
(2017) 01 P&H CK 0155
In the Punjab And Haryana At Chandigarh
Case No : RFA No.1848 of 2007(O & M)

State of Haryana

APPELLANT

Vs

Nafe Singh

RESPONDENT

Date of Decision : 12-01-2017

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2017) 1 LawHerald 370

Hon'ble Judges : Mr. Arun Palli, J.

Bench : Single Bench

Advocate : Mr. Sudeep Mahajan, Addl. Advocate General, Haryana and Mr. Abhinash Jain, AAG Haryana, for The Appellants-State of Haryana; Mr. Ashwani Talwar, Advocate with Mr. Akash Sridhar, Advocate, for the Respondents/landowners/appellants in RFA No. 2149 to 2156, 2196 to 2201, 2842 and 2853 Of 2007 and X-objections No.301-Ci of 2016

Final Decision : Disposed Off

Judgement

Arun Palli, J. (Oral) - Vide this judgement. I shall decide a batch of 37 appeals, of which 21 have been filed by the State, and 16 by the claimants-landowners, as also one cross objection No.301-CI of 2016 in RFA No.1868 of 2007. For, the facts that are involved are common, and so are the questions that arise for determination, thus, these are being disposed of by a common order. However, for facility of reference, the facts are being culled out from RFA No.1848 of 2007.

2. Vide notification, issued under Section 4 of the Land Acquisition Act, 1894, published on 17.06.2003, a land measuring 933 kanals 07 marlas, situated in the revenue estate of village Sutana, Hadbast No.23, Teshsil Madlauda, District Panipat, was sought to be acquired for the ash disposal of Unit No.7 and 8 of Tau Devi Lal Thermal Power Project, Panipat. Declaration under Section 6 of the Act was made on 01.12.2003. The Land Acquisition Collector (for short "the Collector"), vide award No.6 dated 21.01.2004, assessed the market value of the land that was nehri/chahi at Rs. 3,50,000/- per acre, and Banjar Qadeem Thur at

Rs. 2 lacs per acre. The landowners were also held entitled to all the statutory benefits as were admissible in law.

3. Being aggrieved by the assessment and the compensation awarded by the Collector, the landowners filed objections under Section 18 of the Act and sought a reference to the Civil Court.

4. The reference Court, on an analysis of the material and evidence on record held, for, the entire land was situated within the controlled area, it lay in a compact block, and since it was being acquired for a common purpose, vide the same notification, all the claimants landowners were entitled to the same compensation. As regards assessment of market value of the acquired land, the sale deeds Ex.P3 to Ex.P9, brought on record by the claimant-landowners were ruled out of consideration, for, those either pertained to an extremely small area or were executed, post issuance of notification under Section 4. Likewise, the sale instances that were relied upon by the State, Ex.R2 to Ex.R5 were also discarded, for, these sale deeds were executed for a consideration, which was far less than even the assessment or the compensation awarded by the Collector, itself. And, that being so, the reference Court relied upon its previous award dated 31.05.2002 (Ex.P10), rendered in LA No.120 of 1996 (Sumer Chand @ Sumer Singh v. State of Haryana and others), in respect of the land situated in village Khukhrana, which was acquired for construction of Broad Gauge Railway Siding for Indian Oil Refinery Limited. And, award dated 24.12.2005 (Ex.P11) passed in LA Case No.9 of 2004 (Avinash Kumar and others v. State of Haryana and others), in respect of a land that was situated in village Assan Kalan. For, both the villages i.e. Khukhrana and Assan Kalan abutted village Sutana, and the quality of acquired land was the same as in the other two villages. Accordingly, the reference Court while considering the time gap between the two notifications, issued under Section 4 of the Act, in the earlier acquisition and in these proceedings, i.e. from 12.12.1994 to 17.06.2003, awarded 12% annual increase upon the compensation assessed, in the case of Sumer Chand(supra) i.e. $97.94 \times 12/100 = 11.75$. As a result, the market value of the acquired land was determined at Rs. 197.99 ps. per sq. yard, with all the statutory benefits.

5. As indicated above, the State, being aggrieved against the compensation awarded by the reference Court, prays for setting aside its award, whereas the claimants-landowners seek further enhancement.

6. Mr. Ashwani Talwar, learned counsel for the claimants landowners submits that all what forms basis of the compensation assessed by the reference Court are the awards Ex.P10 and Ex.P11, vide which the landowners were awarded compensation at Rs. 97.94 ps. per sq. yard. And, for, in the appeals preferred against the said awards i.e. RFA No.4502 of 2013 (Sampuran Singh and others v. State of Haryana and others), and other connected matters, decided on 06.09.2016, this Court has further enhanced the compensation to Rs. 127/- per sq. yard, as a necessary consequence, the claimants-landowners shall now be entitled to 12% annual increase upon the value assessed by this Court.

7. Per contra, Mr. Sudeep Mahajan, Addl.AG Haryana, submits that even if the sale deeds relied upon by the State were executed for a consideration, less than the compensation awarded by the Collector, still, the reference Court was required to take into account those sale instances, to arrive at a true value of the acquired land. He further asserts that the acquired land was purely rural and agricultural in nature, and, therefore, under no circumstance, the Court could award 12% annual increase. He submits that it is only if the acquired land is urban or semi-urban in nature, there is a possibility of a faster development, whereas in rural areas, the escalation in prices of land is slow and gradual. In reference to the decision of the Hon"ble Supreme Court in: "The General Manager, Oil and Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel and another" 2008(14) SCC 745, it is contended that if the annual increase in urban/semi urban areas is between 10 to 15% per annum, the corresponding increases in the rural areas, at best, would be 5 to 7.5% per annum. In this context, he further refers to the observations of the Hon"ble Supreme Court that if the time gap between the relied-on-sale transactions/acquisitions and subject acquisition is beyond 5 years, it may be unsafe to rely upon the earlier assessment. And, for, in the present case, the difference between the two notifications issued under Section 4 was over 8 years, the reference Court, ought not to have relied upon its previous awards (Ex.P10 and Ex.P11) and consequently could never award 12% annual increase. Therefore, he asserts that the award rendered by the reference Court, is required to be modified, accordingly.

8. I have heard learned counsel for the parties and perused the records.

9. Ex facie, the case set out by the State, itself, has been that the sale deeds relied upon by the claimants-landowners could not be factored in, to determine the true value of the acquired land, for, these, either pertained to extremely small or negligible area, measuring 5 or 6 marlas, or those transactions came into being, post issuance of notification under Section 4 of the Act. Accordingly, those instances were ruled out of consideration by the reference Court. Likewise, for, the sale deeds brought on record by the State were executed for a consideration that was far less than even the compensation awarded by the Collector, those too were discarded by the reference Court. There cannot be any illusion as regards the proposition; that in terms of Section 25 of the Act, the Court cannot award compensation to the claimants-landowners, less than what has been awarded by the Collector, under Section 11 of the Act. And, it too is well settled that the sale deeds, if relevant, that have been executed for a consideration that is less than the compensation awarded by the Collector can always be factored-in, to reach a fair determination and true value of the acquired land. However, such is not the position in the matter in hand. Firstly, the sale deeds relied upon by the State were executed much earlier in time than the issuance of notification under Section 4 in the present acquisition. Secondly, the reference Court found and concluded that the said sale deeds did not represent the true value of the acquired land, for, those were under-valued, to avoid payment of stamp duty.

10. In the given situation, the reference Court found it appropriate to rely upon its previous judicial pronouncements or awards dated 31.05.2002 (Ex.P10), and 24.12.2005 (Ex.P11), vide which, land of the adjacent villages i.e. Khukhrana and Assan Kalan, was assessed by the Court at Rs. 97.94p. per sq.yard. In fact, Vijender Singh Patwari Halqa (PW1), testified in his deposition that the boundaries of village Sutana, adjoins/abuts the boundaries of village Assan Kalan and Khukhrana. Indisputably, the quality, character and value of the acquired land, as also the land that was a subject matter of acquisition in the earlier proceedings was the same. What further needs to be noticed, is that it has never been the case of the State before the reference Court; that it would be unsafe to rely upon the awards dated 31.05.2002 (Ex.P10) and 24.12.2005 (Ex.P11), for determination of true value of the acquired land. Neither, any evidence was led, nor any argument was advanced in this regard. Nothing was brought on record, either to suggest that post passing of the awards Ex.P10 and Ex.P11, the value of the land, in the vicinity or the area concerned had dropped or de-escalated. Rather, it appears that perhaps the assessment on the basis of the previous judicial pronouncements/awards (Ex.P10 and Ex.P11) was consensual. That is how, neither, in the grounds of appeal, nor during the course of hearing of the matter, the learned State counsel urged that the reference Court, ought not to have relied upon the awards Ex.P10 and Ex.P11. The observations recorded by the Hon"ble Supreme Court in Rameshbhai Jivanbhai Patel and another (supra); that it may be unsafe to rely upon the acquisition that precedes the subject acquisition by more than 5 years, were referred to by the learned counsel, only from a limited stand point: that given the nature of acquired land, the annual increase awarded by the reference Court, was highly excessive and unwarranted.

11. Thus, the short question that requires determination is: Whether, the reference Court was justified in awarding 12% annual increase upon the compensation assessed, vide awards Ex.P10 and Ex.P11?

12. An analysis of the records show that the acquired land was depicted in the record of rights as agricultural in nature. In fact, in the reference petitions, itself, the claimants-landowners maintained that the crops were standing in the acquired land at the time of acquisition. Jagmal Singh Patwari (RW1), testified that nature of the acquired land was agricultural and was situated at a distance of 9 kms. from Panipat City. Not just that, it was situated at a distance of 2 kms. even from the village abadi itself, as is made out from the site plan Ex.R1. Further, nothing was brought on record to show that it was surrounded by any residential, commercial or industrial establishments or any construction activities were in progress to indicate development. That being so, the only and the inevitable conclusion one could reach is that the acquired land was purely agricultural in nature and was indeed being used as such. And, thus, formed part of the rural area. The Hon"ble Supreme Court in the case of Rameshbhai Jivanbhai Patel and another (supra), clearly concluded that if the increase in the market value in urban/semi urban area is about 10 to 15% per annum, the corresponding increase in rural area would, at best, be only around half of it, that

is about 5 to 7.5 % per annum. Unless, there are special reasons for applying a higher rate of increase:

Primarily, the increase in land prices depends on four factors - situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during the nineties. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same.

13. As recorded above, the acquired land formed part of a rural area, and, thus, the annual increase that, at best, could be awarded by the reference Court, could never be more than 7.5% per annum. Nothing was brought on record, least any specific evidence to show that there indeed has been a considerable appreciation or escalation, post passing of the awards Ex.P10 and Ex.P11, in the value of the land, in the vicinity warranting higher rates of increase than what has been stipulated by the Hon'ble Supreme Court.

14. That being so, the award, to an extent, claimants-landowners have been awarded 12% annual increase is set aside. For, the landowners only be entitled to annual increase @ 7.5% per annum.

15. It is the common case of the parties that in the appeals arising out of the award dated 31.05.2002 and 24.12.2005 (Ex.P10 and P11), respectively, this Court vide order dated 06.09.2016 rendered in the case of Sampuran Singh and others(supra), had enhanced the compensation from Rs. 97.94p. per sq. yard to Rs. 127/- per sq. yard. Therefore, respondents claimants shall be entitled to an annual increase @ 7.5% per annum, upon the said amount i.e. Rs. 127x12/100 i.e. Rs. 9.525. And, for, the time difference between two notifications i.e. from 12.12.1994 to 17.06.2003 is eight years, six months and five days, the

claimants-landowners shall be entitled to annual increase only for a period of eight years i.e. $9.525 \times 8 = 76.2$. Thus, the compensation to which the claimants-landowners are held entitled to is $127 + 76.2 = 203.2$ p. per square yard, which is rounded off to Rs. 203/-.

16. In conspectus of the position as sketched out above, the appeals preferred by the parties are disposed of in the above terms and the awards rendered by the reference Court is/are accordingly modified.