

(2012) 02 P&H CK 0314

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular First Appeal No. 2536 of 2009 (O and M)

Prem Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: Feb. 17, 2012

Acts Referred:

- Land Acquisition Act, 1894 - Section 18, 19, 23, 24, 4

Citation: (2013) 1 RCR(Civil) 158

Hon'ble Judges: Rajesh Bindal, J

Bench: Single Bench

Advocate: Pritam Saini, Mr. R.S. Budhwar and Mr. Vikasdeep Singh for Mr. S.K. Singla, for the Land owners, for the Appellant; Shailendra Jain, Advocate for the Shahabad Co-operative Sugar Mills, Mr. Ashish Gupta, Assistant Advocate General, Haryana, for the Respondent

Judgement

Rajesh Bindal, J.

This order will dispose of R.F.A. Nos. 2536, 2896, 3073 to 3084, 4530, 4604, 4605, 5102, 5103, 5565 of 2009, as common questions of law and facts are involved. In appeals filed by the land owners, they are seeking further enhancement of compensation for the acquired land, whereas in the appeals filed by Shahabad Cooperative Sugar Mills (hereinafter described as "Sugar Mill"), the prayer is for setting aside the award of the learned court below, whereby it granted annuity to the land owners for 33 years over and above the amount of compensation.

2. Briefly, the facts of the case are that vide notification dated 19.5.2004, issued u/s 4 of the Land Acquisition Act, 1894 (for short, "the Act"), State of Haryana sought to acquire 166 kanals and 14 marlas of land of village Jandheri, Hadbast No. 240, Tehsil Shahabad Markanda, District Kurukshetra for setting up of Distillery and Ethanol Plant and for Sugarcane Seed Research and Production Farm at Ladwa Road, Shahabad Markanda, village Jandheri, Tehsil Shahabad Markanda, District Kurukshetra. The same was followed by notification dated 17.12.2004, issued u/s 6

of the Act. The Land Acquisition Collector (for short, "the Collector") assessed the market value @ Rs. 5,00,000/- per acre for Chahi land. Dissatisfied with the award of the Collector, the land owners filed objections. On reference, the learned court while upholding the award of the Collector regarding assessment of compensation for the acquired land, granted annuity for 33 years over and above the compensation of Rs. 5,00,000/- per acre.

3. Learned counsel for the land owners submitted that the land in question is strategically located adjoining to the already existing Sugar Mill. It was acquired for setting up of Distillery and Ethanol Plant and for Sugarcane Seed Research and Production Farm. The area in the vicinity had already been developed as number of industrial and commercial establishments had been set up. Residential colonies were also not at a far off place. The land is located on Shahabad-Ladwa State Highway. The same is merely at a distance of three kilometers from National Highway No. 1/G.T. Road. The learned court below has noticed the sale deeds produced by the land owners on record, but the same have not been considered for the purpose of assessment of fair value. The land pertaining to sale deed (Ex. PI) registered on 8.9.2003, whereby 13 kanals and 18 marlas of land was sold for a sum of Rs. 37,35,625/-, is located just opposite the acquired land on the road. If the same is considered, the land owners shall be entitled to enhancement of compensation. The sale deeds produced by the State were totally irrelevant as the same were either registered after the issuance of notification u/s 4 of the Act or the same were showing consideration less than the award of the Collector.

4. On the other hand, learned counsel for the Sugar Mill submitted that the sale deeds produced on record by the State show that value of the land in the area was even less than the award of the Collector. The assessment made by the Collector was not on the basis of any sale transaction, rather, it was because of the policy of the State Government providing for minimum rates for acquisition of land in the State. Sale deed (Ex. P1) cannot be relied upon for the reason that the land owners had not produced on record any site plan to show the exact location thereof. Unless the same is produced, it cannot be a relevant piece of evidence. In the absence of any site plan produced on record by the land owners showing the location of the land pertaining to even other sale deeds, which though are pertaining to small plots, it would be a case of no evidence, hence the land owners will not be entitled to any enhancement of compensation.

5. In support of the appeals filed by Sugar Mill, learned counsel submitted that if any policy is framed by the State for providing any annuity to the land owners on account of acquisition of land for a certain specified period or provision is made for employment or allotment of plots to the oustees, it is a matter of concession, which the State Government has given. The Reference Court is not competent to adjudicate thereon in a reference before it for assessment of fair value of the acquired land, as these concessions are not statutory in nature emanating from the

Act. Even otherwise, the same cannot be forced upon the beneficiary department or body. The provisions of Sections 23 and 24 of the Act clearly provide as to what could and could not be considered for the purpose of assessment of fair value of the acquired land, super structure etc. standing thereon. The direction of the learned court below for grant of annuity and other benefits to the land owners in terms of the policy notified by the State Government on 7.12.2007 is totally beyond jurisdiction. The policy has not been exhibited on record, though he did not dispute the fact that the court can always take judicial notice of it, but the contention is that it was beyond the jurisdiction of the Reference Court to have entered into that arena.

6. Learned Assistant Advocate General did not dispute the fact that the State is bound to give benefits to the land owners, whose land is acquired, in terms of the policy notified by it. As far as valuation of the land is concerned, he adopted the contentions raised by learned counsel for the Sugar Mill.

7. In response to the contention raised by learned counsel for the Sugar Mill, learned counsel for the land owners submitted that the Sugar Mill has been set up in Cooperative Sector by the State Government. It is wholly owned by the State and managed by the officers of the State. They are bound by the policy and directions of the State Government. Nothing lies in the mouth of the Sugar Mill to plead that it is not bound to give benefits emanating from the policy of the State. The learned court below has merely granted what was due to the land owners in terms of the policy of the State, which the State was otherwise bound to give. There was no adjudication as such.

8. Heard learned counsel for the parties and perused the relevant referred record.

Regarding valuation of the acquired land

9. As far as location of the land is concerned, it is not in dispute that the same is located on Shahabad-Ladwa road. It is stated to be at a distance of about three kilometers from NH-1/G.T. Road and is adjoining to the existing Sugar Mill. A site plan has been produced on record as Ex. P8 showing the location of various industrial/commercial establishments and residential colonies in the nearby areas. Firstly, the site plan being not to scale does not show a clear picture of the area. Secondly, mere location as such of the land may not be enough to assess the fair value thereof as for the purpose, the relevant piece of evidence would be the sale deeds pertaining to the land in the area, which has similar benefits. In the present case, the land owners have produced following sale deeds:

10. There is no site plan on record produced by the land owners showing the exact location of the land pertaining to any of the sale deed. A perusal of the aforesaid sale deeds shows that sale deeds (Ex. P2, Ex. P4, Ex. P6, Ex. P7 and Ex. P12) are not relevant as the same were registered after the issuance of notification u/s 4 of the Act in the present case. At the time of hearing, learned counsel for the land owners

had primarily stressed upon sale deed (Ex. P1) and claimed that the land pertaining thereto is located just opposite to the acquired land on road. However, there being no site plan on record, this court does not find it safe to consider the same for valuation of the acquired land. The sale consideration paid therein is at an average price of Rs. 21,50,000/- per acre. Nothing prevented the land owners to produce the site plan on record if the aforesaid sale deed was so relevant for the purpose of assessment of fair value of the acquired land and the land owners had merely been paid Rs. 5,00,000/- per acre as compensation.

11. Shahabad is a town located on G.T. Road. The acquired land is adjoining to the already set up Sugar Mill located merely at a distance of three kilometers from G.T. Road. There are number of rice shelters and cold storages in the area. Document (Ex. R13) has been produced on record showing the minimum rates fixed by the Collector for the purpose of registration of sale deeds in the area. For the acquired area in question, the minimum rates fixed for the year 2004-05 were Rs. 5,00,000/- per acre and pertaining to village Chhapra, to which sale deed (Ex. P1) relates to and especially mentioning the khasra numbers, the minimum rates for registration of sale deeds have been shown as Rs. 5,00,000/- per acre. The consideration shown in sale deed (Ex. P1) is @ Rs. 21,50,000/- per acre. As is normally seen that minimum rates fixed by the Collector for registration of sale deeds are lower than the market price. Considering the location of the land, its potentiality and also the aforesaid facts, in my opinion, applying a thumb rule, value of the acquired land can be assessed @ Rs. 6,00,000/- per acre. Ordered accordingly. The land owners shall be entitled to the statutory benefits available to them under the Act.

Regarding jurisdiction of the Reference Court to deal with the policy for grant of annuity to the land owners

12. Now coming to the contention raised by learned counsel for the Sugar Mill pertaining to the jurisdiction of the court regarding grant of benefit of annuity to the land owners, it would be relevant to refer to the fact that State of Haryana came out with a policy on 28.4.2005 providing for minimum rates to be given for acquisition of land in the State. The State was divided into three zones. The policy was effective from 5.3.2005. The same was subsequently revised on 7.12.2007 and 9.11.2010. In furtherance to the object that the land is the source of livelihood of the land owners, with the compensation paid for acquisition of land, sometimes equal amount of fertile land may not be available or in some cases the compensation otherwise received may be wasted, the State Government came out with another policy of providing annual annuity for a period of 33 years so that the farmers, whose land is acquired, get steady return for a considerable period of time. There is a provision for annual increase as well. The policy was made applicable w.e.f. 5.3.2005 in all cases where the awards were announced by the Collector from that date onwards. In addition to the annuity, the policy also provides for allotment of plots by Haryana Urban Development Authority and Haryana State Infrastructure

Development Corporation Ltd. to the oustees, whose land or residential houses are acquired for use by aforesaid authorities. The relevant provisions of the policy pertaining to payment of annuity are extracted below:

POLICY FOR REHABILITATION AND RESETTLEMENT OF LAND OWNERS-LAND ACQUISITION OUSTEES

1. Annuity

(i) The land owners will be paid annuity for 33 years over and above the usual land compensation. The amount of annuity will be Rs. 15,000/- per acre per annum.

(ii) Annuity of Rs. 15,000/- will be increased by a fixed sum of Rs. 500/- every year.

(iii) In respect of land acquired in terms of land acquisition policy for setting up of Special Economic Zone/Technology Cities, Technology Parks, in addition to rehabilitation and resettlement package notified by Industries and Commerce Department vide No. 49/48/2006-4IBI, dated 4th May, 2006 a sum of Rs. 30,000/- per acre per annum will be paid for a period of 33 years by private developers and this annuity will be increased by Rs. 1,000/- per year.

(iv) The policy of paying annuity will be applicable to all cases of land acquisition by Govt. except land acquired for defence purposes.

xx xx xx

5. This policy will be applicable with effect from 5th March, 2005 and cover all those cases of acquisition in which awards of compensation were announced on or after 5th March, 2005.

13. The fact that the land owners in the present case are entitled to the benefits under the aforesaid policy of the State Government is not denied either by the counsel for the State or for Sugar Mill. All what was sought to be argued by learned counsel for the Sugar Mill was that the same could not be subject-matter of dispute before the Reference Court and the Reference Court has exceeded its jurisdiction while granting the aforesaid benefits to the land owners where the issue under consideration before the court was only for determination of fair value of the acquired land in terms of Sections 23 and 24 of the Act.

14. As per the scheme of the Act, any person who is not satisfied with the award of the Collector, is entitled to file an application to the Collector for referring the matter to the court for its determination regarding measurement of the land, amount of compensation, the persons entitled thereto or the apportionment thereof amongst the persons interested. Section 23 of the Act provides that in determining the amount of compensation to be awarded for the acquired land under the Act, the court shall take into consideration certain factors, whereas Section 24 of the Act provides for certain parameters to be ignored while determining the amount of compensation. The provisions of Sections 23 and 24 of the Act are extracted below:

23. Matters to be considered in determining compensation. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration

first, the market value of the land at the date of the publication of the notification u/s 4, sub-section (1);

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration u/s 6 and the time of the Collector's taking possession of the land.

(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification u/s 4, subsection (1) in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.- In computing the period referred to in this subsection, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.

(2) In addition to the market value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition.

24. Matters to be neglected in determining compensation.- But the Court shall not take into consideration - first, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration u/s 6, by or in consequence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification u/s 4, sub-section (1); or

eightly, any increase to the value of the land on account of its being put to any use which is forbidden by law or opposed to public policy.

15. It is settled that any court to which a matter is referred for adjudication derives its jurisdiction only in terms of the reference, which has to be adjudicated upon under the provisions of the relevant statute, which in the present case is the Land Acquisition Act, 1894. The jurisdiction of the court is well-defined. It cannot travel beyond that. In case any policy has been made by the government for rehabilitation and/or re-settlement of the oustees land owners in land acquisition cases, the same cannot be subject-matter of adjudication before the reference court u/s 18 of the Act, as this does not come within the scope of jurisdiction vested in the reference court. All what has to be determined is the value of the acquired land in terms of the parameters laid down in the Act as on the date of issuance of notification u/s 4 of the Act, in addition to certain ancillary issues regarding measurement of the land, the persons to whom the compensation is payable or the apportionment thereof amongst the persons interested. The observations of Hon'ble the Supreme Court in [Muthavalli of Sha Madhari Diwan Wakf S.J. Syed Zakrudeen and Another Vs. Syed Zindasha and Others](#), would be relevant. The same are extracted below:

13. A reference court is not a court of original jurisdiction. It derives jurisdiction only in terms of the order of reference. The Act being a self-contained code, the manner in which the reference is to be made and the statement required to be made by the Collector has been specified in Section 19 of the Act. The lis between the parties to the reference meaning thereby a person interested and the State is with regard to the quantum of compensation. No other question can be raised therein. The reference court exercises a limited jurisdiction. It derives its jurisdiction from the terms of reference.

16. In view of my aforesaid discussion, it can be opined that the learned reference court did not have the jurisdiction to deal with the issue regarding grant of annuity

or any other benefit in terms of the policy framed by the government while dealing with the reference under the Act.

17. However, still as far as the case in hand is concerned, as the land in question was acquired by the State and as per the policy framed by the State, the land owners, whose land is acquired, are entitled to certain benefits over and above the value of the land as determined by the Collector or the reference court, the amount already paid shall not be recovered. In case certain corrections are to be made in the heads or the accounting procedure, the same may be carried out.

Regarding apportionment

RFA Nos. 2536 and 2896 of 2009

18. Learned counsel for the parties submitted that in the said appeals, the dispute regarding apportionment of compensation has been raised. Out of a big chunk of land measuring 475 kanals, only 14 kanals and 19 marlas of land has been acquired in which there are number of co-sharers. A civil dispute regarding ownership thereof is pending in the court. The submission is that the dispute regarding apportionment of compensation be disposed of as the parties will abide by the judgment and decree of the civil court as regards their share in the compensation.

19. To sum up, it is held that the land owners shall be entitled to compensation @ 6,00,000/- per acre for the acquired land. They shall also be entitled to the statutory benefits available to them under the Act. The appeals are disposed of in the manner indicated above.