

SUPREME COURT OF INDIA

Bhupal Singh

Vs.

State of Haryana

C.A.No.7377 of 2008

(Vikramajit Sen and Abhay Manohar Sapre JJ.)

01.04.2015

JUDGMENT

ABHAY MANOHAR SAPRE, J.

1. Civil Appeal No. 7377 of 2008 is filed against the judgment and order dated 19.10.2005 passed by the High Court of Punjab and Haryana at Chandigarh in Regular First Appeal No. 363 of 1989 which arises out of order dated 21.11.1988 passed by the Additional District Judge Faridabad in Land Acquisition Case No. 15 of 1988. Civil Appeal Nos. 8635-8636 of 2014 & 8637-8638 of 2014 are filed against the final judgment and orders dated 07.05.2010 along with modified orders dated 23.07.2010 and 27.05.2010 passed by the High Court of Punjab and Haryana in Regular First Appeal Nos. 2214 of 2010 (O&M) and 2253 of 2010 (O&M) respectively whereby the High Court disposed of both the R.F.As in terms of order dated 19.10.2005 passed in R.F.A. No. 363 of 1989. Civil Appeal Nos. 6184-6185 of 2010 are filed against the judgment and order dated 20.10.2009 in R.F.A. No. 3165 of 1993(O&M) and Cross Objection Petition No. 85-CL of 2009.

2. By impugned judgment/orders, the Division Bench of the High Court partly allowed the first appeals filed by the appellants herein (claimants/landowners) and enhanced the quantum of compensation payable to the claimants at the rate of Rs.50/- per sq. yard for their lands, which were acquired by the State under the Land Acquisition Act 1894 (hereinafter referred to as "The Act"). Dissatisfied with the judgment/orders passed by the High Court, the claimants/land owners have filed these appeals for enhancement of the compensation.

3. The question that arises for consideration in these appeals is whether the High Court was justified in partly allowing the appeals filed by the claimants/landowners by awarding compensation at the rate of Rs.50/- per sq. yard for their lands which were acquired by the State or the rate should have been more than Rs.50/- per sq. yard?

4. In order to appreciate the controversy involved in these appeals, it is necessary to state the relevant facts infra.

5. The appellants are the owners of the land described hereinbelow in relation to the appellants in the appeals:

(i) Appellants in of C.A. No. 7377 of 2008 and C.A. Nos. 6184-6185 of 2010 are the owners of the land acquired in village Atmadpur Hadbast No. 127, Tehsil Ballabgarh, District Faridabad. AND

(ii) Appellants in C.A. Nos. 8635-8636 of 2014 and 8637-8638 of 2014 are the owners of the land acquired in village Mawai, Hadbast Nos. 126 4, Tehsil Ballabgarh, District Faridabad.

6. In exercise of the powers conferred under Section 4 of the Act, the State Government issued a notification on 04.11.1977 and acquired a large chunk of land measuring 689 Kanals and 17 Marlas in village Atmadpur, Hadbast No. 127, Tehsil Ballabgarh District Faridabad, Haryana (as mentioned in Award No.13 of 1982-83 -filed as Annexure P-1 in C.A. No. 7377 of 2008), 66 Kanals 15 Marlas and 149 Kanals and 18 Marlas in Village Mawai, Hadbast Nos. 126 & 4, Tehsil Ballabgarh, District Faridabad (as mentioned in Award No.12 of 1982-83 & Award No. 1 of 1984-85-filed as Annexures P-1 & P-3 respectively in C.A. Nos. 8635-36 of 2014 & 8637-8638 of 2014) and 445 Kanals 12 Marlas in village Atmadpur, Hadbast No. 127, Tehsil Ballabgarh District Faridabad, Haryana (as mentioned in Award dated 06.04.1989 passed by the reference Court of Land Acquisition Collector- filed as Annexure P-1 in C.A. Nos. 6184-85 of 2010) for development of residential colonies for the public at large. It was followed by the declaration published on 01.11.1980 under Section 6 of the Act. The aforementioned land belonging to the appellants was also acquired pursuant to these notifications.

7. This led to initiation of the proceedings for determination of compensation payable to each of the landowners including that of the appellants herein by the Land Acquisition Officer (in short "the LAO"). Under Section 9 of the Act, notices were issued to the appellants calling upon them to participate in the land

acquisition proceedings to enable the LAO to determine the fair market value of the lands on the date of acquisition as provided under Section 23 of the Act so that the compensation would be paid to the land owners at such determined rate. Accordingly, the LAO held an enquiry and after affording an opportunity to the appellants passed award dated 18.11.1982 and 02.05.1984 fixing the compensation @ Rs.16.52 per square yard being the fair market value of the acquired land payable to the appellants.

8. Feeling aggrieved by the said awards, the appellants sought reference to the Civil Court under Section 18 of the Act for re-determination of the compensation made by the LAO. The reference Court, on the basis of the evidence adduced, partly answered the reference in favour of the appellants and accordingly enhanced the rate of compensation from Rs.16.52 per square yard to Rs.22/- per square yard. In other words, the Reference Court held that the appellants were entitled to get compensation for their lands at the rate of Rs.22/- per square yard being the fair market value of their lands on the date of notification issued under Section 4 of the Act.

9. Dissatisfied with the determination made by the reference Court, the appellants filed appeals under Section 54 of the Act before the High Court and challenged the legality and correctness of the award of the Reference Court out of which these appeals arise.

10. The Division Bench of the High Court, by impugned judgment/orders, partly allowed the appeals filed by the appellants and accordingly enhanced the compensation payable to the appellants. The High Court held that the fair market value/rate of the acquired lands on the date of acquisition for the appellants' land was Rs.50/- per square yard and hence the appellants were entitled to get the compensation for their acquired lands at the rate of Rs.50/- per square yard along with other statutory benefits payable under the Act. It is against these judgment/orders, the claimants/landowners have filed these appeals by way of special leave before this Court.

11. Heard the learned Counsel for the parties.

12. Shri Nidhesh Gupta, learned Senior Counsel appearing for the appellants placing reliance on decisions in *Haji Mohd. Ekramul Haq vs. State of W.B.* 1959 Supp(1) SCR 922, *State of Kerala vs. P.P. Hassan Koya* (1968) 3 SCR 459, *Bhag Singh & Ors. vs. UT of Chandigarh* (1985) 3 SCC 737, *Municipal Committee, Bhatinda & Ors. vs. Balwant Singh* (1995) 5 SCC 433, *Union of India & Ors. vs.*

Mangatu Ram & Ors. (1997) 6 SCC 59, V. Hanumantha Reddy vs. Land Acquisition Officer & Mandal R. Officer (2003) 12 SCC 642, General Manager, ONGC Ltd. Vs. Rameshbhai Jivanbhai Patel & Anr. (2008) 14 SCC 745, Maharunnisa vs. Commissioner & Land Acquisition Officer, Bijapur (2009) 9 SCC 750, Chandrashekhar & Ors. vs. Additional Special Land Acquisition Officer, (2009) 14 SCC 441, Valliyammal & Anr. vs. Special Tehsildar (Land Acquisition) & Anr., (2011) 8 SCC 91, Chandrashekar (Dead) by L.Rs. and Ors. Vs. Land Acquisition Officer & Anr., (2012) 1 SCC 390, Salaha Begaum & Ors. vs. Special Land Acquisition Officer, (2013) 11 SCC 426 and Digamber & Ors. vs. State of Maharashtra & Ors., (2013) 14 SCC 406, contended that the High Court having rightly held in appellants' favour that a case for enhancement in payment of compensation for the acquired land is made out, erred in enhancing the compensation only @ Rs.50/- per square yard. According to the learned senior counsel, having regard to the nature of the potentiality of the use of the lands which was duly proved by the appellants by adducing evidence and rightly recognized by the Courts in appellants' favour by returning finding on this issue, the appellants were entitled to claim enhancement in the compensation at the rate ranging between Rs.100/- per square yard to Rs.200/- per square yard in place of Rs.50/- per square yard. Learned senior counsel pointed out that several acres of lands situated near the acquired lands in question were acquired by the State Government between the years 1980 to 1989-1990 and for acquisition of these lands, the State Government paid compensation to their landowners @ Rs.300/- to Rs.325/- per square yard pursuant to orders of the Courts. Learned senior counsel, therefore, contended that if Rs.300/-to Rs.325/- is taken to be the rate of the similarly situated lands in the year 1989-1990 and if 10% is reduced retrospectively on yearly basis of Rs.300/-to Rs.325/-, then in such event, the fair market value of the lands in question prevailing in the year 1977, i.e., the year of acquisition, could safely be determined between Rs.100/- to Rs.200/- per square yard. Lastly and in the alternative, learned senior counsel contended that in any event, the High Court having rightly held that the appellants were entitled to claim compensation at the enhanced rate of Rs.63/- per square yard erred in eventually awarding compensation at the rate of Rs.50/- per square yard without there being any basis. According to him, the appellants therefore were entitled to get the compensation at the enhanced rate of Rs.63/- per square yard instead of Rs. 50/- per square yard on the basis of finding of the High Court.

13. In contra, learned Counsel for the respondent- State supported the impugned judgment and contended that no case is made out on facts or/and in law to call for any interference in the impugned judgment of the High Court. Learned counsel while refuting the contention of Mr. Nidesh Gupta, learned senior counsel

appearing for the appellants, contended that the fair market value of the lands in question cannot be determined in the manner suggested by Mr. Gupta. According to him, firstly in order to determine the fair market value of the acquired land, as provided under Section 23 of the Act, one is required to take into account the prevailing market rate of the similarly situated lands in nearby area of the acquired land on the date of the issuance of notification under Section 4 of the Act but in no case the rate of the lands either sold or acquired subsequent to the date of issuance of the notification in question can be taken into consideration. Learned counsel pointed out that the appellants never claimed compensation at the rate of Rs.200/- per square yard as was urged before this Court for the first time and hence at best the appellants could be considered for award of compensation at the rate of Rs.63/- per square yard but not beyond this rate.

14. Having heard the learned Counsel for the parties and on perusal of the record of the case, we find force in the alternative submission of the learned senior counsel for the appellants mentioned above and hence are inclined to allow these appeals in part and accordingly modify the impugned award in favour of the appellants to the extent indicated below by enhancing the rate of the land per square yard for re-determining the payment of the compensation and other statutory benefits payable under the Act to the appellants.

15. Law on the question as to how the Court is required to determine the fair market value of the acquired land is fairly well settled by several decisions of this Court and remains no more *res integra*. This Court has, *inter alia*, held that when the acquired land is a large chunk of undeveloped land having potential and was acquired for residential purpose then while determining the fair market value of the lands on the date of acquisition, the appropriate deductions are also required to be made.

16. It is apposite to take note of some of the decisions of this Court on the issue relevant for the disposal of these appeals:

(i) In *Brig. Sahib Singh Kalha & Ors. v. Amritsar Improvement Trust & Ors.*, (1982) 1 SCC 419, this Court opined that where a large area of undeveloped land is acquired, provision has to be made for providing minimum amenities of town life. Accordingly, it was held that a deduction of 20% of the total acquired land should be made for land over which infrastructure has to be raised (space for roads, etc.). Apart from the aforesaid, it was also held that the cost of raising infrastructure itself (like roads, electricity, water, underground drainage, etc.) needs also to be taken

into consideration. To cover the cost component for raising infrastructure, the Court held that the deduction to be applied would range between 20% to 33%. Commutatively viewed, it was held, that deductions would range between 40% and 53%.

(ii) In *Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona & Anr.* (1988) 3 SCC 751 while referring to the factors which ought to be taken into consideration while determining the market value of the acquired land, it was observed that a smaller plot was within the reach of many whereas for a larger block of land there were implicit disadvantages. As a matter of illustration, it was mentioned that a large block of land would first have to be developed by preparing its layout plan. Thereafter, it would require carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers (during which the invested money would remain blocked). Likewise, it was pointed out that there would be other known hazards of an [pic]entrepreneur. Based on the aforesaid likely disadvantages it was held that these factors could be discounted by making deductions by way of allowance at an appropriate rate ranging from 20% to 50%. These deductions, according to the Court, would account for land required to be set apart for developmental activities. It was also sought to be clarified that the applied deduction would depend on, whether the acquired land was rural or urban, whether building activity was picking up or was stagnant, whether the waiting period during which the capital would remain locked would be short or long; and other like entrepreneurial hazards.

(iii) In *Kasturi & Ors. v. State of Haryana*, (2003) 1 SCC 354, this Court opined that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation should be deducted depending upon the location, extent of expenditure involved for development, the area required for roads and other civic amenities, etc. It was also opined that appropriate deductions could be made for making plots for residential and commercial purposes. It was sought to be explained that the acquired land may be plain or uneven, the soil of the acquired land may be soft or hard, the acquired land may have a hillock or may be low-lying or may have deep ditches. Accordingly, it was pointed out that expenses involved for development would vary keeping in mind the facts and circumstances of each case. In *Kasturi* case, it was held that normal deductions on account of development would be 1/3rd of the amount of compensation. It was, however, clarified that in some cases the deduction could be more than 1/3rd in other cases even less than 1/3rd.

(iv) In *Lal Chand v. Union of India & Anr.*, (2009) 15 SCC 769, it was held that to determine the market value of a large tract of undeveloped agricultural land (with potential for development), with reference to sale price of small developed plot(s), deductions varying between 20% to 75% of the price of such developed plot(s) could be made.

(v) In *A.P. Housing Board v. K. Manohar Reddy & Ors.*, (2010) 12 SCC 707, having examined the existing case law on the point it was concluded that deductions on account of development could vary between 20% to 75%. In the peculiar facts of the case, a deduction of 1/3rd towards development charges was made from the awarded amount to determine the compensation payable.

(vi) In *Special Land Acquisition Officer & Anr. v. M.K. Rafiq Saheb*, (2011) 7 SCC 714, this Court after having concluded that the land which was the subject-matter of acquisition was not agricultural land for all practical purposes and no agricultural activities could be carried out on it, concluded that in order [pic]to determine fair compensation, based on a sale transaction of a small piece of developed land (though the acquired land was a large chunk), the deduction made by the High Court at 50%, ought to be increased to 60%.

17. After taking note of the aforesaid cases and placing reliance upon the principles laid down therein, this Court in *Chandrashekar and Others*, (*supra*) observed as under:

"It is essential to earmark appropriate deductions out of the market value of an exemplar land, for each of the two components referred to above. This would be the first step towards balancing the differential factors. This would pave the way for determining the market value of the undeveloped acquired land on the basis of market value of the developed exemplar land.

As far back as in 1982, this Court in *Brig. Sahib Singh Kalha* case held, that the permissible deduction could be up to 53%. This deduction was divided by the Court into two components. For the "first component" referred to in the foregoing paragraph, it was held that a deduction of 20% should be made. For the "second component", it was held that the deduction could range between 20% to 33%. It is therefore apparent that a deduction of up to 53% was the norm laid down by the Court as far back as in 1982. The aforesaid norm remained unchanged for a long duration of time, even

though, keeping in mind the peculiar facts and circumstances emerging from case to case, different deductions were applied by this Court to balance the differential factors between the exemplar land and the acquired land. Recently however, this Court has approved a higher component of deduction.

In 2009 in Lal Chand case and in 2010 in A.P. Housing Board case it has been held that while applying the sale consideration of a small piece of developed land, to determine the market value of a large tract of undeveloped acquired land, deductions between 20% to 75% could be made. But in 2009 in Subh Ram case, this Court restricted deductions on account of the "first component" of development, as also, on account of the "second component" of development to 33% each. The aforesaid deductions would roughly amount to 67% of the component of the sale consideration of the exemplar sale transaction(s)."

18. Keeping the aforesaid principles in mind, we have perused the evidence in these cases. It is not in dispute that the acquisition of land in question was made in the year 1977 and it was for a large chunk of undeveloped agriculture land. It is also not in dispute that it was for construction of "residential purpose". It is further not in dispute that the appellants did not file any sale deed in evidence in support of their case to prove the fair market value of the acquired land. All that they adduced was an oral evidence of some witnesses to prove the potentiality of the lands by showing its location, proximity to the main road which was passing in the area and named some industries and hospitals operating in the nearby areas of the acquired lands etc.

19. Taking all these factors in mind and on appreciation of this oral evidence, the LAO, Reference Court and the High Court fixed their respective rates as mentioned above, namely, Rs.16.52, Rs.22/- and Rs. 50/- per Square yard.

20. As rightly argued by learned senior counsel for the appellants, it is not in dispute that the High Court did hold in appellants' favour that they were entitled to claim compensation at the rate of Rs.63/- per Square yard in the concluding para of the impugned judgment basing its finding after taking into consideration the potentialities of land and rate of one adjacent land of the acquired land which was also found to have been acquired at the same time as determined by the Courts.

21. In the light of this finding, we fail to appreciate as to why the High Court then assessed the rate at Rs.50/- per square yard in place of Rs.63/- per sq. yard. In other

words, having rightly come to a conclusion that the fair market value of the land in question on the date of acquisition (04.11.1977) was Rs.63/- per square yard, there was no justification on the part of the High Court to have then reduced it to any rate less than Rs.63/- much less to Rs.50/- per square yard. In our considered view, it should have been fixed at Rs.63/- per square yard only.

22. We have also given our anxious consideration to the whole issue keeping in view the peculiar facts, evidence adduced and the law quoted above for determining the fair market value of the land on the date of notification (04.11.1977). Having regard to the total scenario emerging from the record of the case and the findings recorded by the Courts below on the issues such as location of land, its potentiality, surroundings, the rate of the adjacent land determined by the Courts, the condition of the acquired underdeveloped lands, the expenditure required to develop the acquired land to start the activities, per cent of deductions to be made, its proximity to the various places in the nearby town (Faridabad), and lastly, the fact that the appellants failed to file any sale deed of any parcel of land (be that of small piece of land or big) sold in the near proximity of the acquired land, the fair market value of the lands in question as on 04.11.1977 (date of acquisition) can reasonably be worked out to "Rs.63/- per Square Yard". In other words, in our considered opinion, the High Court was not right in determining the fair market rate of the acquired land at Rs.50/- per Square yard and instead it should have determined the fair market rate of the acquired land in question at "Rs.63/- per Square Yard". We accordingly now fix it.

23. We are not impressed by the submission of learned senior counsel for the appellant when he submitted that we should take into consideration the fair market value of the adjacent land determined by the Court which was acquired 10 years subsequent to the acquisition in question in 1989-1990 and then go on reducing its value 10% every year to determine the fair market value of the land in question. To say the least, this submission is wholly misconceived being against the settled principle of law relating to land acquisition cases.

24. As rightly argued by learned counsel for the respondent, the fair market value of the acquired land is required to be determined under Section 23 of the Act on the basis of the market rate of the adjacent lands similarly situated to the acquired lands prevailing on the date of acquisition or/and prior to acquisition but not subsequent to the date of acquisition. In appropriate cases, addition of 10% per annum escalation in the prices specified in the sale deeds (if filed and relied on) in relation to adjacent similarly situated lands for fixing the market value of the acquired land may be permitted. Such is, however, not the case in hand. Here is the

case where firstly, no sale deeds were filed by the appellants to prove the fair market value of the acquired land and secondly, what they now want this Court to do is to take into consideration the rate of those lands which were acquired ten years after the date of acquisition in question and then reduce the value of such land by 10% every year so as to determine the fair market value of the acquired land in question. In our view, such procedure for determination is not provided in the Act.

25. We also cannot accept the submission of the learned counsel for the appellants when he contended that the appellants are entitled to claim compensation at the rate ranging between Rs.100/- to Rs.200/- per sq. yard. As observed supra, since the appellants failed to file any sale deed of the lands to prove the price of the lands prevailing at the relevant time (04.11.1977), we fail to appreciate as to on what basis, the appellants can claim the compensation at the rate of Rs.100/- per sq. yard or more. In our view it was necessary for the appellants to have filed copies of the sale deed to prove the fair market rate prevailing on the date of acquisition (04.11.1977). Since the only evidence which was adduced was to prove the potentialities of the acquired land, the courts below took into account the potentialities and the rate of adjacent land fixed by the Courts and accordingly fixed the rate. We do not find any illegality in such approach of the courts below.

26. We have arrived at the figure of "Rs.63/- per sq. yard" after applying all relevant factors, which we have mentioned above. In our view, the rate determined by this Court is just, reasonable and represents fair market value of the lands in question on the date of acquisition. Indeed, in such cases, one can never come to any exact figure of price of lands because in the very nature of things, the prices are bound to vary from land to land and further they also depend upon the individual buyer-to- buyer, seller-to-seller and the reasons which led to such sale and purchase. However, Courts in such cases always exercise their discretion within the permissible parameters after appreciating the entire evidence brought on record and applying the relevant legal principles. We have kept these factors in mind.

27. In view of foregoing discussion, the appeals filed by the appellants-landowners deserve to be allowed and are accordingly allowed in part. The impugned judgment and orders are accordingly modified to the extent indicated above.

28. The concerned LAO is directed to calculate the compensation payable to the appellants (land owners) for their acquired lands pursuant to notification issued

under Section 4 of the Act on 04.11.1977 "at the rate of Rs.63/- per sq. yard" and accordingly calculate all statutory compensation such as solatium, interest etc. payable under the Act to every land owner.

29. Let this calculation be made, as directed above, by the LAO and the amount so calculated and worked out be paid to the appellants (land owners) after making proper verification of their claim cases within three months from the date of receipt of this judgment. No costs.