crystal clear that the land, which has been acquired in this case, falls in village Ferozpur Namak, where the Mini Secretariat and Court Complex building are under construction. He further clarified that the acquired land abuts Gurgaon-Delhi road as well as Nuh-Palwal road. He proved on file the attested copy of site plan of the road as Exhibit P18 to P21. In his cross-examination, he has clarified that the acquired land has frontage of 6 acres on Delhi-Alwar road, whereas it has frontage of 9 acres on Nuh-Palwal road. Thus, from the above discussion and statements of the said material witnesses, there leaves no manner of doubt in my mind with regard to the location of acquired land, which is a compact block of total land measuring 372 kanals 2 marlas and abuts on State Highway on its western side and Nuh-Palwal road on its eastern side. It is well proved from the statement of one of the petitioners Mohammad Yusuf that his land is a valuable and it is at a short distance from Nuh town. During the course of submissions, it is not disputed at bar that new Court Complex, which is under construction at the acquired land, is at a distance of merely one and a half kilometer from Nuh town. It is worthwhile to mention here that there is JBT Training College and Women College in village Ferozpur Namak. No doubt, Medical College is little bit far from the acquired land, which is concededly situated at a distance of more than 4 kilometers but in any case, from the above discussed evidence, it is clear that the acquired land has strong and great potential to be developed for the extension of abadi of village Nuh and it has also strong potential to raise other constructional activities for commercial purposes as well. During the course of submissions, it is conceded that police line and District Jail, Mewat are also coming up near the court complex towards Gurgaon side."

In view of the above said undisputed fact situation about the location and potentiality of the acquired land, it can be safely concluded that the acquired land was situated at a prime location and it was having immense potentiality. It is so said because the acquired land could have been easily put to residential as well as commercial use. Bare perusal of the site plan Ex.P22 available on the lower Court record, would show that a major chunk of the acquired land was abutting Nuh-Palwal road as well as on Delhi-Alwar road. Thus, there cannot be any doubt that the acquired land was situated in a most happening area and it was having huge potentiality.

7. It is a matter of record that State of Haryana did not produce any evidence before the learned reference Court as mentioned in para 9 of the impugned award. Coming to the evidence produced by the land owners, they placed reliance on four sale exemplars, which were Ex.P1 to Ex.P4. However, only three sale instances were found relevant, which were Ex.P1, Ex.P2 and Ex.P3, Ex.P4 being the post-acquisition sale deed. It is also a matter of record that maximum area was sold by way of sale deed Ex.P1 dated 05.10.2005 out of the revenue estate of village Ferozpur Namak itself. Land measuring 01 kanal, 06 marla was sold by way of this sale deed Ex.P1 for an amount of Rs. 11,70,000/- at the rate of Rs. 72,00,000/- per acre.

8. Thrust of the arguments raised by learned senior counsel for the land owners is that although the learned reference Court rightly placed reliance on this sale deed Ex.P1, but illegally applied 60% cut thereon, which was not warranted in view of the facts and circumstances of the case. On the other hand, learned counsel for the State, while supporting the imposition of 60% cut by the learned reference Court, submits that because of smallness of plot sold by way of Ex.P1, imposition of 60% cut on the market price disclosed therein, was justified.

9. So far as imposition of particular percentage of cut on any market price disclosed by way of relevant sale deed is concerned, it is not an absolute rule. Neither it is desirable nor possible to lay down a straight-jacket formula, which might be made applicable in every given fact situation. Each case has to be decided as per its own peculiar facts and circumstances. As far as applying any cut on account of development costs is concerned, said ground is not available in the present case, for the reason that owing to the location of the acquired land, no further development, of any kind whatsoever, was required in the present case. However, since the area sold by way of sale deed Ex.P1 was measuring 01 kanal, 06 marla and the total acquired land was measuring 372 kanal, 02 marla, a reasonable cut is required to be imposed on account of smallness of plot sold by way of this sale deed Ex.P1.

10. It is also pertinent to note here that out of the above said three sale deeds, sale deed Ex.P1 has been found to be the best piece of evidence, as it discloses the highest market price. In view of the law laid down by the Hon'ble Supreme Court in Mehrawal Khewaji Trust (Regd.), Faridkot and others v. State of Punjab and others, 2012 (5) SCC 432 as well as Udho Dass v. State of Haryana, 2010 (12) SCC 51, the land owners are entitled to receive the best price for their acquired land.

11. Keeping in view the totality of facts and circumstances of the case noticed herein above and proceeding on a holistic, pragmatic and constructive approach, with a view to do complete and substantial justice between the parties, this Court is of the considered opinion that imposition of 10% cut on the market price disclosed in the above said sale deed Ex.P1 will meet the ends of justice. Applying any higher cut would be wholly unjustified. After applying 10% cut on the market price disclosed in the sale deed Ex.P1, the amount comes to Rs. 64,80,000/- per acre. Accordingly, the land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs. 64,80,000/- per acre, from the date of notification under Section 4 of the Act.

12. The above said view taken by this Court also finds support from a Division Bench judgment in Harbans Singh and others v. State of Punjab through the Land Acquisition Collector, Patiala, 2006 (1) RCR (Civil) 634 and judgments of the Hon'ble Supreme Court in Nelson Fernandes and Others v. Special Land Acquisition Officer, South Goa and Others, 2007(9) SCC 447 as well as Himmat Singh and others v. State of M.P. and another, 2013(16) SCC 392.

13. On the issue of imposition of cut, the Hon"ble Supreme Court in paras 28 to 30 of its judgement in Nelson Fernandes and others v. Special Land Acquisition Officer, South Goa and others, 2007(9) SCC 447, held as under :-

"In our opinion, the High Court has adopted a rough and ready method for making deductions which is impermissible in law. We have already noticed the valuers report. No reason whatsoever was given by the Reference Court or by the High Court as to why the report of the valuer and her evidence cannot be relied on. In our opinion, the compensation awarded by the High Court had no basis whatsoever and was not supported by cogent reasons and that it did not consider the future prospect of the development of the land in question. The High Court also did not assess the injury that the appellant is likely to sustain due to loss of his future earnings from the said land and also did not assess the damage already suffered due to diminution of the profits of the land between the time of publication of the notice and time of the collector taking possession. The Division Bench of the High Court has miserably erred in passing the order impugned thereby reducing the rate of compensation from Rs. 192/- to Rs. 38/- and in utter misreading of the evidence on record and acted in a flagrant error of law and facts. In our view, the orders passed by the Division Bench resulted in manifest injustice being caused to the appellants. The High Court also erred in passing the order by holding that the opinion of the Government approved valuer was not based on any opinion method of valuation but solely on the basis of facilities available to the land. In our view, the High Court ought to have appreciated that the Government approved valuer is an expert in her field and the opinion of such an expert ought not to have been rejected shabbily.

Both the Special Land Acquisition Officer, the District Judge and of the High Court have failed to notice that the purpose of acquisition is for Railways and that the purpose is a relevant factor to be taken into consideration for fixing the compensation. In this context, we may usefully refer the judgment of this Court of Viluben Jhalejar Contractor (D) by Lrs. v. State of Gujarat reported in JT 2005(4) SC 282. This Court held that the purpose for which the land is acquired must also be taken into consideration in fixing the market value and the deduction of development charges. In the above case, the lands were acquired because they were submerged under water of a dam. Owners claimed compensation of Rs. 40/- per sq. ft. LAO awarded compensation ranging from Rs. 35/- to Rs. 60/- per sq. mtr. Reference Court fixed the market value of the land at Rs. 200/- per sq. mtr. and after deduction of development charges, determined the compensation @ Rs. 134/- per sq. mtr. In arriving at the compensation, Reference court placed reliance on the comparative sale of a piece of land measuring 46.30 sq. metre @ Rs. 270 per sq. mtr. On appeal, the High Court awarded compensation of Rs. 180/- per sq. mtr. in respect of large plots and Rs. 200/- per sq. mtr. in respect of smaller plots. On further appeal, this Court held that since the lands were acquired for being submerged in water of dam and had no potential value and the sale instance relied was a small plot measuring 46.30 sq. mtr. whereas the acquisition in the present case was in

respect of large area, interest of justice would be subserved by awarding compensation of Rs. 160/- per sq. mtr. in respect of larger plots and Rs. 175/- per sq. mtr. for smaller plots. In *Basavva (Smt.) and Ors. v. Spl. LAO and Ors.* reported in JT (1996)5 SC 580, this Court held that the purpose by which acquisition is made is also a relevant factor for determining the market value.

We are not, however, oblivious of the fact that normally ? deduction of further amount of compensation has been directed in some cases. However, the purpose for which the land acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways. This Court in *Hasanali Khanbhai & Sons & Ors. v. State of Gujarat*, (1995)2 SCC 422 and *L.A.O. v. Nookala Rajamallu*, 2003(10) Scale 307 had noticed that where lands are acquired for specific purposes deduction by way of development charges is permissible. In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise. Therefore, the order passed by the High Court is liable to be set aside and in view of the availability of basic civic amenities such as school, bank, police station, water supply, electricity, high way, transport, post, petrol pump, industry, telecommunication and other businesses, the claim of compensation should reasonably be fixed @ Rs. 250/- per sq. mtr. with the deduction of 20%. The appellant shall be entitled to all other statutory benefits such as solatium, interest etc. etc. The appellants also will be entitled to compensation for the trees standing on the said land in a sum of Rs. 59,192 as fixed. I.A. No. 1 of 2006 for substitution is ordered as prayed for."

14. Again, the Hon"ble Supreme Court in paras 27 to 29 of its judgement in *Himmat Singh and others v. State of M.P. and another*, 2013(16) SCC 392, while reiterating its above-said view taken in *Nelson Fernandes's* case (supra), held as under:-

"The approach adopted by the Reference Court and the High Court in making deductions towards the cost of development/development charges from the market value determined on the basis of the sale deeds produced by the appellants was clearly wrong. The respondents had not even suggested that the development envisaged by the Reference Court, i.e., laying of roads, drains, sewer lines, parks, electricity lines etc. or any other development work was required to be undertaken for laying the Railway line. Therefore, 25% deduction made by the Reference Court and approved by the High Court under two different heads is legally unsustainable.

In *Nelson Fernandes and others v. Special Land Acquisition Officer, South Goa and others*, (2007) 9 SCC 447, this Court considered the question whether any deduction could be made towards development cost where the land is acquired for laying railway line and answered the same in negative. In that case, the appellant had challenged the judgements of the Reference Court and the Division Bench of the High Court fixing market value of the acquired land and contended that no deduction could be made because the land had been acquired for laying

railway line. This Court reversed the judgements of the Reference Court and the High Court and observed :

"29. Both the Special Land Acquisition Officer, the District Judge and of the High Court have failed to notice that the purpose of acquisition is for Railways and that the purpose is a relevant factor to be taken into consideration for fixing the compensation. In this context, we may usefully refer the judgement of this Court in *Viluben Jhalejar Contractor v. State of Gujarat*. This Court held that the purpose for which the land is acquired must also be taken into consideration in fixing the market value and the deduction of development charges. In the above case, the lands were acquired because they were submerged under water of a dam. Owners claimed compensation of Rs. 40 per sq ft. LAO awarded compensation ranging from Rs. 35 to Rs. 60 per sq m. Reference Court fixed the market value of the land at Rs. 200 per sqm and after deduction of development charges, determined the compensation @ Rs. 134 per sqm. In arriving at the compensation, Reference Court placed reliance on the comparative sale of a piece of land measuring 46.30 sq m @ Rs. 270 per sq m. On appeal, the High Court awarded compensation of Rs. 180 per sq m in respect of large plots and Rs. 200 per sq m in respect of smaller plots. On further appeal, this Court held that since the lands were acquired for being submerged in water of dam and had no potential value and the sale instance relied was a small plot measuring 46.30 sq m whereas the acquisition in the present case was in respect of large area, interest of justice would be subserved by awarding compensation of Rs. 160 per sq m in respect of larger plots and Rs. 175 per sq.m for smaller plots. In *Basavva v. Spl. Land Acquisition Officer* this Court held that the purpose for which acquisition is made is also a relevant factor for determining the market value.

We are not, however, oblivious of the fact that normally 3rd deduction of further amount of compensation has been directed in some cases. However, the purpose for which the land is acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways. This Court in *Hasanali Khanbhai & Sons v. State of Gujarat* and *Land Acquisition Officer v. Nookala Rajamallu* had noticed that where lands are acquired for specific purposes, deduction by way of development charges is permissible. In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise. Therefore, the order passed by the High Court is liable to be set aside and in view of the availability of basic civic amenities such as school, bank, police station, water supply, electricity, highway, transport, post, petrol pump, industry, telecommunication and other businesses, the claim of compensation should reasonably be fixed @ Rs. 250 per sq m with the deduction of 20%. The appellant shall be entitled to all other statutory benefits such as solatium, interest, etc. etc. The appellants also will be entitled to compensation for the trees standing on the said land in a sum of Rs. 59,192/- as fixed. IA No. 1 of 2006 for substitution is ordered as prayed for."

In *C.R. Nagaraja Shetty v. Special Land Acquisition Officer and Estate Officer and*

another (2009)¹¹ SCC 75, the Court referred to the judgment in *Nelson Fernandes and others v. Special Land Acquisition Officer, South Goa and others* (supra) and observed:

"15. The learned counsel appearing on behalf of the respondents was also unable to point out any such evidence regarding the proposed development. We cannot ignore the fact that the land is acquired only for the widening of the national highway. There would, therefore, be no question of any such development or any costs therefor.

16. In *Nelson Fernandes v. Land Acquisition Officer* this Court has discussed the question of development charges. That was a case where the acquisition was for laying a railway line. This Court found that the land under acquisition was situated in an area which was adjacent to the land already acquired for the same purpose i.e. for laying a railway line. In para 29, the Court observed that the Land Acquisition Officer, the District Judge and the High Court had failed to notice that the purpose of acquisition was for the Railways and that the purpose is a relevant factor to be taken into consideration for fixing the compensation.

17. The Court in *Nelson Fernandes* relied on *Viluben Jhalejar Contractor v. State of Gujarat* where it was held that :

"29. the purpose for which the land is acquired must also be taken into consideration in fixing the market value and the deduction of development charges."

Further, in para 30, the Court specifically referred to the deduction for the development charges and observed:

"30. We are not, however, oblivious of the fact that normally 2nd deduction of further amount of compensation has been direct in some cases. However, the purpose for which the land is acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways. ... In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise."

The Court made a reference to two other cases viz. *Hasanali Khanbhai & Sons v. State of Gujarat* and *Land Acquisition Officer v. Nookala Rajamallu* where the deduction by way of development charges was held permissible.

18. The situation is no different in the present case. All that the acquiring body has to achieve is to widen the national highway. There is no further question of any development. We again, even at the cost of repetition, reiterate that no evidence was shown before us in support of the plea of the proposed development. We, therefore, hold that the High Court has erred in directing the deduction on account of the developmental charges at the rate of Rs. 25 per square foot out of the ordered compensation at the rate of Rs. 75 per square foot. We set aside the judgment to that extent."

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

15. Considering the peculiar facts and circumstances of the cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that the 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.

16. The appeals as well as cross-objections filed by the land owners deserve to be partly accepted and the same are allowed to the extent indicated above. The land owners are held entitled to receive the compensation for their acquired land at uniform rate of Rs. 64,80,000/- per acre, from the date of notification under Section 4 of the Act. Besides this, land owners shall also be entitled for all the statutory benefits available to them, under the relevant provisions of the Act.

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