

**SUPREME COURT OF INDIA**

Loveleen Kumar

Vs.

State of Haryana

C.A.No.5261-5263 of 2018

(Kurian Joseph and Mohan M.Shantanagoudar,JJ.,)

16.05.2018

**JUDGMENT**

**Mohan M.Shantanagoudar, J.,**

SLP(C)No. 25395-97of 2016

1. Delay condoned. Leave granted.

2. These appeals are directed against the judgment dated 28.05.2016 passed in R.F.A. No. 7324 of 2014 and connected matters by the High Court for the States of Punjab and Haryana at Chandigarh. Civil Appeals arising out of SLP(C) Nos. 25395-25397/2016, SLP(C) No. 25853/2016, SLP(C) Nos. 26989-27017/2016, SLP(C) Nos. 31489-31516/2016, SLP(C) Nos. 25792-25793/2016, SLP(C) Nos. 34877/2016, SLP(C) No. 34874/2016, SLP(C) Nos. 36677-36710/2016, SLP(C) No. 34875/2016, SLP(C) Nos. 11671-11679/2017, SLP(C) No. 34876/2016, SLP(C) No. 806/2017, SLP(C) No. 808/2017, SLP(C) No. 807/2017, SLP(C) No. 6057/2017, SLP(C) No. 2455/2017, SLP(C) Nos. 8213-8220/2017, SLP(C) Nos. 8352-8353/2017, SLP(C) Nos. 18607-18608/2017, SLP(C) No. 19817/2017, SLP(C) Diary No. 23208/2017, SLP(C) No. 25154/2017, SLP(C) No. 28058/2017, SLP(C) Diary No. 30734/2017, and SLP(C) Diary No. 33285/2017 are filed by the land-losers/claimants seeking enhancement of compensation. Civil Appeals arising out of SLP(C) No. 30164-30312/2016 are filed by the State seeking reduction of compensation, and consequently praying for setting aside the judgment of the High Court.

3. For the sake of convenience, the parties shall be referred to as “landowners” and “State”. The facts, in brief, are as under:-

By a notification dated 29.08.2005 under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter, “the Act”), the State of Haryana sought to acquire the land measuring 229.13 acres from the revenue estate of village Hansi for the development and utilisation of commercial and residential Sectors namely 3, 5 and 6 at Hansi

(District Hisar). The Land Acquisition Collector passed an award on 03.08.2007 assessing the market value in three belts:

(a) Rs. 12,00,000/- per acre up to a depth of 2 acres from G.T. Road;

(b) Rs.10,00,000/- per acre up to a depth of 2 acres from the Jind bye-pass road;

(c) Rs. 8,00,000/- for the remaining land. The Reference Court under Section 18 of the Act while assessing the compensation and passing the award dated 31.05.2014 did away with the belting system and enhanced the compensation to Rs. 1,000/- per square yard (1 acre = 4840 square yards), which means that the Reference Court awarded compensation of Rs. 48,40,000/- per acre. The State accepted the award of the Reference Court and did not file an appeal, whereas the landowners approached the High Court seeking enhancement of compensation by filing appeals, including R.F.A No. 7324 of 2014 and connected matters.

4. The High Court allowed the appeals of the landowners by the impugned judgment dated 28.05.2016 enhancing the compensation to Rs. 4173/- per square yard, i.e., Rs. 2,01,97,320/- per acre. While awarding enhanced compensation as mentioned supra, the High Court noted that the land acquired is situated at a prime location and possessed immense potentiality; after the acquisition, more than 27 acres of land were sold by the Haryana Urban Development Authority (hereinafter, "HUDA") to two Government departments at Rs. 3,200/- per square metre and Rs. 2,246 per square yard (1 square metre = 1.19599 square yards). It has been observed that in an acquisition on 12.06.1995 of land in the same revenue estate situated at a distance of 300 yards from the presently acquired land, the Supreme Court in *Smt. Ashrafi and others vs. State of Haryana and others*<sup>1</sup>, had granted compensation of Rs. 1,342/- per square yard; the Supreme Court had applied 1/3rd cut while concluding so; the gap between that acquisition in *Smt. Ashrafi* (supra) and the present case was about 10 years and 2 months. The High Court solely relied upon these figures, and keeping in mind the time gap between the acquisition in *Ashrafi's* case (supra) and the present one of about 10 years and 2 months, granted 15% interest increase per year on the aforementioned compensation of Rs. 1,342/- per square yard with cumulative effect from the date of acquisition. However, the High Court applied a further cut of 25%, as the land in the case of *Ashrafi* (supra) was acquired for a commercial purpose while the land in the present case was acquired for both commercial and residential purposes. The ultimate compensation awarded by the High Court at Rs. 4,173/- per square yard is questioned both by the State as well as the landowners in the present appeals.

5. Shri Alok Sangwan, learned Additional Advocate General appearing on behalf of the State, argued that the High Court erred in finding the land to be commercial in nature when in reality it was agricultural in nature, as was deposed by the landowners themselves in the evidence of PW1; the Land Acquisition Officer had allowed the landowners to harvest the crops up till 31.10.2007; the High Court has failed to consider the sale deeds dated 14.06.2005, 30.12.2005, 31.01.2006, 13.07.2006, 06.09.2006, 21.02.2005 and 15.09.2005 which clearly disclose that certain patches of land involved in those sale deeds were situated

in the middle of the entire patch of land now acquired, which were valued from Rs. 4,00,000/- per acre to Rs. 8,00,000/- per acre. He further submits that the copies of the sale deeds were heavily relied upon by the State both before the Reference Court as well as before the High Court, but the same were strangely ignored by the High Court. He also argued that the landowners relied upon Exhibit PW4/A, the sale deed which depicts sale consideration at Rs. 826/- per square yard, amounting to almost Rs. 40,00,000/- per acre. He vehemently contended that the High Court has erred in relying upon the judgment which dealt with the acquisition under a different notification (Smt. Ashrafi, supra), wherein that acquisition had taken place more than a decade ago; there is no reason as to why the High Court should rely upon the judgment passed in Ashraf (supra) particularly when the land involved therein was a commercial property and was a very small area, that too when the acquisition in the said matter had taken place a decade ago; absolutely no reasons are assigned to ignore the sale deeds on record produced by the State. On these and other grounds, he prays for setting aside the judgment of the High Court and for confirming the award of the Reference Court.

6. Per contra, Shri Neeraj Kumar Jain, Senior Advocate, and Shri Manoj Swarup, Advocate, appearing on behalf of the landowners, contended that the High Court is justified in awarding compensation at Rs. 4173/- per square yard; as a matter of fact, the High Court has passed an equitable judgment by reducing the compensation to Rs. 4,173/- per square yard by levying a cut of 25% over and above 33.33% cut levied by the Supreme Court in the matter of Ashrafi (supra). They heavily supported the judgment of the High Court contending that the land acquired in Ashraf (supra) is situated just 300 yards from the lands in question; the land in question is acquired not only for residential purpose but also for commercial purpose; the land involved in Ashrafi as well as the land involved in the present acquisition are from the revenue estate of village Hansi; the sale deeds relied upon by the State were not depicting the true market value in as much as the sale consideration mentioned therein was less than the award granted by the Land Acquisition Collector; more than 27 acres of land was sold by HUDA in favour of two Government departments at Rs. 3,200/- per square metre and Rs. 2,246/- per square yard; on these grounds, he prayed for dismissing the appeals of the State and further prayed for enhancement of compensation to a certain extent.

7. Having gone through the material on record and after considering the arguments of the advocates, we are of the opinion that the Reference Court, as well as the High Court, have not considered the sale deeds produced on behalf of the State for determination of compensation. A chart of the sale deeds on record filed before us by the learned advocates appearing on behalf of the State reveals prima facie the value of certain lands involved in those sale deeds. The site plan of the village Hansi depicts such sold patches as being in the middle of the acquired land. The lands in all the sale deeds shown alongside the plan are in close proximity and adjoining to the land acquired under the Section 4 notification of the present case. There is no reason as to why the High Court, while coming to its conclusion, has not referred to the sale statistics. If the sale statistics are to be ignored, the High Court should have furnished reasons for doing so.

8. The High Court has mainly relied upon Ashrafi (supra) for coming to its conclusion. In our considered opinion, the method of granting compensation on the basis of cumulative increase as done was not permissible in the facts of the case, in view of the sale deeds produced. The method of working out compensation without considering the evidence on record cannot be said to be justifiable. The land in Ashrafi (supra) was acquired in the year 1995 and was very small. It was for a commercial purpose. In the matter on hand, the land was acquired in the year 2005. Thus, there is a gap of about 10 years between the two acquisitions. Relying on such an acquisition of a decade ago may be unsafe. This Court in the case of *ONGC Ltd. v. Rameshbhai Jivanbhai Patel*<sup>2</sup>, observed that a transaction or acquisition over five years before the present acquisition is an unreliable standard. It held as follows:

“15. Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisitions), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on sale transactions/acquisitions precede the subject acquisition by only a few years, that is, up to four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is of only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the “rate” of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase.”

In addition to this, the land in the case of Ashrafi (supra) was very small as compared to the acquisition on hand. The award passed in that matter cannot be taken into consideration as a comparable factor while awarding compensation in this matter which involves more than 229 acres of land. The award that had been relied upon was passed keeping in mind the price as prevailed in the year 1995 in Ashrafi’s matter (supra), that too for a small commercial area. As there is a huge time gap between the acquisition in Ashrafi (supra) and the present one, and the land in Ashrafi (supra) was much smaller, Ashrafi (supra) cannot be a safe criterion to assess compensation in this case, and more so in view of the ample evidence available on record. The Court cannot lose sight of the facts and the documents. This Court in the case of *Special Land Acquisition Officer v. Karigowda & Ors*<sup>3</sup>, discussed the burden upon each party in reference and held that each case must be examined on its own facts. It held as follows: “28. We may notice that Part III provides for procedure and rights of the claimants to receive compensation for acquisition of their land and also states various legal remedies which are available to them under the scheme of the Act. Under Section 18 of the Act, the Reference Court determines the quantum of compensation payable to the claimants. Section 23 provides guidelines, which would be taken into consideration by the court of competent jurisdiction while determining the compensation to be awarded for the acquired land. Section

24 of the Act is a negative provision and states what should not be considered by the court while determining the compensation. In other words, Sections 23 and 24 of the Act provide a complete scheme which can safely be termed as statutory guidelines and factors which are to be considered or not to be considered by the court while determining the market value of the acquired land. These provisions provide a limitation within which the court has to exercise its judicial discretion while ensuring that the claimants get a fair market value of the acquired land with statutory and permissible benefits. Keeping in view the scheme of the Act and the interpretation which these provisions have received in the past, it is difficult even to comprehend that there is possibility of providing any straitjacket formula which can be treated as panacea to resolve all controversies uniformly, in relation to determination of the value of the acquired land. This essentially must depend upon the facts and circumstances of each case.

29. It is a settled principle of law that the onus to prove entitlement to receive higher compensation is upon the claimants. In *Basant Kumar v. Union of India*<sup>4</sup> this Court held that the claimants are expected to lead cogent and proper evidence in support of their claim. Onus primarily is on the claimants, which they can discharge while placing and proving on record sale instances and/or such other evidences as they deem proper, keeping in mind the method of computation for awarding of compensation which they rely upon. In this very case, this Court stated the principles of awarding compensation and placed the matter beyond ambiguity, while also capsulating the factors regulating the discretion of the Court while awarding the compensation. This principle was reiterated by this Court even in *Gafar v. Moradabad Development Authority*<sup>5</sup> and the Court held as under: (SCC p. 620, para 12)

“12. As held by this Court in various decisions, the burden is on the claimants to establish that the amounts awarded to them by the Land Acquisition Officer are inadequate and that they are entitled to more. That burden had to be discharged by the claimants and only if the initial burden in that behalf was discharged, the burden shifted to the State to justify the award.”

Thus, the onus being primarily upon the claimants, they are expected to lead evidence to revert the same, if they so desire. In other words, it cannot be said that there is no onus whatsoever upon the State in such reference proceedings. The court cannot lose sight of the facts and clear position of documents, that obligation to pay fair compensation is on the State in its absolute terms. Every case has to be examined on its own facts and the courts are expected to scrutinise the evidence led by the parties in such proceedings.”

Moreover, it was brought to our notice that the land is acquired mainly for the purpose of a residential colony, and about 5% commercial area to cater to the needs of such residential colony will also be built. Be that as it may, since the reasons assigned by the High Court while coming to the conclusion were assigned solely on the basis of Ashrafi (supra), and as the evidence on record adduced by both the parties was not considered, much less properly considered, the matter, in our opinion, needs reconsideration by the High Court in as much as the High Court in such matters would be the last Court to decide the matter on facts.

9. Accordingly, the impugned judgment passed by the High Court stands set aside, and the matter is remitted to the High Court for fresh consideration in accordance with law. All appeals before this Court hereby stand disposed of. The High Court is requested to decide the first appeals on merits as early as possible, keeping in mind that the land was acquired in the year 2005.

Judgment Referred.

<sup>1</sup>(2013) 5 SCC 0527

<sup>2</sup>(2008) 14 SCC 0745

<sup>3</sup>(2010) 5 SCC 0708

<sup>4</sup>(1996) 11 SCC 0542

<sup>5</sup>(2007) 7 SCC 0614