(2019) 02 P&H CK 0164

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 3707 Of 2009

Partap Singh And Others APPELLANT

Vs

State Of Haryana And Others RESPONDENT

Date of Decision : 07-02-2019

Acts Referred:
Land Acquisition Act, 1894 — Section 4, 23(1A), 23(2), 54

Citation : (2019) 02 P&H CK 0164

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

Bench : Single Bench

Advocate : Ashwani Bakshi, Ashok Arora, Sushil K. Sharma, M.L. Sharma, I.S. Sidhu, Sudeep Mahajan, Shivendra Swaroop

Final Decision : Partly Allowed

Judgement

G.S. Sandhawalia , J

1. The present order shall dispose of 25 appeals i.e. RFA Nos.3707, 3705, 3706, 3708 to 3711, 3119, 3280, 3282 to 3290, 3309 & 3944 to 3947 of 2009, RFA Nos.2371 & 5485 of 2010 filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') both by the landowners and the beneficiary Power Grid Corporation India Ltd. against the Award dated 01.04.2009, whereby as many as 13 reference petitions were decided by the Reference Court, Fatehabad. The Reference Court has evaluated the market value of the land in question @ Rs.9 lakhs per acre by enhancing it from Rs.2,40,000/- per acre as awarded by the Land Acquisition Collector (for short 'the Collector') vide Award dated 09.03.2005.

2. The notification under Section 4 of the Act was issued on 19.04.2004, whereby land measuring 38.33 acres situated in village Matana, Hadbast No.192, Tehsil & District Fatehabd was sought to be acquired. The primary reliance of the Reference Court was upon the sale deed dated 06.06.2002 (Ex.P41) was for land measuring 49 kanals 15 marlas (approximately 6 acres), which was sold for Rs.56,65,281/- and market value of which works out @ Rs.9,11,000/- per acre,

which was in close vicinity of the acquired land.

3. Counsel for the landowners has primarily referred to Ex.P9, the site plan to submit that the land falling across the road had been acquired for the purpose of Police Lines on 02.10.2001. This Court in RFA No.63 of 2005 'State of Haryana Vs. Hemant Kumar' decided on 29.04.2010 had awarded the market value @ Rs.600/- per square yard (Rs.29,04,000/- per acre). It has been further submitted that in Civil Appeal No.6755 of 2013 'Bhavani Vs. State of Haryana' the amount has further been enhanced to Rs.866/- per square yard (Rs.41,91,440/- per acre) by the Apex Court and, therefore, reliance as such is placed upon the same to seek enhancement.

4. It is also submitted that there were other sale deeds which the Reference Court has not taken into consideration, whereby the market value would work out much higher. Reference is made to sale deed dated 27. 09.2000 (Ex.P40) which was for 2 kanals 16 marlas and land was sold @ Rs.280/-per square yard, market value of which works out @ Rs.13,55,200/- per acre. Similarly, Ex.P34 for 4 kanals of land sold for Rs.5 lakhs, whereby market value worked out Rs.10 lakhs per acre is relied upon to submit that as there was considerable difference and cumulative enhancement should be granted. Similarly, post dated sale deed dated 17.11.2006 (Ex.P48) which is for land measuring 40 kanals and was sold for Rs.2 crores, whereby market value worked out comes to Rs.40 lakhs per acre. Similarly, sale deed dated 11.03.2008 (Ex.P50), which was for land measuring 3 acres 2 kanals, whereby market value works out @ Rs.50 lakhs per acre were also relied upon to show that there was considerable appreciation in the area.

5. Reliance has also been placed upon the Award pertaining to notification dated 04.07.2006, whereby the market value had been assessed @ Rs.71,87,400/- per acre in RFA No.5585 of 2014 'HUDA and another Vs. Prem Chand Gupta and others' decided on 22.07.2015. Similarly, reliance has also been placed upon the Award of notification dated 12.02.2008, whereby market value has been assessed @ Rs.50 lakhs per acre in RFA No.9626 of 2014 'Hanuman Singh Vs. State of Haryana and others' decided on 22.09.2015. It is submitted that these notifications are pertaining to the land which is situated around the area of Basti Bhiwan and land in question also was earlier situated in the same area, which was separated vide notification dated 01.05.1998 (Ex.P27) and had become part of villlage Matana. It is, accordingly, submitted that the market value, which has been assessed is on the lower side and adequate enhancement has been sought.

6. Mr. Sidhu, appearing on behalf of the Power Grid Corporation India Ltd. has claimed that the sale deed dated 06.06.2002 (Ex.P41) was not a bonafide transaction as such and the market value is inflated and was of far more value than what was awarded by the Collector.

7. This Court has examined the record and it cannot be denied that the land had immense potential as it is abutting the National Highway No.10 and is near the

residential and commercial area of Fatehabad and within the controlled area as per the plan of District Town Planner and has rightly been treated as urban land as such by the Reference Court.

8. PW-6 Dharam Pal Yadav, the Architect, who prepared the site plan (Ex.P9) and proved the same had deposed that the acquired land was adjoining to the land pertaining to Gurukul Vaidh Mandir, Bal Vatika Public School, Radha Swami Satsang Bhawan and, thereafter, at some distance the residential area of Sector-3 extension on the right side of the road was situated. On the left side there was Police Lines, Daffodils Public School, Petrol Pump and the residence of Kulharia and Dhan Dhan Satguru Ashram. The land from village Matana had been acquired for development of residential and commercial Sectors 4, 5 and 7-A. Even RW-2 Ram Chander, Kanungo had deposed that Radha Swami Satsang Bhawan was situated opposite the Police Lines offices and quarters.

9. It was also noticed that vide sale deeds dated 11.03.2008 Ex.P50 to Ex.P53 land was purchased by the private colonizers and the market value was worked out @ Rs.50 lakhs per acre and, thus, the potentiality as such was rightly commented upon. The sale deeds as such relied upon on behalf of Power Grid Corporation India Limited Ex.R8 to R10 could not be co-related as the land pertaining to said sale deeds was not situated on the National Highway and were executed on the minimum Government rates. It is to be noticed that vide notification dated 01.05.1998 (Ex.P27) land of village Matana which was part of Basti Bhiwan had been separated. Reliance upon Ex.P32 to P40 was not made on account of the fact that these were of small piece of land and only indicative of high valuation of the land involved. Resultantly, reliance was placed upon Ex.P41 by which land was purchased by Radha Swami Satsang and it was held that it was a genuine and authentic piece of sale transaction. It was also noticed that it was at a distance of 250 meters from the acquired land. The Reference Court though calculated the appreciation @ 10% per annum, which was liable to be granted for the difference of 1 year and 2 months, but did not grant any other benefit as such while fixing the market rate @ Rs.9,11,000/-, which is verified by the statement of PW-21 Satpal Patwari Mall Halqa, village Matana on the ground that the Radha Swami Satsang Bhawan, was subject matter of Ex.P41 was closer by 250 meters towards the town.

10. A perusal of the evidence would go on to show that PW-3 Murli Manohar, Draftsman had categorically stated that the acquired land falls in urban as well as in the controlled area of Fatehabad on the National Highway No.10, which even the Architect has duly proved and there is no dispute as such. Rather RW-1 S.K. Gupta, Chief Manager, Power Grid Corporation, Fatehabad in his cross-examination admitted that Radha Swami Satsang Bhawan was situated opposite the Police Lines. He also further admitted that the acquired land was a big area of 38 acres and out of which only 4 acres adjoins National Highway No.10. He denied the suggestion that the distance between the Police Lines and the acquired land was about 800 meters and volunteered that there was a distance

of 2.5 Kms between them.

11. It is also pertinent to notice that there was a pleading wherein a specific plea was taken that the Police Lines and staff quarters were adjoining to the land of the appellants. In the written statement filed by the State also it has been specifically denied that the units as such were adjacent to the land in question. Even the written statement of respondent No.3 as such does not admit the factum of Police Lines being opposite the land in question.

12. The argument which is raised that on account of notification dated 02.10.2001 the value should be enhanced to Rs.50 lakhs per acre, since Rs.41,91,440/- per acre has been granted by the Apex Court is also not justifiable. It is also pertinent to notice that this Court as such in the case of Hemant Kumar (supra) had granted the benefit of enhancement on the strength of notifications dated 21.07.1993 and

21. 12.1998 and by giving 12% increase per annum, the market value had been enhanced to Rs.600 per square yard. If the said formula is adopted as such it would amount to grant the benefit of cumulative enhancement from the year 1993 to 1998 retrospectively. The Apex Court recently in 'Manoj Kumar & others Vs. State of Haryana & others' 2018 (2) RCR (Civil) 815 and in 'Loveleen Kumar etc. Vs. State of Haryana and others' 2018 (3) RCR (Civil) 127 has specifically held that the best piece of evidence is the sale exemplar of the neighbouring area, rather than following the awards passed on an earlier occasion in the neighbourhood. The relevant portion reads as under:-

"15. The awards and judgment in the cases of others not being inter parties are not binding as precedents. Recently, we have seen the trend of the courts to follow them blindly probably under the misconception of the concept of equality and fair treatment. The courts are being swayed away and this approach in the absence of and similar nature and situation of land is causing more injustice and tantamount to giving equal treatment in the case of unequal's. As per situation of a village, nature of land its value differ from the distance to distance even two to three-kilometer distance may also make the material difference in value. Land abutting Highway may fetch higher value but not land situated in interior villages.

16. The previous awards/judgments are the only piece of evidence at par with comparative sale transactions. The similarity of the land covered by previous judgment/award is required to be proved like any other comparative exemplar. In case previous award/judgment is based on exemplar, which is not similar or acceptable, previous award/judgment of court cannot be said to be binding. Such determination has to be out rightly rejected. In case some mistake has been done in awarding compensation, it cannot be followed on the ground of parity an illegality cannot be perpetuated. Such award/judgment would be wholly irrelevant.

17. There is yet another serious infirmity seen in following the judgment or award passed in acquisition made before 10 to 12 years and price is being

determined on that basis by giving either flat increase or cumulative increase as per the choice of individual Judge without going into the factual scenario. The said method of determining compensation is available only when there is absence of sale transaction before issuance of notification under section 4 of the Act and for giving annual increase, evidence should reflect that price of land had appreciated regularly and did not remain static. The Recent trend for last several years indicates that price of land is more or less static if it has not gone down. At present, there is no appreciation of value. Thus, in our opinion, it is not a very safe method of determining compensation.

18. To base determination of compensation on a previous award/ judgment, the evidence considered in the previous judgment/ award and its acceptability on judicial parameters has to be necessarily gone into, otherwise, /gross injustice may be caused to any of the parties. In case some gross mistake or illegality has been committed in previous award/judgment of not making deduction etc. and/ or sufficient evidence had not been adduced and better evidence is adduced in case at hand, previous award/judgment being not inter-parties cannot be followed and if land is not similar in nature in all aspects it has to be out-rightly rejected as done in the case of comparative exemplars. Sale deeds are at par for evidentiary value with such awards of the court as court bases its conclusions on such transaction only, to ultimately determine the value of the property."

13. Similarly, the relevant observations of Loveleen Kumar (supra) read as under:-

"8. The High Court has mainly relied upon Ashrafi (supra) for coming to its conclusion. In our considered opinion, the method of granting compensation on the basis of cumulative increase as 9 done was not permissible in the facts of the case, in view of the sale deeds produced. The method of working out compensation without considering the evidence on record cannot be said to be justifiable. The land in Ashrafi (supra) was acquired in the year 1995 and was very small. It was for a commercial purpose. In the matter on hand, the land was acquired in the year 2005. Thus, there is a gap of about 10 years between the two acquisitions. Relying on such an acquisition of a decade ago may be unsafe. This Court in the case of ONGC Ltd. v. Rameshbhai Jivanbhai Patel, (2008) 14 SCC 745 observed that a transaction or acquisition over five years before the present acquisition is an unreliable standard."

14. In the present matter one thing which has to be examined from the sale deed dated 06.06.2002 (Ex.P41) which was executed almost a year and 10 months earlier, it would be clear that there was an agreement to sell inter se the seller and the Radha Swami Satsang, on the basis of which the same had fructified. At the time of execution of the said sale deed all the landowners as such had been given their respective shares by way of cheque amounting to Rs.8,53,056/- each to make good the balance amount, as advance had also been received on an earlier account, in view of the agreement to sell. Therefore, the argument which has been raised by Mr. Sidhu that the sale deed (Ex.P41) was

not a bonafide transaction is to be rejected being a bonafide transaction. It is not disputed that the land pertaining to said sale exemplar is in close vicinity of the land acquired and has a similar advantage and its frontage is also falling on the National Highway No.10 and there was no other similar sale exemplar to fall back on.

15. Reliance as such on Ex.P40 which is dated 27.09.2000 is not justified, since it is for 2 kanals 16 marlas of land and was sold for Rs.13,55,200/- even if considered would entail a 40% minimum cut to be put on account of the smallness of the plot as per settled principle. Therefore, it would again bring down the value and would be of no help to the counsel for the landowners. Sale deed Ex.P34 was executed 15 years prior to the issuance of Section 4 notification in the year 1987 and, therefore, also cannot be of any help, even though the land pertaining to both the sale deeds might be falling in the Basti Bhiwan. Even otherwise no site plan has been brought on record to show the location of the land and merely because they are of the same locality and in close vicinity, this Court is not inclined to apply the market value of those sale deeds. Reliance upon the sale deed which are post notification Ex.P48 to P50 also cannot be taken into account in view of the settled principle of law as has been held in 'Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another' 2008 (14) SCC 745, wherein it has been held that it is a dangerous exercise to make a reverse cut to assess the market value. Similarly, the awards passed for notification dated 04.07.2006 and 12.02.2008 are also liable to rejected, keeping in view the fact that for the earlier notifications a higher amount of compensation Rs.71,18,400/- and for subsequent notification Rs.50 lakhs per acre for the adjoining village had been awarded, whereby land was acquired for development of HUDA Sectors. Therefore, keeping in view the same principle as has been held in the case of Manoj Kumar and Loveleen Kumar (supra), the said Awards cannot be blindly accepted, once Ex.P41 is available to the Court.

16. Resultantly, coming to the issue of lack of cumulative enhancement granted by the Reference Court, this Court is of the view that the benefit should have been granted, keeping in view the fact that there was immense potential and the fact that the land was falling in the urban area. In the facts and circumstances that the location of the land as such is in close vicinity of a developed area, as there was a petrol pump near the acquired land and admittedly Radha Swami Satsang had already purchased a property 2 years and 10 months earlier. Resultantly, keeping in view the judgment of the Apex Court passed in ONGC (supra) and the fact that there is an apparent rise as such in the prices on account of the development, which is taking place, this Court is of the opinion that 15% enhancement is liable to be granted to the landowners in the facts and circumstances. Accordingly, the table which would work out as such for granting enhancement is as under:-

06.06.2002

06.06.2003

19.04.2004

(one year)

(approximately 10

months)

Rs.9,11,000/-

+ Rs.1,36,650/- =

+Rs.1,30,956.25=

per acre

Rs.10,47,650/-

Rs.11,78,606.25

per acre

(Rs.11,78,606/- R.O)

per acre

Compensation for Structures

17. Lastly, coming to the issue of constructed portion of Atma Ram and Uggar Sen. In RFA No.3708 of 2009 'Atma Ram Vs. State of Haryana and others' a sum of Rs.5,08,720/- has been granted on account of Farm House-cum-Dhani, which was acquired and falling in the acquired land. As per report Ex.P11, the total covered area was 2543.60 square yards and as per the report of the expert (Ex.P11), the value had been calculated as Rs.9,66,568/- , but the cost of constructed portion was calcuated @ Rs.200 per square yard for the said Farm House. The valuation report as such was proved by PW-6 Dharam Pal Yadav.

18. A perusal of photographs Ex.P8 to Ex.P26 would go on to show type of construction which was standing as such in the land acquired and, therefore, this Court is of the opinion that the amount as such which has been awarded @ Rs.200 per square yard is less. On the other hand no other contrary report as such was proved by the respondents to dispel Ex.P11 and resultantly, for the constructed area cost of Rs.300/- per square yard is granted, which would work out to Rs.7,63,080/-

19. Similarly, in the case of Uggar Sen who is appellant No.2 in RFA No.3706 of 2009 'Jaito Devi and others Vs. State of Haryana and others', a sum of Rs.3,50,296/- had been granted by taking the cost of Rs.200/- per square yard, whereby total covered was 1751.48 square yards. The report as such of the Architect was proved on record as Ex.P13 and, accordingly, amount is enhanced for the same reasons given above, in view of the type of construction, which was existing in the acquired land, which would work out to Rs.5,25,444/-.

Relief

20. Accordingly, the market value is assessed @ Rs.11,78,606 per acre alongwith all statutory benefits. However, it is clarified that for the cost of super-structure, the landowners would not be entitled for the benefits of solatium and additional market value under Section 23 (1A) and Section 23 (2) in view of the judgment of the Apex Court passed in 'State of Punjab Vs. Amarjit Singh', 2011 (4) SCC 734. The same reads as under:-

" 6. Section 23(1) refers to market value of the land on the date of publication of the notification underSection 4(1) of the Act as a relevant factor for determining the amount of compensation to be awarded for land acquired under the Act. Sub-section (2) provides that in addition to the market value of the land determined under Section 23(1), the Court shall, in every case, award a sum of 30% on such market value in consideration of the compulsory nature of acquisition. Sub-section (1A) of Section 23, inserted by Act 68 of 1984 provides that in addition to the market value of the land, as provided under Section 23(1), the Court shall, in every case, award an amount calculated at the rate of 12% per annum on such market value for the period commencing on or from the date of publication of the notification under Section 4(1) in respect of such land to the date of award of the collector or the date of taking possession of the land, whichever is earlier. The additional amount under Section 23(1A) and solatium under Section 23(2) are both payable only on the market value determined under Section 23(1) of the Act and not on any other amount. Solatium under Section 23(2) is not payable on the additional amount nor additional amount under Section 23(1A) payable on solatium. Solatium and additional amount are also not payable on the damages/ expenses that may be awarded under second to sixth factors under Section 23(1) of the Act.

7. Thus a person whose land is acquired is entitled to the following amounts under the Act.

(a) Compensation determined under Section 23(1) of the Act (comprising the market value of the land referred to as the first factor and any damages/ expenses referred to as the second to sixth factors under the said sub-section).

(b) Solatium at 30% on the market value determined as the first factor under section 23(1) of the Act.

(c) Additional amount at 12% per annum of the market value of the land referred to as the first factor under Section 23(1) of the Act, for the period specified in Section 23(2).

(d) Interest on the aggregate of (a), (b) and (c) above for the period between the date of taking possession to date of payment/deposit at the rate of 9% per annum for the first year and 15% per annum for the remaining period."

21. Resultantly, the appeals of the landowners are partly allowed in view of the above discussion, whereas those of Power Grid Corporation India Limited are

dismissed qua decreasing the market value of the land in question.

