

# SUPREME COURT OF INDIA

National Fertilizers Ltd.

Vs.

Jagga Singh

C.A.No.3033 of 2008

(Cyriac Joseph and A.K.Patnaik, JJ.,)

15.11.2011

## JUDGMENT

### **A.K.Patnaik, J.,**

1. These are the appeals by way of special leave against the judgment and order dated 13.07.2005 of the Division Bench of the Punjab and Haryana High Court, Chandigarh, in Letters Patent Appeals determining the market value of acquired land @ Rs.120/- per square yard (for short 'the impugned judgment').

2. The facts relevant for deciding these appeals briefly are that the National Fertilizers Limited (for short 'the NFL') is a Government of India Undertaking engaged in the business of manufacturing fertilizers and has a plant in Bhatinda in the State of Punjab. To meet the requirement of dwelling houses for the employees of NFL, the State of Punjab acquired 29.68 acres of land in village Bhatinda by notification dated 24.01.1983 issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act'). The District Collector sent the market rates to the Land Acquisition Collector for different classes of agricultural or revenue land and these were for Nehri - Rs.56,000/- per acre, for Barani - Rs. 23,000/- per acre and for Gair Mumkin - Rs.23,000/- per acre. The Land Acquisition Collector determined the compensation at 50% above the rates sent by the District Collector for each of the aforesaid classes of land in his award dated 19.03.1986. Not satisfied with the award, the landowners made a reference under Section 18 of the Act to the civil court. Besides the State, NFL was impleaded as a defendant in the reference. By order dated 29.04.1991, the learned Additional District Judge determined the compensation for all the three classes of land at a uniform rate of Rs.32.50 per square yard after considering two unregistered sale agreements (Exhibits A-X and A-Y) and the order of the High Court in Sadhu Singh's case determining the compensation for land acquired for extension of the military cantonment in the year 1976. The land owners challenged the order of the Additional District Judge before the High Court in Regular First Appeals. The State of Punjab and NFL also challenged the order of the learned Additional District Judge before the High Court in Regular First Appeals. The learned Single Judge of the High Court, who heard the appeals, sustained the determination

of compensation made by the learned Additional District Judge and dismissed the appeals by a common order dated 09.09.1994.

3. Aggrieved, the land owners as well as NFL challenged the order dated 09.09.1994 of the learned Single Judge before the Division Bench of the High Court in Letters Patent Appeals. In the impugned judgment, the Division Bench of the High Court held that as Exhibits A-X and A-Y were unregistered and did not bear any date, these documents could not be considered for determination of compensation. The Division Bench also found from the site plan that the military cantonment for which Sadhu Singh's land was acquired was far away from the land acquired in the present case. The Division Bench also found that the land of Sadhu Singh was acquired for the military cantonment in the year 1976 whereas the lands acquired in the present case were included in the municipal limits of Bhatinda city in 1977 and around the land acquired in the present case, various colonies had come up in the municipal limits of Bhatinda. The Division Bench further found from the site plan that the land of Karam Singh which had been acquired for a municipal park was much nearer to the land of the land owners acquired in the present case. The Division Bench, therefore, took the view in the impugned judgment that the order passed by the High Court in the case of Sadhu Singh for the land acquired for military cantonment could not be preferred over the order of the High Court passed in the case of Karam Singh for land acquired for municipal park in the year 1983 for making the assessment of market value of the land acquired in the present case and determined Rs.120/- per square yard as just and reasonable market value for the land acquired in the present case and adopted the reasoning given in the order dated 08.11.1989 of the High Court (Exhibit A-15) in the case of Karam Singh (RFA No.906 of 1988).

4. Learned counsel appearing for the appellant submitted that the Division Bench of the High Court was not correct in coming to the conclusion that the assessment of compensation in Karam Singh's case was more comparable and relevant for making assessment of market value of the land acquired in the present case. He submitted that in Karam Singh's case a very small area of land measuring 1058 sq. yards was acquired whereas in the present case a much bigger area of acre 29.68 was acquired. He submitted that in Karam Singh's case the land was a developed land located in the heart of the Bhatinda town, but in the present case the acquired land was water-logged and used for agricultural purpose and was away from the city. He referred to the order of the High Court passed in Karam Singh's case to show that the land acquired in that case had a great potential value for being used for commercial and residential purposes. He submitted that the land acquired in Karam Singh's case was at a distance of about 200 karmas from the scheme of Improvement Trust on the Amrik Singh Road. He submitted that at a short distance from the land acquired in Karam Singh's case, towards the city, there were shops of jewellers, iron furniture factory, cinema hall as well as Sepal Hotel. He argued that these facts made a big difference to the value of the land that was acquired in Karam Singh's case and that the assessment of compensation in Karam Singh's case was not at all relevant to the assessment of compensation for the land acquired in the present case.

5. Learned counsel for the appellant submitted that the learned Additional District Judge and the learned Single Judge have therefore rightly taken the view that the value of the land acquired in the case of Karam Singh could not be the basis for determining the compensation for the land acquired in the present case. He submitted that the learned Additional District Judge and the learned Single Judge of the High Court have in the present case taken the average price of two sale transactions in Exhibits A-X and A-Y as well as the market value of the land acquired in the year 1976 in the case of Sadhu Singh and after adding an increase of 12% per annum arrived at the value of the land acquired in the present case in 1983 at Rs.32.50 per sq. yard, which was just and reasonable.

6. Learned counsel for the appellant cited *Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and Another*<sup>1</sup> in which this Court has listed the plus factors and minus factors which have to be taken into consideration for determining the market value of land in land acquisition cases. He submitted that in this decision this Court has mentioned largeness of area of land in the list of minus factors for determination of the market value of the land. He also relied on *Hasanali Khanbhai & Sons and Others v. State of Gujarat*<sup>2</sup> in which deduction to the extent of 60% of the value of land on account of the large size of the land adopted by the High Court was found to be justified. He also relied on *K. Vasundara Devi v. Revenue Divisional Officer (LAO)*<sup>3</sup> in which it was held that sufficient deduction should be made to arrive at the just and fair market value of large tracts of land, which were not developed. He also relied on *Kanta Devi and Others v. State of Haryana and Another*<sup>5</sup> in which this Court made deduction of 60% for meeting the expenditure towards development charges.

7. Learned counsel for the respondent-land owners, on the other hand, submitted that all the witnesses produced by the land owners before the Additional District Judge have testified to the fact that the acquired land is situated on the National Highway leading from Bhatinda to Ferozpur via Goniana and was within the municipal limits of Bhatinda and was situated by the side of a metal road. He submitted that the witnesses have also testified that the acquired land was surrounded by many industrial concerns and residential colonies, such as thermal plant, the plant of NFL as well as colony of the employees of the two plants and Sucha Singh Colony, Amar Singh Colony, Kheta Singh Colony, Mandir Colony etc. He submitted that the witnesses have also stated that the abadi of Bhatinda town has extended towards the land acquired in the present case and three sides of the acquired land are already occupied and on the fourth side is the metal road. He submitted that the learned Additional District Judge has taken note of all such evidence or the witnesses and has held that the land acquired in the present case has the potentiality of urban land and not of agricultural land.

8. Learned counsel for the respondent-landowners submitted that the land acquired in the present case may be at some distance from the land acquired in Karam Singh's case but this cannot be a ground for not treating the acquired land in the present case as comparable with the land acquired in Karam Singh's case for the purpose of determination of compensation. In support of his submission he relied on *Thakarsibhai Devjibhai and Others v. Executive Engineer, Gujarat and Another* [(2001) 9 SCC 584] in which this Court has held that if the quality, including potentiality, of two areas of land is similar then distance between the two

would not by itself lead to a change in their respective market values. He submitted that it is not correct as has been submitted on behalf of the appellant that the acquired land was a low waterlogged agricultural land and as per the evidence of RW-1, the Patwari, Land Acquisition, Industries Department, Government of Punjab, the level of the acquired land was the same as that of the existing land of township of the NFL. He submitted that the quality of the acquired land and the quality of the land acquired in the case of Karam Singh were therefore one and the same and the Division Bench of the High Court has rightly held that the compensation determined for the land acquired in the case of Karam Singh should be the basis for determination of compensation of the acquired land in the present case. He submitted that in any case the value of the acquired land in Karam Singh's case was determined by the High Court under Ext.A-15 at Rs.176/- per square yard and the Division Bench in the impugned order has applied a cut and determined the compensation for the land acquired in the present case at a reduced rate of Rs.120/- per square yard and this was a just and reasonable compensation awarded for the land acquired in the present case.

9. Learned counsel for the respondent-landowners next submitted that the determination of compensation by the learned Single Judge of the High Court in the present case on the basis of land acquired in Sadhu Singh's case was not at all correct because the land acquired in the case of Sadhu Singh was located in the cantonment area and the acquisition was in 1976, whereas the Municipal Council of Bhatinda was constituted only in 1977 and the land in the present case was acquired in 1983 when the land was within the municipal limits. He submitted that the acquisition in Sadhu Singh's case was made in 1976 more than seven years before the acquisition in the present case and therefore the value of land as determined in Sadhu Singh's case cannot be the basis for determination of compensation in the present case. He cited *General Manager, Oil and Natural Gas Corporation Limited v. Rameshbhai Jivanbhai Patel and Another*<sup>5</sup> in which this Court has held that sale transactions which precede the subject acquisition by only a few years, i.e. upto four to five years, can be relied upon but relying on sale transactions beyond that would be unsafe, even if it relates to a neighbouring land. He submitted that in the absence of any appropriate sale transaction of the year 1983 in respect of land in an around the acquired land in the present case, the Division Bench rightly relied on the judicial precedent in the case of Karam Singh and determined the compensation at the rate of Rs.120/- per square yard. He relied on *Pal Singh and Others v. Union Territory of Chandigarh*<sup>6</sup> wherein this Court has observed that a judgment of a court in a land acquisition case determining the market value of a land in the vicinity of the acquired lands, even though not inter partes, is admissible in evidence either as an instance or one from which the market value of the acquired land could be deduced or inferred. He submitted that Ext.A-15 which was the order of the High Court in the case of Karam Singh has therefore been rightly relied upon by the Division Bench of the High Court in determining the compensation of Rs.120/- per square yard for the land acquired in the present case.

10. We have considered the submissions of the learned counsel for the parties and we find that while the case of the appellant is that the learned Additional District Judge and the learned Single Judge correctly determined the compensation payable to the landowners for the land acquired in the present case at the rate of Rs.32.50 per sq. yard, the case of the

respondent-landowners is that the Division Bench of the High Court has correctly determined the compensation in the impugned judgment at the rate of Rs.120/- per sq. yard. Therefore, the question that we have to decide in these appeals is whether the compensation for the lands acquired as determined by the Additional District Judge and as upheld by the order of the learned Single Judge is a correct assessment of the market value of the acquired land or the compensation as determined by the Division Bench of the High Court in the impugned judgment is a more accurate assessment of the market value of the land acquired in present case.

11. We may first deal with the determination of the compensation by the Additional District Judge as affirmed by the learned Single Judge of the High Court in the Regular First Appeals. The Additional District Judge has taken into consideration two sale agreements (Exts. A-X and A-Y). Exhibit A-X is executed by one Satish Gupta agreeing to transfer his plot of land measuring 400 sq. yards for Rs.17,300/- to one Sham Singh and Exhibit A-Y is executed by one Balram Shukla agreeing to transfer his plot of 400 sq. yards for Rs.17,000/- to Satnam Singh. The average sale price in these two sale agreements comes to Rs.42.87 per sq. yard. The sale agreements are between the employees of NFL, who were members of the NFL Employees Co-operative Society. The Division Bench of the High Court has held in the impugned judgment that these sale agreements, which have no details with regard to the date of execution and were not really sale deeds, could not have been taken into consideration for determining the market value of the acquired land. We have perused a copy of the sale agreement between Balram Shukla and Satnam Singh, which has been annexed in Civil Appeal No.3033 of 2008 as Annexure P-13 and we find that the sale agreement does not mention the date on which the agreement has been entered into. In the absence of any date of the sale agreement, the sale agreement could not have constituted the basis for determination of the market value of land in 1983 when the land was acquired in the present case. The Division Bench of the High Court, therefore, was right in taking the view that Exhibits A-X and A-Y cannot constitute the basis for determination of the market value of the acquired land in the present case.

12. The learned Additional District Judge has also relied on the order of the High Court determining compensation of land acquired in the case of Sadhu Singh (RFA No.1207 of 1984). The land in the case of Sadhu Singh was acquired within the revenue village of Bhatinda for extension of the military cantonment by notification dated 29.10.1976 and the High Court determined a rate of compensation of Rs.17/- per sq. yard. The Additional District Judge has given an increase of 12% per annum on this rate of Rs.17/- per sq. yard from 29.10.1976 to 24.01.1983 to arrive at the market value of the land as on 24.01.1983, i.e. the date of notification under Section 4 of the Act in the present case. The learned Single Judge of the High Court while sustaining the order of the learned Additional Judge, has held that although the exact location of the land is not given in Sadhu Singh's case, yet the same can be made the basis for determining the market value of the acquired land in the present case as the land acquired in the Sadhu Singh's case was within municipal limits of Bhatinda. In our considered opinion, the reliance on order of the High Court passed in Sadhu Singh's case by the learned Additional District Judge and the learned Single Judge was not correct because from the site plan it appears that the land in Sadhu Singh's case which was acquired

for military cantonment was far away from the land acquired in the present case which was located adjacent to the colony of NFL and other colonies. From the site plan, we also find that compared to the land acquired in Sadhu Singh's case, the land acquired in Karam Singh's case was much more nearer to the land acquired in the present case.

13. The Division Bench of the High Court has thus relied upon its order in the case of Karam Singh (RFA No.906 of 1988) passed on 08.11.1989 which was marked in the reference proceedings as Ext. A-15. The land in the case of Karam Singh was acquired for a municipal park by notification issued under Section 4 of the Land Acquisition Act on 30.08.1983 and is located within the municipal limits. In Karam Singh's case there was evidence of three transactions of sale of the same date i.e., 29.06.1973, showing that some land in the area had been sold at the rate of Rs.100/- per sq. yard, some land in the area had been sold at Rs.70.30 paise per sq. yard and some land in the area had been sold at the rate of Rs.62.50 per sq. yard and the Court took the average rate of the three sale transactions which worked out to Rs.80/- per sq. yard. The Court then added an increase of 12% per annum for ten years to arrive at the value of the land in the year 1983 when the land was acquired and the figure worked out at Rs.176/- per sq. yard. For finding out the market value of the land acquired in the present case, the Division Bench of the High Court applied a cut to this rate of Rs.176/- per sq. yard and determined the rate of Rs.120/- per sq. yard as just and reasonable value of the land acquired in the present case considering the location and potentiality of the acquired land. The Division Bench has, therefore, taken into consideration the fact that the land in Karam Singh's case was located in the heart of the Bhatinda town, whereas the land acquired in the present case was slightly away from the heart of the town and was located adjacent to the existing colony of the NFL and other colonies, namely, the residential colonies of the thermal plant, Sucha Singh Colony, Amar Singh Colony, Kheta Singh Colony, Mandir Colony, etc. and reduced the market value of the land acquired in the present case.

14. We may now consider whether any further cut to the rate of Rs.120/- per sq. yard as determined by the Division Bench of the High Court in the impugned judgment was called for, considering the size and quality of the land acquired in the present case. Regarding the size of the land, the argument of learned counsel for the appellant is that the size of the land acquired in the case of Karam Singh was .04 acres (1058 sq. yards), whereas the size of the land acquired in the present case is acre 29.68 (143651 sq. yards). But on a reading of the order dated 08.11.1989 of the High Court in the case of Karam Singh (RFA No.906 of 1988) marked as Annexure Ext.A-15, we find that the High Court has taken into consideration three sale deeds of the same date to work out the average rate of the land at Rs.80/- per sq. yard in 1973 and applied an increase of 12% per annum to arrive at the figure of Rs.176/- per sq. yard, but has not mentioned the size of the lands which were sold under the three sale deeds. In the absence of the size of the plots of land which were sold under the sale deeds, which were taken into consideration by the High Court while determining the market rate of the land in Karam Singh's case, it is difficult to accept the contention of the learned counsel for the appellant that the determination of market value of the land in Karam Singh's case was in respect of land which was sold was much smaller in size as compared to the land which was acquired in the present case. Regarding quality of the land acquired in the present case, learned counsel for the appellant submitted that the land in Karam Singh's case was

developed urban land meant for residential and commercial purpose, whereas the land acquired in the present case was low, water-logged agricultural land. We, however, find from the evidence of Basant Singh Patwari, Land Acquisition, Industries Department Punjab, Chandigarh, examined as RW-1, that the level of the land, which was acquired in the present case, was that of the existing land of the township of NFL. The learned Additional District Judge in his order dated 29.04.1991 has in fact held, after considering all the oral and documentary evidence adduced by the parties, that the market value of the land acquired in the present case has to be determined on the basis of its potentiality for urban development and not on the basis of the revenue or agricultural classification of the land as done by the Collector because the land acquired in the present case had a great potential value for urban purposes, i.e. commercial, industrial and residential. We, therefore, do not find any merit in the submission of learned counsel for the appellant that a cut of 60% should have been applied to the rate as determined in Karam Singh's case considering the larger size and lower quality of the land acquired in the present case. In our opinion, the cut applied by the Division Bench of the High Court in the impugned judgment so as to reduce the value from Rs.176/- per sq. yard to Rs.120/- per sq. yard was just and reasonable in the facts of the present case.

15. In the result, we do not find any merit in these appeals and we dismiss the same and award a cost of Rs.10,000/- in favour of the respondents in each of the appeals.

Judgment Referred.

<sup>1</sup>(1988) 3 SCC 0751

<sup>2</sup>(1995) 5 SCC 0422

<sup>3</sup>(1995) 5 SCC 0426

<sup>4</sup>(2008) 15 SCC 0201

<sup>5</sup>(2008) 14 SCC 0745

<sup>6</sup>(1992) 4 SCC 0400