State of Haryana and another - Appellants @HASH Sudarshan Kumar and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 1, 2016

Acts Referred: Land Acquisition Act, 1894 - Section 23

Citation: (2017) 1 RCRCivil 478

Hon'ble Judges: Rameshwar Singh Malik, J.

Bench: Single Bench

Advocate: Arun Beniwal, DAG, Haryana, for the Appellants in RFA Nos. 6989 to 7005 of 2014; Anurag Jain, Advocate, for the Appellants in RFA No. 9630 to 9636 of 2014 and 3140 of 2015; Manoj Chahal, Advocate, for the Appellants in RFA No. 2568 and 2569 of 2015; Manis

Final Decision: Disposed Off

Judgement

Rameshwar Singh Malik, J. (Oral)â€"This bunch of 30 Regular First Appeals, out of which 17 appeals bearing RFA Nos. 6989 to 7005 of

2014 filed by State of Haryana and 13 appeals bearing RFA Nos. 8879 to 8881, 9630 to 9636 of 2014, 2568, 2569, 3140 of 2015, filed by the

landowners, is being decided vide this common order, as all these appeals 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 culled out from RFA No. 6989

of 2014 (State of Haryana and another v. Sudarshan Kumar and others).

2. Briefly put, facts necessary for disposal of this bunch of appeals are that State of Haryana sought to acquire land measuring 8.34 acres out of

revenue estate No.33 Tosham, District Bhiwani, at public expenses for public purpose; namely for construction of Tosham Drain. Accordingly,

notification dated 22.2.2010 was issued under Section 4 of the Land Acquisition Act, 1894 ("the Act" for short), which was followed by

notification dated 23.4.2010 under Section 6 of the Act. Land Acquisition Collector, vide his award No. 3-B dated 6.5.2011, assessed the

market value of the acquired land at uniform rate of Rs. 12 lacs/- per acre.

3. Dissatisfied, the landowners filed their objections under Section 18 of the Act and as a consequence thereof, as many as 17 land references

were forwarded, which were decided together by the learned reference court, vide its common impugned award dated 20.3.2014. Learned

reference court assessed the market value of the acquired land at the uniform rate of Rs. 58,88,000/- per acre.

4. Both the parties felt aggrieved against the abovesaid impugned award passed by the learned reference court. State of Haryana has filed 17

appeals, seeking reduction in the amount of compensation awarded by the learned reference court, whereas the landowners, by way of 13

appeals, are seeking further enhancement thereof. That is how, all these 30 appeals are being decided together.

5. Having heard learned counsel for the parties at considerable length, after careful perusal of record of the cases and giving thoughtful

consideration to the rival contentions raised, this Court is of the considered opinion that so far as appeals filed by the State of Haryana are

concerned, the same are without any merit and are liable to be dismissed, whereas, appeals filed by the landowners deserve to be partly allowed.

To say so, reasons are more than one, which are being recorded hereinafter.

6. A bare perusal of the impugned award passed by the learned reference court would show that the landowners have produced voluminous

evidence on record in support of their stand taken. State has also brought on record voluminous evidence, but the sale instances relied upon by the

State were found irrelevant, because the same were post acquisition. Although some of the sale instances relied upon by the landowners were also

post acquisition, yet learned reference court has referred to 5 sale examplers in tabulated form in para 20 of the impugned award. Since two sale

instances contained in Ex.P-1 and Ex.P-4 were pertaining to different revenue estate, i.e. Dharwanbas and also because only one marlas of land in

each of these two sale deeds was sold, learned reference court committed no error of law, while ignoring these two sale deeds.

7. However, since very small parcels of land belonging to different landowners, ranging from 2 marla to less than 2 kanals were acquired in the

instant acquisition, the learned reference court ought to have taken into consideration the average market value of three sale deeds, i.e. Ex.P-5,

Ex.P-9 and Ex.P-10, instead of taking into consideration only one sale deed Ex.P5. Findings recorded by the learned reference court in this regard

are liable to be modified. It is so said because land measuring 10 marlas, 7 marlas and 6Ã¯Â¿Â½ marlas was sold by Ex.P-5, Ex.P-9 and Ex.P-10

respectively. The average market value disclosed in all the abovesaid three sale deeds comes to Rs. 73,91,062/- per acre and it is being taken as

such, so that none of the parties may have any grouse in this regard.

8. The immediate next question that falls for consideration of this Court is; whether 20% cut applied by the learned reference court was justified or

not. As noticed hereinabove, a bare reading of Ex.P-31, available from pages 315 to 343 of the lower court record (''LCR'' for short), would

show that the acquired land of many landowners was measuring only two marla. Similarly, small pieces of land measuring 3 marla, 5 marla, 6 marla

and 9 marla were acquired, owned by different landowners. In no case, land measuring 2 kanal owned by any of the landowners was acquired. In

this undisputed fact situation obtaining in the instant set of appeals, this Court feels no hesitation to conclude that learned reference court fell in

serious error of law, while applying 20% cut on the market value disclosed in the abovesaid sale deeds. It is so said, because no cut was

warranted to be imposed in the present set of cases.

9. In fact, imposition of any particular percentage of cut is not an absolute rule. Neither it is desirable nor it is possible to lay down any straight

jacket formula in this regard, which might be made applicable in every given situation. It is equally true that each case is to be decided on the basis

of its own peculiar facts and circumstances. Further, facts of each case are to be examined, considered and appreciated first, before applying any

codified or judgemade law thereto. Sometimes difference of even one circumstance or additional fact can make the world of difference, as held by

the Hon''ble Supreme Court in Padmausundara Rao and another v. State of Tamil Nadu and others, 2002 (3) SCC 533.

10. The abovesaid view taken by this Court on the principle of imposition of any particular percentage of cut on the market value, also finds

support from the judgment rendered by a Division Bench of this Court in Harbans Singh and others v. State of Punjab through the Land

Acquisition, 2006 (1) RCR (civil) 634, which, in turn, was based on the law laid down by the Hon''ble Supreme Court.

11. The relevant observations made by the Division Bench in para 12 and 13 of its judgment in Harbans Singh''s (supra), which can be gainfully

followed in these cases, read as under:-

12. ""There is no quarrel with the proposition, as has been laid down by the Hon''ble Apex Court in Administrator General of West Bengal. v.

Collector''s case (supra) that where the sale instance relied upon by the claimants comprised of small plot of land, then a cut has to be applied

while evaluating a large tract of land. However, in our considered view, the aforesaid proposition of law would not be attracted to the present

case. As has been noticed by the learned reference court as well as by the learned Single Judge, it is clear that the acquired land was situated

within the municipal limits. G.T. Road was situated on one side of the acquired land whereas on the other side of the acquired land, a by-pass road

connecting Sirhind town with the G.T. Road was situated. There were certain shops, workshops and petrol-pumps near the acquired land. In this

view of the matter, certain observations made by the Hon''ble Apex Court in Bhagwathula Samanna and others v. Special Tehsildar and

Land Acquisition Officer, 1992 (1) RRR 257 may be noticed:

The proposition that large area of land cannot possibly fetch a price at the same rate at which shall plots are sold is not absolute proposition and in

given circumstances it would be permissible to take into account that price fetched by the small plots of land. If the larger tract of land because of

advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with

little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted. With regard to

the nature of the plots involved in these two cases, it has been satisfactorily shown on the evidence on record that the land has facilities of road and

other amenities and is adjacent to a developed colony and in such circumstances it is possible to utilise the entire area in question as house sites. In

respect of the land acquired for the road, the same advantages are available and it did not require any further development. We are, therefore, of

the view that the High Court has erred in applying the principle of deduction and reducing the fair market value of land from Rs. 10/- per sq. yard

to Rs. 6.50/- per sq. yard. In our opinion, no such deduction is justified in the facts and circumstances of these cases.

13. Following the aforesaid dictum laid down by the Hon''ble Supreme Court of India, a Division Bench of Madras High Court in Special

Tehsildar (Adi Dravidar Welfare) v. Abdul Reguman, 1996 LA.C.C. 394 held as follows:

In our view the observations made by the Supreme Court is squarely applicable to the case in hand developed. Admittedly, the land in question is

already in a developed area and situated in an advantageous position and quite suitable for building purpose. It is also proved in evidence that the

land in question has all the amenities such as roads, drainage, electricity, communications etc. Therefore, we are of the view that the learned

Subordinate Judge is not justified in deducting 20% from the market value. We, therefore, set aside that part of the order of the learned

Subordinate Judge, fixing the market value at Rs. 1325/- less 20%. The cross-objection is, therefore, allowed and the order of the Subordinate

Judge is modified to this extent.

Respectfully following the law laid down by the Hon''ble Supreme Court as well as by the Division Bench of this Court in the cases referred to

hereinabove, it is unhesitatingly held that no cut is warranted to be imposed on the abovesaid market value, because imposition of any cut would

run counter to the law laid down by the Hon''ble Supreme Court as well as by the Division Bench of this Court.

12. So far as location and potentiality of the acquired land is concerned, a bare perusal of the site plan Ex.P12 and Aks Shajra Ex.R-5 would

leave no room for doubt that most part of the acquired land was abutting the metaled road. Surender Singh Stadium was abutting the acquired

land. Residential quarters and office of Public Health Department were also abutting the acquired land. Besides this, there were many

establishments, including commercial establishments, which were situated in the close vicinity of the acquired land. Residential colonies were also

abutting the acquired land. Surya Steel Factory, Plastic Dana Factory, Sheep Farm, Milk Plant, Maharaja Agrasen School, Hot Mix Plant and one

hatchery were also situated either abutting the acquired land or in the close vicinity thereof. Bye-pass road was also going through the acquired

land. Tehsil & SDM office, PWD Rest House, BDO office, Civil Hospital and Bus stand were also situated near the acquired land.

13. Keeping in view the abovesaid undisputed facts on record, it can be safely concluded that the acquired land was having a great potentiality.

Since the acquired land was situated very close to the town and it was no more a simple agricultural land, finding recorded by the learned reference

court, while imposing 20% cut on the abovesaid market value, cannot be upheld and the same is hereby set aside.

14. That takes this Court to the issue of severance charges. A bare glance at the site plan would show that about 20 acres land has been bifurcated

from the starting point up to the metaled road, because of construction of the drain in question. Since the drain has been constructed alongside the

pucca road, the landowners would not be in a position to put their unacquired land to its optimum use. Neither it would be feasible nor practicable

for the authorities concerned, to provide either culverts or bridges at short distances on the drain in question. In the absence of convenient passage

to their unacquired land, the landowners would have to cover long distances to approach their unacquired land for the purpose of its cultivation. It

shall considerably add to the transportation charges, reducing the net agricultural income from the unacquired land for all times to come. In this

regard, evidence given by RW1-Bharat Singh, SDO, is very relevant whose statement is available at page 413 of the LCR. This witness has

categorically admitted that after the acquisition, no direct passage from the road would be available to the unacquired land/fields of the landowners.

15. Keeping in view that totality of facts and circumstances of the cases in hand and proceeding on a holistic approach, this Court is of the

considered opinion that granting 40% of the abovesaid market value to the landowners, on account of severance charges, would meet the ends of

justice. Although learned counsel for the appellants-landowners, on the strength of two judgments of this Court in Yaqub v. Union of India, 1999

(2) RCR Civil) 260 and State of Punjab v. Mohan Lal, 1997 (3) RCR (Civil) 693, pray for at least 50% of the abovesaid market value on

account of severance charges, yet the 40% would be just and reasonable.

16. Let it be specifically recorded here that no better evidence or relevant judicial precedents were pressed into service, nor any other argument

was raised on behalf of either of the parties.

17. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the

considered view that the appeals filed by the State of Haryana are wholly misconceived, bereft of merit and without any substance, thus, these

must fail and the same are hereby dismissed.

18. Appeals filed by the landowners deserve to be partly accepted and the same are allowed to the extent indicated above. The landowners are

held entitled to receive the compensation for their acquired land at the uniform rate of Rs. 73,91,062/- per acre from the date of notification under

Section 4 of the Act. Further, the landowners are also held entitled to receive 40% of the abovesaid market value on account of severance charges

for their unacquired land. Besides this, the land owners shall also be entitled for all the statutory benefits available to them under the relevant

provisions of the Act.

19. Resultantly, with the observations made above, all these 30 appeals stand disposed of in the abovesaid terms, however, with no order as to

costs.