

SUPREME COURT OF INDIA

Guru Gobind Singh Refineries Ltd.

Vs.

Punjab State

C.A.Nos.8986-9012 of 2010

(G.S.Singhvi and Asok Kumar Ganguly JJ.)

20.10.2010

JUDGMENT

G.S.Singhvi, J.

1. Leave granted.

2. These appeals by M/s. Guru Gobind Singh Refineries Ltd. (hereinafter referred to as, 'the Company'), which is now known as HPCL - Mittal Energy Limited, and the land owners are directed against judgment dated 22.10.2008 of the learned Single Judge of the Punjab and Haryana High Court whereby he declined to interfere with the valuation of the land and belting method adopted by the Reference Court but remanded the matter for reconsideration of the issue relating to categorization of the acquired land.

3. The Government of Punjab acquired various parcels of land situated in villages Phulokhari, Kanakwal, Ramsra and Raman, Tehsil Talwandi Sabo, District Bhatinda for setting up Oil Refinery and Liquid Fuel based Power Plant. Notification under Section 4 read with Section 17 of the Land Acquisition Act, 1894 (for short, 'the Act') was issued on 27.8.1997 in respect of 1995.82 acres land, but declaration under Section 6 was published only for 1992.575 acres land.

4. The Land Acquisition Collector passed award dated 4.6.1999 for payment of compensation to the land owners. He divided the acquired land in the following three categories:

Sr.	Name of land	Kind of	No.	Village	Nehri	Barani	G.M.	Total Area in Acres	K	M	K	M
K	M	K	M	K	M	K	M	K	M	K	M	

.....

1. Phulokhari 518.02 1724.01 60.17 2303.00 287.875

2. Kanakwal 4002.08 6165.12 140.06 10308.06 1288.5375

3. Ramsra 1848.08 1318.03 76.17 3243.08 405.425

4.	Raman	40.11	41.18	3.09	85.18	10.7375
.....						Total 6469.09
9219.14		281.09		15940.12		1992.575"

..... For the aforesaid three categories of land, the Land Acquisition Collector fixed market value at Rs.3.50 lacs per acre, Rs.2.75 lacs per acre and Rs.5 lacs per acre.”

5. Dissatisfied with the compensation awarded by the Land Acquisition Collector, as many as 131 land owners filed applications under Section 18 of the Act. Thereupon, the Collector made a reference to the Court of Additional District Judge, Bhatinda (Reference Court). After considering the evidence produced by the parties, the Reference Court clubbed the land classified as Nehri/Chahi with Barani and tube well irrigated land and fixed market value thereof at Rs.3.50 lacs per acre. For Gair Mumkin land, the Reference Court maintained the market value fixed by the Land Acquisition Collector but carved out a new category i.e., land abutting metalled road except Gair Mumkin, going from Raman to Kalianwala via Gyan up to a depth of 500 meters and fixed its market value at Rs.3.75 lacs per acre.

6. The appellants challenged the award of the Reference Court by filing separate appeals under Section 54 of the Act. While the Company questioned the clubbing of Nehri/Chahi land with Barani and tube well irrigated land and creation of new category i.e., land abutting metalled road, the land owners claimed that compensation awarded by the Reference Court was not just and equitable and they were entitled to higher market value.

7. The High Court admitted the appeals but declined to stay the award of the Reference Court. Thereupon, the Company filed Special Leave Petition (Civil) No. 8386/2006. While issuing notice on 12.5.2006, this Court passed the following order:

“Issue notice.

Without prejudice to the claims involved, let the petitioners deposit Rs.7,50,00,000/- (Rupees Seven Crores and fifty lakhs only) in the trial court. The amount shall be invested in fixed deposit in a nationalised bank initially for a period of six months. There shall be interim stay of the impugned order subject to the aforesaid condition.”

Similar order was passed on 28.8.2006 in Special Leave Petition (Civil) No. 13778/2006.”

8. Both the special leave petitions were finally disposed of on 22.4.2008 in the following terms:

“These special leave petitions are against interim orders passed by the Punjab and Haryana High Court. While issuing notice in the appeals, interim protection was denied. By order dated 12.05.2006, this Court, while issuing notice, directed deposit of Rupees 7.5 crores with the Trial Court, to be invested in a nationalized Bank initially for a period of six months. Since the main matter is pending before the High Court, we do not think it necessary to pass any further orders in the matter. Let the Regular First Appeals be heard by the High Court. We feel interest of justice would be best served if the amount deposited is permitted to be withdrawn by the land owners on furnishing such security, as may be fixed by the Trial Court.

The special leave petitions are disposed of accordingly.”

9. By the impugned judgment, the learned Single Judge negated the Company's challenge to the belting of the land by recording the following reasons:

“It cannot be disputed that the area abutting a road certainly has a better value as compared to the area falling behind it. To state that valuation of the land either on the road or behind that should be at the same rate is totally misconceived. Even otherwise, the benefit given by the learned court below for the land on the road is very marginal as the same has been assessed at Rs. 3,75,000/- per acre, whereas other part of the land behind that has been assessed at Rs. 3,50,000/- per acre. As the amount of compensation awarded for the front portion is marginally high, i.e., Rs. 25,000/- per acre, I do not find any good reason to interfere with the impugned award on this ground.” However, the learned Single Judge expressed reservation on the issue of clubbing of the land categorized as Nehri/Chahi with Barani and tube well irrigated land and remanded the case to the Reference Court for further detailed examination and recording a specific finding with regard to the area shown as Barani. This is evident from the following extracts of the impugned judgment:

"A perusal of the material produced on record shows that the Collector in his award had mentioned the quality of land as Nehri, Barani and Gair Mumkin giving specific area pertaining to that quality in four villages, the land of which was acquired. The land owners in the present case had produced evidence in the form of records regarding Chakbandi etc. showing the land to be Nehri, whereas on the other hand the Refinery had produced jamabandis and khasra girdawaris to show that the area, as mentioned in the award, with regard to Barani land is correct description thereof which did not call for any interference by the learned Court below. The learned court below had merely referred to Ex.A1, Ex. A2, Ex. A25 and Ex. A37 in Land Reference No. 103 of 2000 and has not referred to any other material in other land references produced by the land owners regarding quality of land. The total of the land which was allegedly found to be Nehri in terms of exhibits, as referred to above, is also not tallying with the area mentioned in the exhibits. Even it has not been recorded as to in what area the alleged 19 tubewells were installed and as to whether those were forming part of the land which was considered as Nehri by the Collector or those

were found in the area which was recorded as Barani. In addition to this, the learned Court below has recorded certain facts in paragraph 55 of the award regarding the total area sown in Punjab and the percentage thereof which is irrigated. Similar facts regarding the area of Bhatinda were also mentioned. No evidence in that regard has either been discussed by the learned Court below or has been referred to. At the time of hearing, nothing had been referred to substantiate the plea that the khasra numbers, which were recorded as Barani by the Collector and the corresponding evidence regarding the same showing them to be Nehri. All what has been referred to at the time of hearing was that the total area shown in the evidence led by the land owners in Land Reference No. 103 of 2000 is that the land forming part of the documents (Chakbandi) etc. is more than the area which is shown to be Barani by the Collector, but the same is not showing that it is the same land which was shown as Barani by connecting it with khasra numbers. Merely on the basis of the figure taken by the learned Court below from certain publications or elsewhere without there being any evidence to that effect on record cannot be made the basis for changing the category of the land, once the same was being contested by the Refinery.

Accordingly, in my opinion, on this issue a further detailed examination is required by the learned Court below by recording a specific finding with regard to the area with reference to khasra numbers which were shown as Barani by the Collector. It has to be considered as to whether there exists any source of irrigation in the land which has been recorded as Barani in the revenue record to change the category thereof from Barani to Nehri.”

10. The learned Single Judge rejected the land owners' prayer for fixing higher market value of the acquired land and observed: "As far as the claim of the land owners for further enhancement in the value of the land, as assessed by the Court below while upholding the award of the Collector is concerned, a perusal of the evidence led by the land owners, as referred to in paragraph 41 of the impugned award, shows that the sale deeds as produced on record were pertaining to only two villages, namely, Ramsra and Raman. Sale deeds (Ex. A14, Ex.A15, Ex. A17, Ex. A18 and Ex. A23) are of a date which is subsequent to the acquisition of land, whereas sale deeds (Ex. A13, Ex. A19, Ex. A20, Ex. A21 and Ex. A22) are pertaining to dates which are prior in time. Further perusal of the sale deeds shows that the area comprised therein is ranging from 8 marlas to 4 kanals with the price range of Rs. 4,00,000/- per acre to Rs. 7,60,000/- per acre. A perusal of sale deed dated 4.8.1997 (Ex. A.13) shows that the land measuring 4 kanals described as Barani (rural) was sold at average price of Rs. 4,00,000/- per acre. In the sale deeds, Ex. A.19, Ex. A20, Ex. A21 and Ex. A 22, land measuring 5-1/2 marlas to one kanal was shown to have been sold from Rs. 4,35,000/- per acre to Rs. 7,60,000/- per acre. The description of the land as mentioned in the aforesaid sale deeds clearly show that the property therein was urban and further that the area dealt with is quite small as compared to the large chunk of land measuring 1992.575 acres acquired. Firstly, these sale deeds cannot be made basis for determination of value of large chunk of acquired land. Secondly, even if a reasonable cut is applied keeping in view

smallness of area dealt with the sale deeds and the location thereof, still the value of the acquired land as assessed at Rs. 3,50,000/- per acre cannot be said to be on lower side."

11. Shri Sunil Gupta, learned senior counsel for the Company assailed the impugned judgment and argued that the reasons assigned by the learned Single Judge for refusing to interfere with the belting of the land and grant of higher compensation for such land are ex facie erroneous because no evidence was produced by the land owners to show that the land up to the depth of 500 meters from the metalled road was different from the remaining land and its price was higher. Learned senior counsel emphasized that when a vast chunk of land measuring 1992.575 acres was acquired for setting up refinery, different market value could not have been fixed for a small portion of the land on the ground that it is near the metalled road and could fetch higher market value. Learned senior counsel then argued that the sale deeds produced by the land owners were not at all relevant for fixing market value of the acquired land because the same related to very small parcels of land measuring 8 to 1 kanal or even less. Shri Gupta produced a compilation of papers to show that Gair Mumkin land situated in and near the abadi can fetch higher market value and argued that the same cannot be made basis for awarding higher compensation for other categories of land.

12. Shri Manoj Swarup, learned counsel for the land owners argued that the entries made in the jamabandis and other revenue records, which were based on the settlement operations carried out many decades ago do not reflect true nature of the land as on the date of acquisition and, as such, those entries could not have been relied upon by the Land Acquisition Collector for fixing market value of the acquired land. Learned counsel emphasized that due to availability of irrigation facilities i.e., canals and tube wells, the quality of the land in Phulokhari, Kanakwal, Ramsra and Raman has altogether changed in last 20 years and the Reference Court did not commit any error by clubbing Barani and tube well irrigated land with Nehri/Chahi land for fixing market value of such land. Learned counsel then argued that Gair Mumkin land is not superior to Nehri/Chahi, Barani and tube well irrigated land and when the State Government has itself fixed market value of Gair Mumkin land at Rs.5 lacs per acre, the Reference Court should have awarded compensation for the entire land at least at the rate of Rs.5 lacs per acre. Learned counsel submitted that if this Court is not inclined to interfere with the order of remand passed by the High Court, then the Reference Court should be directed to decide all the issues afresh after giving opportunity to the parties to produce additional evidence. In the end, the learned counsel submitted that the land owners may be permitted to withdraw the amount deposited by the Company in furtherance of the conditional interim order dated 12.5.2006 passed in Special Leave Petition (Civil) No. 8386/2006. He pointed out that even though the land owners had applied to the Reference Court for withdrawal of the amount, necessary orders were not passed by the concerned Court because of the stiff resistance put up by the counsel for the Company.

13. Learned senior counsel for the Company seriously opposed the last mentioned request of the land owners' counsel and submitted that his client should be allowed to withdraw the amount deposited in compliance of the direction given by this Court because by virtue of the

judgment of the High Court, the award passed by the Reference Court has become non est and the land owners cannot derive any benefit from the same..

14. We have considered the respective submissions. The reasons recorded by the High Court for remanding the case to the Reference Court for deciding the issue of clubbing the land categorized as Nehri/Chahi with Barani and tube well irrigated land do not appear to be flawed. In our view, the Reference Court was not justified in deciding the issue relating to fixation of market value of the acquired land by presuming that irrigation facilities are available throughout the State of Punjab either through canals or through tube wells. The Reference Court should have referred to the substantive evidence produced by the parties and then decided whether it was just and proper to club the land categorized as Nehri/Chahi with Barani and tube well irrigated land. Therefore, we do not find any error in the direction given by the High Court to the Reference Court to decide issue relating to clubbing of different categories of land.

15. However, we are inclined to agree with the learned counsel for the land owners that the High Court should have ordered an open remand so as to enable the parties to lead additional evidence on all the issues including the belting of land and fixation of market value at a flat rate keeping in view the rate fixed by the State Government for Gair Mumkin land. What is the extent of land falling within 500 meters of the metalled road and whether such land can fetch higher price in the market are questions which can be decided only after giving opportunity to the parties to adduce further evidence. Likewise, the questions whether the entire Gair Mumkin land i.e., 281 kanals 9 marlas is in abadi and market value thereof can be made basis for fixing market value of other categories of land or higher market value fixed by the State Government for Gair Mumkin land would supply basis for grant of higher compensation in respect of other lands are required to be decided after considering the evidence which may be produced by the parties. Therefore, it will be in the interest of justice if the Reference Court is directed to decide all the issues afresh after giving opportunity to the parties to adduce additional evidence.

16. We shall now deal with the question of withdrawal of the amount deposited by the Company in compliance of order dated 12.5.2006 passed by this Court in S.L.P. (C) No.8386 of 2006. A reading of order dated 24.4.2008 by which the special leave petitions filed by the Company against the High Court's refusal to stay the award of the Reference Court were disposed of by this Court shows that liberty was given to the land owners to withdraw the amount on furnishing appropriate security to be fixed by the trial Court. It is not in dispute that the Company did not seek modification of that order. Therefore, we do not find any justification to pass an order which may run contrary order dated 24.4.2008.

17. In the result, the appeals are disposed of in the following terms: (i) The impugned judgment of the High Court is set aside and the matter is remanded to the Reference Court with the direction that it shall pass fresh award after giving opportunity to the parties to produce additional evidence on all the issues. (ii) The Reference Court shall not entertain any unreasonable request made by either party for adjournment of the case and shall dispose of

the matter within 6 months from the date of receipt/production of this judgment. (iii) The land owners shall be entitled to withdraw the amount deposited by the Company after furnishing appropriate security to the satisfaction of the Presiding Officer of the Reference Court.