

CASE DETAILS

THE CENTRAL WAREHOUSING CORPORATION

v.

THAKUR DWARA KALAN UL-MARUF BARAGLAN WALA
(DEAD) & ORS.

(Civil Appeal Nos. 6918-6919 of 2023)

OCTOBER 19, 2023

[VIKRAM NATH AND AHSANUDDIN AMANULLAH, JJ.]

HEADNOTES

Issue for consideration: High Court if justified in raising the amount of compensation per square yard on the date of notification u/s.4, Land Acquisition Act, 1894 on the basis of cumulative annual increase at the rate of 15% for a period of 11 years, taking base figure from an order of Reference Court dtd.30.08.2000 relating to acquisition of land of the same village of the year 1989, and the period of 11 years being counted from 1989 to 2000, the year of the notification issued u/s.4 of the 1894 Act.

Land Acquisition Act, 1894 – Determination of fair and just compensation – Annual increase whether on cumulative basis or non-cumulative basis – Rate of applying annual increase – Period to be applied:

Held: The consistent view taken by this Court for awarding annual increase to determine the just compensation varies from case to case and the period to be applied is a major factor to be considered – In the present case, the period is 11 years which is pretty large – Fair and reasonable compensation in the present case would be best determined if 8% annual increase is applied with cumulative effect as the gap is huge i.e. 11 years – For shorter period of 3-5 years, it could have been 10% or 12% – But in no case 15% would be justified for a period of 11 years as awarded by the High Court – In the present case, given the 11 years gap, 8% would be just and proper – On rough assessment, the compensation would be equivalent to compensation awarded by the Reference Court – High Court fell in error in enhancing the compensation by applying the cumulative annual increase of 15% – Impugned judgment set aside

– Land Acquisition Collector to calculate the compensation at the rate as determined. [Paras 23-26]

LIST OF CITATIONS AND OTHER REFERENCES

General Manager, Oil and Natural Gas Corporation Limited vs. Rameshbhai Jivanbhai Patel and Another (2008) 14 SCC 745 : 2008 [11] SCR 927; *Ashrafi and Others Vs. State of Haryana and Others* (2013) 5 SCC 527 : 2013 [6] SCR 148; *Narbadi Devi & Ors. Vs. State of Haryana* Order of Supreme Court dtd.22.08.2014 in SLP(c)Nos.20531-20565 of 2014; *Ramrao Shankar Tapase vs. Maharashtra Industrial Development Corporation and Others* (2022) 7 SCC 563 : 2013 [6] SCR 148; *State of Haryana and Another vs. Subhash Chander and Others* (2023) 5 SCC 435 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 6918-6919 of 2023.

From the Judgment and Order dated 01.06.2016 of the High Court of Punjab & Haryana at Chandigarh in RFA Nos. 2400 of 2004 and 295 of 2005.

Appearances:

Harin P Raval, Sr. Adv., Shaiwal Srivastava, Mrs. Rachna Gupta, Advs. for the Appellant.

Rakesh Kumar Khanna, Sr. Adv., Mrs. Tanuj Bagga Sharma, Dr. M.K. Ravi, Ramya Khanna, K. Uday Kapoor, Sumit Jidani, Rajesh Sehgal, Ms. A. Sumathi, B. K. Satija, Ms. Yagya Kalla, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

VIKRAM NATH, J.

1. Application for substitution is allowed.
2. Leave granted.

3. The present appeals assail the correctness of common judgment and order of the High Court of Punjab & Haryana at Chandigarh dated 01.06.2016, whereby the appeal filed by Respondent No.1 (RFA No. 295 of 2005) was partly allowed, and the appeals filed by the appellant and State of Haryana (respondent No.2) (RFA No. 2400 of 2004 and RFA No. 2522 of 2004) were dismissed, raising the amount of compensation to Rs.493/- per square yard on the date of notification under Section 4 of the Land Acquisition Act, 1894¹. The basis for the same being cumulative annual increase at the rate of 15% for a period of 11 years. The base figure was taken from an order of Reference Court dated 30.08.2000 relating to acquisition of land of the same village Naraingarh of the year 1989, and the period of 11 years being counted from 1989 to 2000, the year of the notification dated 10.11.2000 issued under Section 4 of the 1894 Act.

4. Relevant facts for deciding the present appeals are as follows:

- i) Notification was issued under Section 4 of the 1894 Act on 10.11.2000 for acquiring land measuring 80 Kanals, 11 Marlas out of the revenue estate of Naraingarh, District Ambala for the benefit of the appellant.
- ii) Objections were invited as per the provisions of the 1894 Act; however, no objections were filed.
- iii) Declaration under Section 6 of the 1894 Act was issued on 19.03.2001.
- iv) The Land Acquisition Collector/Sub Divisional Officer (Civil) who was duly authorised to give the award, started the process on 25.09.2001 by serving notices under Section 9 of the 1894 Act. After the parties led evidence and considering material on record, vide award dated 12.10.2001 the Land Acquisition Collector determined the rate of compensation at Rs.3.50 lacs per acre, which would be equivalent to Rs.2,187.50Ps. per Marla and further equivalent to Rs.72.31 per square yard being the market value prevailing on the date of notification under Section 4 of the 1894 Act.

1 In short, '1894 Act'

5. The Land Acquisition Collector considered the following factors to determine the rate of compensation:

- a) No objections were filed with respect to area and classification of the land in question.
- b) The land owners (respondents) did not put forth any specific claim with regard to the market value of the land. The only claim was that fair and reasonable compensation be awarded.
- c) The acquired land was purely an agricultural land situated by the side of a link road.
- d) Report of the Committee constituted at the Divisional Level for evaluation under the chairmanship of Divisional Commissioner had fixed the market rate of Rs.3,50,000/- per acre after considering the market rates provided from the Office of the District Collector, Ambala.
- e) The material provided by the local revenue Patwari regarding sale deeds of similar land executed within closed proximity on the material date.

6. The respondent preferred a reference under Section 18 of the 1894 Act on 19.11.2001 seeking enhancement of compensation primarily for the following reasons:

- (i) The acquired land was Chahi land (Irrigated land) which was used for residential purposes, and was situated within the Abadi near the Naraingarh District as well as near the sector carved by Haryana Urban Development Authority and was also near the Government College, Naraingarh and Government Senior Secondary School, Naraingarh.
- (ii) The Market value of the acquired land was not less than Rs.30 lacs per acre at the relevant time and therefore the claim of Rs.35 lacs per acre was made.

7. The appellant filed his objections and written statement in the reference proceedings denying all the assertions made by the respondent in the reference.

8. After considering the material on record, the Reference Court/ Additional District Judge, Ambala allowed the reference and determined the market value at Rs.6,310/- per Marla equivalent to Rs.208.59/- per square yard by taking into account 12% (simple/flat) increase per annum for 11 years from 1989 to 2000. Reliance was placed upon a judgment dated 30.08.2000 of the Reference Court pertaining to acquisition of land in the year 1989 of the same village (Naraingarh), wherein the Reference Court had fixed the rate at Rs.2720/- per Marla equivalent to Rs.89.91 per square yard.

9. Aggrieved with the enhancement by the Reference Court, both the parties appealed before the High Court. The said appeals came to be decided by the common impugned order of the High Court as already mentioned in the opening paragraph.

10. The High Court granted an annual increase at the rate of 15% on cumulative basis for a period of 11 years, relying upon the judgment of this Court in the case of **General Manager, Oil and Natural Gas Corporation Limited vs. Rameshbhai Jivanbhai Patel and Another**². While entertaining the special leave petition, this Court *vide* interim order dated 11.11.2016 granted stay subject to condition that the appellant would deposit 50% of the compensation as determined by the High Court. In compliance to the same, the appellant deposited Rs.2,54,46,007/- on 04.01.2017 which was subsequently allowed to be withdrawn by the respondent *vide* order dated 12.04.2017. The said amount has since been withdrawn.

11. The appellant further pointed out that it has actually paid a total amount of Rs.3,72,01,551/- to the respondent. The breakup of which is as follows: (i) Rs.49,71,728/- was paid at the time of award; (ii) under interim order of the High Court, further amount of Rs.65,69,816/- along with TDS of Rs.2,14,000/- was paid; and (iii) further Rs.2,54,46,007/- was deposited and paid as directed by this Court.

12. We have heard learned senior counsels for the parties and have also perused the material on record.

13. The core question to be decided in the present appeals is as to what would be a fair and just compensation so as to do justice between the

2 (2008) 14 SCC 745

parties that is to say that land owners may get a fair and reasonable amount of compensation for losing their land, and at the same time balancing the State exchequer by not awarding an amount which may be in excess of the market value so as not to put an additional burden on the appellant which is a State entity.

14. It is an admitted position that there is no material in the form of exemplars of the relevant time that is the date of the notification under Section 4 of the 1894 Act so as to facilitate determination of the market value. Whatever sale deeds have been referred by the appellant, cannot be taken as exemplars to determine the market value for which the reasons given by the High Court are reasonable and we have no reason to interfere with the same. Thus, we have to fall back upon the order of the Reference Court dated 30.08.2000 which related to an acquisition of the year 1989. This Reference Court order of 30.08.2000 has been relied upon by the Reference Court and the High Court in the present case. The question to be determined would be as to at what rate the annual increase be applied? The Reference Court applied 12% flat rate increase, whereas High Court applied 15% cumulative.

15. The law on the point of annual increase whether on cumulative basis or non-cumulative basis and the rate of annual increase to be applied are thus to be considered. Based upon the same a balance and equitable compensation needs to be determined in the present case.

16. The following cases have been relied upon by the parties with respect to determining the just compensation.

- i) **General Manager, Oil and Natural Gas Corporation Limited vs. Rameshbhai Jivanbhai Patel and Another (supra),**
- ii) **Ashrafi and Others Vs. State of Haryana and Others³,**
- iii) **Narbadi Devi & Ors. Vs. State of Haryana⁴,**
- iv) **Ramrao Shankar Tapase vs. Maharashtra Industrial Development Corporation and Others⁵,**

3 (2013) 5 SCC 527

4 SLP(c)Nos.20531-20565 of 2014, (22.08.2014- Order)

5 (2022) 7 SCC 563

v) **State of Haryana and Another vs. Subhash Chander and Others⁶**

17. The case which was referred to by the High Court was **Rameshbhai Jivanbhai Patel (supra)**. It no doubt referred to determining compensation on the basis of annual increase with cumulative effect, but at the same time it had put a caution that such annual increase can be taken only for 4-5 years as beyond that it would be unsafe to uniformly apply the same rate for increase and that too with cumulative effect. Paragraph 15 of the said judgment may be reproduced here which mentions the reasons where the gap is of several years, such standards may not be reliable rather the same maybe unsafe.

“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.”

18. In the said case, after laying down the caution, this Court awarded cumulative annual increase at the rate of 7.5% for a period of five years.

6 (2023) 5 SCC 435

19. In the case of **Ashrafi and others (supra)**, this Court amongst many issues, considered the issue of applying annual increase cumulatively for determining just compensation. It also considered the law laid down in the case of **Rameshbhai Jivanbhai Patel (supra)** and many other judgments on the said point. It applied formula of 12% annual increase cumulatively for a period of five years. The base rate being of the year 1987 whereas the acquisition in question being of 1993.

20. We will also refer to order dated 22.08.2014 in the case of **Narbadi Devi & others (supra)** which relied upon the judgment in the case of **Ashrafi & others (supra)** and accepted the annual increase of 12% cumulatively. The High Court in the said case had although followed the dictum in the judgment of **Ashrafi & others (supra)**, however, the annual increase of 12% was granted at a flat rate by the High Court and not cumulatively. This Court accordingly had modified the order of the High Court to the aforesaid extent that 12% annual increase would be cumulative.

21. Recently, in the year 2022, this Court in the case of **Ramrao Shankar Tapase (supra)** citing the judgment in the case of **Rameshbhai Jivanbhai Patel (supra)** and other similar matters, awarded annual increase cumulatively at the rate of 12% for a period of three years. The High Court in the said case had applied annual increase cumulatively at the rate of 10%.

22. The latest judgment is of 2023 in the case of **Subhash Chander (supra)**. In this case, the Court held that rate of annual increase could vary from 8% to 15% per year. However, considering the facts of the said case, this Court had awarded 10% annual increase cumulatively for a period of two years only.

23. From the above, we notice that the consistent view taken by this Court for awarding annual increase to determine the just compensation varies from case to case and the period to be applied is a major factor to be considered. In the present case, the period is 11 years which is pretty large as compared to the time period considered in the cases referred to above.

24. Taking an overall view in the matter and the consistent view of this Court, the fair and reasonable compensation in the present case would be best determined if we apply 8% annual increase with cumulative effect. This is for the reason that the gap is huge i.e. 11 years. For shorter period

of 3-5 years, it could have been 10% or 12%. But in no case 15% would be justified for a period of 11 years as awarded by the High Court in the impugned order. In the present case, given the 11 years gap, 8% would be considered just and proper.

25. On rough assessment, the compensation would be equivalent to compensation awarded by the Reference Court. The High Court fell in error in enhancing the compensation by applying the cumulative annual increase of 15%.

26. In view of the above, the appeals are allowed. The impugned judgment and order of the High Court dated 01.06.2016 is set aside. The Land Acquisition Collector to calculate the compensation at the rate as determined above.

27. According to the appellant, an amount of Rs.3,72,01,551/- had already been deposited and also disbursed to the respondents. In case, after the final calculation, the Land Acquisition Collector finds that any additional amount has been paid to the respondents, the same be recovered in accordance with the law, however, if the final calculation requires some additional amount to be paid to the respondents, the same to be paid within two months from the date of receipt of this judgment.

28. There shall be no order as to costs.

29. Pending applications, if any, are disposed of.