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**(2014) 08 P&H CK 0285**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** RFA Nos. 2196, 2197 and 2373 of 1994

Prabhu Dayal

APPELLANT

Vs

Haryana Government

RESPONDENT

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**Date of Decision:** Aug. 4, 2014

**Acts Referred:**

- Land Acquisition Act, 1894 - Section 18, 4

**Hon'ble Judges:** Bharat Bhushan Parsoon, J

**Bench:** Single Bench

**Advocate:** Ajay Jain, Advocate for the Appellant; Rajiv Kwatra, Sr. DAG, Advocate for the Respondent

**Final Decision:** Partly Allowed

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**Judgement**

Dr. Bharat Bhushan Parsoon, J.

Vide this judgment RFA Nos. 2196, 2197 and 2373 of 1994 filed by the land owners against the reference Awards rendered u/s 18 of the Land Acquisition Act, 1894 (for short "the Act") are being adjudicated together, as there are common questions of law and facts.

2. Though reference Awards are of different dates but nature of adjudication and issues involved therein are the same. In RFA Nos. 2196, 2197 and 2373, the awards passed by the Reference Courts are of 07.06.1994, 31.03.1994 and 31.03.1994 respectively.

3. Some of the facts which require notice are put forth in tabular form as under:-

4. To provide clarity and better comprehension of the matter in controversy, the facts have been taken from RFA No. 2196 of 1994 under title Prabhu Dayal and others Vs. Haryana Government and others.

Details of Acquisition by the State of Haryana

5. The State of Haryana for the construction of road from village Seka to village Mandhana, pursuant to notification issued u/s 4 of the Act on 16.12.1986 had acquired land measuring 3.43 acres. The Land Acquisition Collector vide his Award dated 03.05.1989 had fixed the market value of the acquired land, as under:-

#### Quantum of Compensation by the Reference Court

6. Aggrieved with the assessment of market value of the acquired land made by the Collector, the land owners had made their objections seeking enhancement, which applications of the land owners had been forwarded by the Land Acquisition Collector to the District Judge, Narnaul for ascertaining the market value of the land at the relevant time. These applications of the land owners were decided by the Court of Sh. B.S. Rawat, the then Additional District Judge, Narnaul (hereinafter mentioned as the "Reference Court") as a reference u/s 18 of the Act. Vide impugned Award, the market value of the land was assessed as Rs. 35,000/- per acre from the date of notification u/s 4 of the Act.

#### Plea before this Court for enhancement of Compensation

7. It is claimed in the appeal that the Reference Court neither evaluated the factual matrix nor rightly understood the strategic location of the land as also its potentialities. It is averred further that the acquired land was located within the "Lal Lakir" of the village and thus market value of the same was to be affixed at double the rate of the "Chahi Land". It is claimed that market value of the acquired land was not less than Rs. 1,00,000/- per acre. It is claimed that even sale instances had been ignored and incorrect evaluation of the land was made. It is further urged that due to acquisition of land, remaining unacquired land of landowners had been rendered uncultivable causing loss to the landowners, who require to be compensated, but the Reference Court did not deal with the matter with concern.

8. Counsel for the respondents on the other hand has urged that though the Collector had assessed the compensation keeping in view the entire spectrum of facts and attending circumstances but even then the Reference Court had ordered enhancement without basing such findings in the evidence produced by the parties. It is urged that there was no evidence that after acquisition of land, unacquired land of appellants had been bifurcated and due to severance, rest of the land already had become uncultivable. It is canvassed that there is no ground made out for further enhancement over and above the one fixed in the Award rendered by the Reference Court.

9. Counsel for the parties have been heard while going through the impugned awards, grounds of appeals in all the appeals and attending facts as also circumstances therein.

#### Evidence and Circumstances regarding enhancement analysed

10. Acquired land is situated in village Seka. It was acquired for construction of road from village Seka to Mandhana. Both the villages are in the same revenue estate.

11. Conjoint reading of statements of Halqua Patwari Puran Mal (PW1), Ramdhari Singh Patwari, P.W.D. (B & R), Narnaul (RW2) as also the site plan (Ex. R1) reveal that the entire land of the owners was "Chahi Land" but due to its acquisition, the unacquired land has resulted in bifurcation due to construction of the road. Actually, the remaining unacquired land as shown in site plan (Ex. R1) has been converted in two triangular segments. The Reference Court though had noticed this aspect as also the omission of the Collector in not awarding any compensation for severance of the unacquired land which had made it uncultivable resulting in prejudice to the appellants, but had awarded only Rs. 5000/- as severance charges.

#### Case of Enhancement

12. The date of notification u/s 4 of the Act is 16.12.1986, which date is most relevant to assess the market value of acquired land. Exemplar sale deed (Ex. P2), vide which 10 marlas of land was sold for a sale consideration of Rs. 6000/- is of 05.07.1986. This land is located in village Mandhana. Even though boundaries are adjacent to villages Seka but sale deed of land of Mandhana would not be proper. Sale Deed (Ex. P2) was thus rightly kept out of consideration. Sale Deed (Ex. P1) is of 16.06.1993 and thus pertains to post notification u/s 4 of the Act, i.e., 16.12.1986. It is also of no relevance.

13. The Reference Court thus rightly relied upon sale deed dated 13.06.1984 (Ex. R2) pertaining to village Seka, whereby land measuring 12 Kanals 13 Marlas was sold for a consideration of Rs. 43,500/-. The market price of the land vide sale deed Ex. R2 comes to Rs. 27,509/- per acre. Since this exemplar sale deed was produced by the respondents, sale price emerging therefrom is Rs. 27,509/- per acre and it can not be doubted even by the respondents being part of their own evidence.

14. The Reference Court taking note of the said fact that the said sale deed is dated 13.06.1984, whereas notification u/s 4 of the Act is dated 16.12.1986, thus the enhancement in the price of the land on account general escalation of prices of land @ 12% per annum for time leg of 2 years 6 months was allowed and market rate thereof was fixed @ Rs. 35000/- per acre. However calculating such enhancement @ 12% per annum cumulatively on the date of notification u/s 4 of the Act, market price of the land comes to Rs. 36,567/- per acre whereas learned Lower Court by wrong calculation had fixed the market value @ Rs. 35000/- per acre.

15. It would be pertinent to mention that regarding Awards pertaining to RFA Nos. 2373 and 2197 of 1994 under title Gopi Ram and others Vs. Haryana State & Ratti Ram and others Vs. Haryana State, respectively, the Reference Court taking the same exemplar sale deed of 13.06.1984 of sale of land measuring 12 kanal 13 marlas pertaining to village Seka of Rs. 43,500/- while calculating the rate of sale of land per acre arrived at a figure of Rs. 29,000/- per acre albeit wrongly.

16. The Reference Court duly noticed the disparity in date of exemplar sale deed of 13.06.1984 and date of issuance of notification u/s 4 of the Act. With a purpose to arrive at market value of the acquired land as on 16.12.1986 noticing general trend of escalation of prices of land, cumulative hike of 12% per annum for 2 years and 6 months was duly allowed.

17. It is interesting to note that while making calculation for assessment of the market value of the acquired land on the date of notification with reference to exemplar sale deed of 13.06.1984, the Reference Court fell in error in all the cases. To demonstrate, in RFA No. 2196 of 1994, taking per acre price of land as per exemplar sale deed of 13.06.1984 (Ex. R2) to be Rs. 27,500/-, the Reference Court had arrived at market price of the acquired land at a figure of Rs. 35,000/- per acre. This calculation is wrong. Actually, per acre price of land sold by sale deed (Ex. R-2) comes to be Rs. 27,509/- and per acre market value of the acquired land giving 12% increase in the same for escalation of prices over the period of 2 years & 6 months, it comes to Rs. 36,567/-

18. While calculating the market value of the land in RFA No. 2197 of 1994 titled as Ratti Ram and others Vs. Haryana State, price of per acre qua land sold vide sale deed of 13.06.1984 instead of arriving at a correct figure of Rs. 27,509/- price per acre, by wrong calculation by the Reference Court, it was arrived at Rs. 29,100/-. While arriving at the market value of the acquired land, the Reference Court by mis-calculation had fixed such rate at Rs. 29,000/- per acre, which is completely wrong. When Reference Court had taken the same exemplar sale deed for all the three cases to be the base irrespective nature of the land or quantum of land or its comparative location qua the acquired land, then no distinction should have been made. It is also noteworthy that the Reference Court actually did not want to make any distinction in all the three cases and infact did not make any, but fell in error by arithmetic mis-calculation. Infact market value of the land acquired on the date of notification u/s 4 of the Act, even in this case would be same.

19. So far as the impugned Award pertaining to RFA No. 2373 of 1994 titled as Gopi Ram and others Vs. Haryana State is concerned, the Reference Court was very near to the calculations while arriving at market value of the land on the date of issuance of notification u/s 4 of the Act. In this case, basing the calculation on the same exemplar sale deed as also giving the hike of 12% for the gap period of 2 years and 6 months from the date of exemplar sale deed, i.e. 13.06.1994 to date of notification u/s 4 of the Act, the figure arrived at by the Reference Court is Rs. 36,500/-. However, as has already been noticed earlier, the actual figure is Rs. 36,567/-. There is a marginal difference of Rs. 67/- as per assessment done by the Reference Court and made by this Court in RFA No. 2196 of 1994.

20. Perusal of Awards of the Reference Court in all the three cases leaves no manner of doubt that the Reference Court did not want to create any disparity in all the three cases and in fact even did not attempt that and it founded the calculation on

the same exemplar sale deed of 13.06.1984 of land sold in village Seka but the arithmetic mis-calculation made by the Reference Court, are required to be rectified and it has been so done.

#### Potential of Acquired Land

21. So far as the enhancement demanded by the appellants/landowners is concerned, it is to be noticed that the Reference Court had taken all the aspects in view and thus nothing new with regard to potentiality of the land as also of the strategic location, has emerged during these appeals. There is no denying the fact that the acquired land was situated in the vicinity area of Narnaul. There was strong potential of development as it was converting into urban property. Nothing more, than these factors which have already been noticed and taken into consideration by the Reference Court, has been pointed by the appellant-landowners during these appeals.

Should there be cut for development charges?

22. Claim of the counsel for the respondents is that even if market price of land was calculated and arrived at basing the calculation on sale deed of 13.06.1984, the land having not been subjected to any development at that stage, was to be subjected to suitable cut for development charges on the market value so arrived at. It is claimed that cut of 1/3rd on that price should have been applied.

Should there be cut on the market value of the land because of large tract in comparison with exemplar sale deed which is of small parcel of land?

23. Counsel for the respondents have urged that the land sold vide exemplar sale deed of 13.06.1984 was a small parcel whereas the acquired land is a huge tract. It is also claimed that small parcels of land are sold for higher price than the large tracts of land and thus 1/3rd cut should have also been applied to cover up the difference in size of land acquired & land of exemplar sale deed (Ex. R2). It is claimed that even otherwise no cut on account of development charges was applied even though the land acquired was yet to be developed and requiring high expenditure.

24. In the interface of facts and attending circumstances, this plea of the respondent is untenable. There is no huge disparity between the area acquired and the area of land as per exemplar sale deed of 13.06.1984 (Ex. R2). The land acquired as also land sold vide exemplar sale deed is of the same village, i.e. village Seka. Acquired land is 3.43 acres in total whereas there are many landowners. The land sold vide sale deed (Ex. R2) is 12 kanals 13 marlas, which means more than 1 1/2 acre.

25. In short, there is no huge disparity in size of land sold and land acquired. Even on the pedestal of development charges, keeping in view the fact that no huge infrastructure is to be laid for making land fit for its user as a road, no development cut was required to be applied, which was rightly not applied by the Reference Court.

26. Sequelly, in all the three appeals market value of the acquired land is fixed at Rs. 36,567/- per acre on the date i.e. 16.12.1986, i.e. date of issuance of notification u/s 4 of the Act.

How severance charges are to be calculated

27. So far as the severance charges are concerned, concededly in RFA No. 2196/1994 titled as Parbhu Dayal and others Vs. Haryana Government and others, there is severance of unacquired land. Severance charges in this case were granted only to the tune of Rs. 5,000/- whereas in RFA No. 2197 of 1994 titled as Ratti Ram and others Vs. Haryana State, no severance charges of unacquired land were given because it was not a case of severance of unacquired land making it uncultivable to the prejudice of land owners hence no severance charges had been granted. So far as RFA No. 2373 of 1994 titled as Gopi Ram and others Vs. Haryana State is concerned, holding that there was severance of unacquired land entitling the landowners for compensation on that count, only Rs. 2500/- were granted as severance charges by the Reference Court.

28. Once the Reference Court had come to the conclusion that there was severance of unacquired land causing economic hardship and prejudice in cultivation, it was expected that Reference Court should have adopted a judicial approach in the matter. Even otherwise, there is no reason to discriminate between the said two cases where the severance of unacquired land was found as a fact, making the same uncultivable to the financial loss of the landowners.

29. Sequelly 25% of the market value of the acquired land i.e. 25% of Rs. 36567/- per acre of unacquired land is to be paid as compensation on account of severance of unacquired land rendering it uncultivable.

30. However, severance was not payable in RFA No. 2197 of 1994, as no severance of unacquired land had factually been found to exist. Even otherwise, there is complete dearth of evidence on this count.

Conclusion

31. Thus, partly accepting all the appeals and modifying the awards of the Reference Court compensation to the land owners would be paid at the market value of the acquired land as Rs. 36,567/- on the date of issuance of notification u/s 4 of the Act. So far as the severance charges are concerned in RFA No. 2196 of 1994 titled as Parbhu Dayal and others Vs. Haryana Government and others, the severance charges of the unacquired land would be Rs. 25% of the market value i.e. Rs. 36,567/- per acre. It is made clear that landowners would be entitled to statutory benefits and interest as well.

32. With this modification in the impugned awards, these appeals are partly accepted in the above terms.