

SUPREME COURT OF INDIA

Nirmal Singh

Vs.

State of Haryana Thr. Collector

C.A.Nos.3982-3987 of 2011

(V. Gopala Gowda and Adarsh Kumar Goel JJ.)

26.09.2014

JUDGMENT

V. GOPALA GOWDA, J.

1. These groups of appeals have been filed against the impugned Judgment and order dated 10.12.2010 passed by the High Court of Punjab and Haryana at Chandigarh. Since the grievance and prayer of all the appellant-land owners are similar, namely, for enhancement of compensation in respect of their acquired land in question, for the sake of convenience and brevity, we shall refer to the facts of C.A. No(s). 3982-3989 of 2011 which have been filed against the Judgment and award passed in Page 1 R.F.A. Nos. 69 of 2007, 70 of 2007, 71 of 2007, 72 of 2007, 288 of 2008, 289 of 2008. All these R.F.A.s were disposed of in terms of Judgment and award of even date passed in R.F.A. No. 4538 of 2006, whereby the High Court enhanced the compensation in respect of the acquired lands to Rs.9,00,000/- per acre from Rs.6,60,000/- per acre as was determined by the Reference Court.

2. The State of Haryana issued a notification dated 22.08.2001 under Section 4 of the Land Acquisition Act, 1894 (in short 'the Act') for acquisition of 45.3 acres of land owned by the appellants situated at Pehowa, District Kurukshetra, for the public purpose, namely for construction of road, development and utilization of land for residential and commercial purposes. At the time of proposed acquisition, the nature of the land was agricultural and mostly vacant. Declaration that the land is required for

a public purpose was made vide notification under Section 6 of the Act on 25.01.2002. The Land Acquisition Collector (for short 'the Collector') vide award dated 19.11.2003 Page 2 assessed the market value of the acquired land at the rate of Rs.6,00,000/- per acre.

3. Being unsatisfied with the award of the Collector, the appellant-land owners filed objections claiming a market value of their land at Rs.60,00,000/- per acre. The Collector made a reference to the Addl. District Judge, Kurukshetra which is the Reference Court under Section 18 of the Act for determination of the correct market value of the acquired land. The learned Addl. District Judge vide his order dated 28.08.2006, on the basis of material evidence on record assessed the value at Rs.6,60,000/- per acre besides other statutory benefits under Sections 23(1A), 23(2) and 28 of the Act.

4. Regular First Appeals were filed by the appellant-land owners as they were dissatisfied with the compensation awarded by the Reference Court and sought for further enhancement of compensation for the acquired land, whereas the State filed the appeals praying for reduction of the compensation before the High Court of Punjab and Haryana at Page 3 Chandigarh.

5. After hearing the parties and going through the evidence on record, the High Court found that there was significant variation in the sale instances of lands located close to the acquired land as depicted in the sale deeds produced by the State as well as by the land owners. The High Court, vide its impugned Judgment and award dated 10.12.2010, by applying a thumb rule, determined and enhanced the amount of compensation at Rs.9,00,000/- per acre. Hence, these appeals are filed by the land owners with prayer for further enhancement of compensation in respect of their acquired land by determining the correct market value.

6. The learned counsel for the appellants contended that the market value of the acquired land has not been determined by the High Court based on the sale instances duly produced and exhibited before the Addl. District Judge. The High Court has erroneously held that the compensation cannot be awarded for a large scale of land on the basis of sale instances of small pieces of land. The learned counsel has Page 4 further contended that the High Court, despite appreciating that the land pertaining to the sale deeds produced by the land owners are located just outside the boundary of

the acquired land, has failed to determine the correct market value of the acquired land based on the sale instances which are substantive evidence produced in justification of the claim. The learned counsel for the appellants relied on the case of Haridwar Development Authority. v. Raghbir Singh¹ to support their contention, wherein this Court has held thus:-

“7. The acquisition with which we are concerned relates to a comparatively small extent of village land measuring about 38 bighas of compact contiguous land. The High Court was of the view that the size and situation did not warrant any belting and all lands deserved the same rate of compensation. The Authority has not placed any material to show that any area was less advantageously situated. Therefore the view of the High Court that compensation should be awarded at a uniform rate does not call for interference.

9. The claimants do not dispute the appropriateness of the said sale transaction taken as the basis for determination of compensation. Their (2010) 11 SCC 581 Page 5 grievance is that no deduction or cut should have been effected in the price disclosed by the sale deed, for arriving at the market value, in view of the following factors: (i) that the acquired lands were near to the main Bye-pass Road and had road access on two sides; (ii) that many residential houses had already come up in the surrounding areas, and the entire area was already fast developing; and (iii) that the acquired land had the potential to be used an urban residential area.”

7. On the other hand, the learned counsel for the State contended that the High Court after considering evidence and all relevant materials on record has already enhanced the amount of compensation payable to the land owners more than the actual value of land. The High Court categorically observed that there is a lot of variation in the consideration paid, as is depicted in the sale deeds produced by the State as well as by the land owners, though they are located close to the acquired land. The High Court observed that when on facts it is found that the land owners have not been adequately compensated, the courts have to apply a principle thumb rule. Thus, by applying the Page 6 above principle the High Court has already enhanced the compensation from Rs.6,60,000/- to Rs.9,00,000/- per acre and hence, the same does not warrant any further enhancement. It is further contended by the learned counsel that the High Court did not make deductions towards developmental charges, but rightly ignored the

sale instances of very small pieces of land, upon which reliance was placed by the land owners as it had no co-relation with the market value of the agricultural land in that area.

8. With reference to the above rival legal contentions, the following points would arise for consideration of this Court:

i. What should be the appropriate rate of compensation and extent of deductions towards developmental charges for the acquired land in question?

ii. Whether the sale-consideration mentioned in the sale deeds of small pieces of land, which are situated close to the acquired land can be considered for determination of the compensation in favour of land owners?

iii. What award?

Since all the questions are interrelated, we are Page 7 answering all of them simultaneously.

9. We have carefully considered the respective arguments of the learned counsel for both the parties with reference to the material evidence on record with a view to examine as to whether the land owners are entitled for enhanced compensation on the basis of sale instances placed by the appellants on record in relation to the small bits of land situated near the acquired land. It has been proved on record that the acquired land is surrounded by hafed go-downs, marriage places, grain market and rice shelters. Undoubtedly, the acquired land is advantageously located in a prime locale, as it is close to commercial and residential establishments. Therefore, the acquired land has attained non agricultural potentiality. The said land also falls within the municipal limits of Pehowa, besides being bound by the river Saraswati.

10. Further, it is on record that the land has been acquired by the State Government for the purpose of developing commercial, residential and urban estate, Pehowa. Since the acquired land is situated within Page 8 the developed area of the municipal limits of Pehowa, there is no doubt that it has acquired potential value to be utilised for both residential and commercial purposes in the future.

11. With respect to the general principles that are to be followed for determining just and reasonable compensation to land owners for acquisition of their land, we refer to the case of Smt. Tribeni Devi and Ors. v. Collector of Ranchi²; in support of the same, wherein this Court held that:-

“4. The general principles for determining compensation have been set out in Sections 23 and 24 of the Act. The compensation payable to the owner of the land is the market value which is determined by reference to the price which a seller might reasonably expect to obtain from a willing purchaser, but as this may not be possible to ascertain with any amount of precision, the authority charged with the duty to award is bound to make an estimate judged by an objective standard. The land acquired has, therefore, to be valued not only with reference to its condition at the time of the declaration under Section 4 of the Act but its potential value also must be taken into account. The (1972)¹ SCC 480 Page 9 sale-deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have, furnish a rough and ready method of computing the market value. This, however, is not the only method. The rent which an owner was actually receiving at the relevant point of time or the rent which the neighbouring lands of similar nature are fetching can be taken into account by capitalising the rent which according to the present prevailing rate of interest is 20 times the annual rent. But this also is not a conclusive method. This Court had in *Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty* (1959) Supp.1 S.C.R. 404, indicated at page 412 the methods of valuation to be adopted in ascertaining the market value of the land on the date of the notification under Section 4(1) which are : (i) opinion of experts, (ii) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and

(iii) a number of years purchase of the actual or immediately prospective profits of the lands acquired. These methods, however, do not preclude the Court from taking any other special circumstances into consideration, the requirement being always to arrive as near as possible an estimate of the market value. In arriving to a reasonably correct market value, it may be necessary to take even two or all of those Page 10 methods into account inasmuch as the exact valuation is not always possible as no two lands may be the same either in respect of the

situation or the extent or the potentially nor is it possible in all cases to have reliable material from which that valuation can be accurately determined.”

12. A perusal of the record shows that there is significant variation in the consideration paid in the array of sale instances submitted by the parties. Moreover the consideration paid for the sale instances produced by the appellants are in relation to small pieces of land which are near the acquired land. To consider these small pieces of land as the basis for determining just compensation to be paid to the appellants for the acquired land as urged by the learned counsel for the appellants, we refer to the legal principles laid down by this Court after examining the relevant provisions of the Act in catena of cases. In *Special Land Acquisition Officer and Anr. v. M.K. Rafiq Saheb* this Court held as under:-

(2011)7 SCC 714 Page 11 “24. It may also be noticed that in the normal course of events, it is hardly possible for a claimant to produce sale instances of large tracks of land. The sale of land containing large tracks are generally very far and few.

Normally, the sale instances would relate to small pieces of land.

This limitation of sale transaction cannot operate to the disadvantage of the claimants. Thus, the Court should look into sale instances of smaller pieces of land while applying reasonable element of deduction.” To determine the rate of compensation to be paid for the acquired land when the same is made on the basis of sale deeds with respect to smaller pieces of land, we have to make deductions in order to keep provision for the developmental expenses that the acquirer has to incur. The principle of deductions in the determination of the compensation based on the sale instances of smaller pieces of land was established in *Smt. Basavva and Ors. v. Special Land Acquisition*⁴, wherein this Court held thus:-

“3.On the principle of deductions in the determination of the compensation, this Court in *K.Vasundara Devi v. Revenue Divisional Officer, LAO AIR 1995 SC 2481* has (1996)9 SCC 640 Page 12 considered the entire case law and has held that the Court, in the first instance, has to consider whether sales relating to smaller pieces of lands are genuine and reliable and whether they are in respect

of comparable lands. In the event the Court finds that such sales are genuine and reliable and the lands have comparable features, sufficient deduction should be made to arrive at the just and fair market value of large tracks of land. The time lag for real development and the waiting period for development are also relevant consideration for determination of just and adequate compensation. Each case depends upon its own facts. For deduction of development charges, the nature of the development, conditions and nature of the land, the land required to be set apart under the building rules for roads, sewerage, electricity, parks, water etc, and all other relevant circumstances involved are to be considered.” (Emphasis laid by this Court) A similar opinion was held in Bhagwathula Samanna and others v. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality , wherein this Court held as under:-

“7. In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the (1991)4 SCC 506 Page 13 expenses required for development of the larger tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction.

13. The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land.....” (Emphasis laid by this Court)

13. Further, this Court has discussed the basis on which deductions on the market value should be made for the development of land, keeping in mind various factors that influence it. In the case of Viluben Jhalejar Contractor v. State of Gujarat⁶, wherein this Court held thus:-

“20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

(2005)4 SCC 789 Page 14 Positive factors Negative factors

1. smallness of size largeness of area
2. proximity to a road situation in the interior at a distance from the road
3. frontage on a road narrow strip of land with very small frontage compared to depth
4. nearness to developed area lower level requiring the depressed portion to be filled up
5. regular shape remoteness from developed locality
6. level vis-à-vis land under some special acquisition disadvantageous factors which would deter a purchaser
7. special value for an owner of an adjoining property to whom it may have some very special advantage Page 15

21. Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price.” Thus, when it comes to deductions for development of land, it can sway back and forth and can only be determined after carefully considering factors such as size of land, nearness to developed area, etc. as discussed in the above case.

14. Keeping in mind the guidelines laid down by this Court in the catena of cases referred to supra, we are of the opinion to determine just and reasonable compensation for the acquired land on the basis of the sale instances as submitted by the appellants by taking the average of the sale considerations mentioned therein that are relevant to the date of issue of Notification under Section 4 Page 16 of the Act. However, the same is to be determined keeping in mind that developmental costs are higher for

larger areas of land as compared to small portions of land. The rate of compensation must be subject to deductions towards developmental purpose that will have to be incurred by the respondent- State.

15. Sale instances in relation to small pieces of land situated near the acquired land can be considered, subject to (i) reasonable deductions for developmental costs that will be incurred in the future as per the cases referred to supra and (ii) the evidence that these lands can be compared to the acquired land in terms of its vicinity and the comparable benefits and advantages.

Before we determine the extent of deductions to be allowed on the market value of the acquired land, we must take note of the following details; firstly, the acquired land is mostly agricultural in nature and vacant at the moment; secondly, the determination of the market value of the acquired land based on the sale instances in relation to Page 17 small pieces of land situated near the acquired land as produced by the land owners; thirdly, the well settled principle by this Court in a catena of cases that larger portions of land incur higher developmental costs compared to smaller portions of land. Therefore, we are of the opinion based on the facts and circumstances of the cases on hand and keeping in mind the legal principles laid down in the cases referred to supra, to allow 60% deduction on the market value of the acquired land towards developmental expenses.

The following table depicts the relevant sale deeds as per the date of notification under Section 4 of the Act that are produced as evidence by the land owners, followed by the deduction towards developmental expenses and the value per acre of the acquired land:

Ex.	Date	Area sold	Value Per acre(Rs.)
P4	17.5.2001	200 sq. yards	48,40,000
P12	20.6.2001	95 sq. yards	33,88,000

P13	11.1.2001	5.37 marlas	24,13,407
P14	11.1.2001	80 sq. yards	24,20,000
Average market value per acre			32,65,351
Deductions for developmental expenses			60%
			13,06,140

VALUE PER ACRE

16. However, having regard the fact that the acquired land have got non-agricultural potentiality as the same being in close proximity to the already developed commercial and residential areas, within the municipal limits of Pehowa & and the significant variation in the sale considerations of small pieces of land situated in the proximity of the acquired land, we are of the view to award a just and reasonable compensation in respect of the acquired land at Rs.12,00,000/- per acre. It is the contention of the appellants that the lands described in Ex. P4, P12, P13 and P14 are comparable to the acquired land with respect to their potentiality, location and conditions, but on perusal of the evidence on record, we are of the view that the said contention may be correct to some extent, but the exact location of the small pieces of land covered in the sale instances is not Page 19 forthcoming. Therefore, the market value of the acquired land cannot be entirely based at Rs.13,06,140/- per acre as per the sale instances mentioned in table above. However, having regard to the location, potentiality of the acquired land and other relevant factors and circumstances of the cases we are of the opinion that the appellant-land owners are entitled for enhancement of compensation.

17. Hence, in view of the foregoing reasons, the appellant-land owners will be entitled to just and reasonable compensation at the rate of Rs.12,00,000/- per acre. Besides the above amount, they will also be entitled to the statutory benefits in accordance with Sections 23(1A) and 23(2) on the compensation awarded. The appellant-land owners are also entitled to get interest on the compensation at the rate of 15% p.a. under the proviso to Section 28 of the Act.

18. All the appeals are allowed accordingly in the above terms. Since the land of the appellants were acquired in the year 2002, the respondents are directed to pay the compensation awarded in favour Page 20 of the appellants by way of demand draft after proper calculation made within eight weeks from the receipt of copy of this Judgment and Award. There shall be no order as to costs.

Page 21 ITEM NO.1A-For Judgment COURT NO.13 SECTION IV S U P R E M E C
O U R T O F I N D I A RECORD OF PROCEEDINGS Civil Appeal No(s). 3982-
3987/2011 NIRMAL SINGH & ETC.ETC. Appellant(s) VERSUS STATE OF
HARYANA TR.COLLECTOR Respondent(s) WITH C.A. No. 7916-7918/2011 C.A.
No. 10207/2011 C.A. No. 7547-7549/2013 C.A. No. 7707-7709/2013 Date :
26/09/2014 These appeals were called on for JUDGMENT