Ravinder Kumar Goel vs The State Of Haryana on 15 February, 2023

Author: A.S. Bopanna

Bench: Hima Kohli, A.S. Bopanna

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1173 OF 2023
(Arising out of SLP (Civil) No.3585 of 2022)

Ravinder Kumar Goel .…Appellant(s)

Versus

The State of Haryana & Ors. …. Respondent(s)

With

C.A.NO. 1176 OF 2023 @ of SLP (C) No.4837 of 2022)

C.A.NO. 1178 OF 2023 @ of SLP (C) No.7772 of 2022)

C.A.NO. 1177 OF 2023 @ of SLP (C) No.7455 of 2022)

C.A.NOS. 1182-1210 OF 2023@ of SLP(C) Nos.3446-3474/2023 @ D.No.11863 of 2022)

C.A.NOS. 1179-1181 OF 2023@ of SLP (C) Nos.10577-79/2022)

C.A.NOS. 1174-1175 OF 2023 @ of SLP (C) Nos.9898-99/2022)

C.A.NOS. 1217–1220 OF 2023 @ of SLP (C) Nos.622–625/2023)

C.A.NOS.1211–1216 OF 2023@ of SLP (C) Nos.3434–3439/2023 @ D.No.14744 of 2022)

C.A.NOS.1221–1222 OF 2023@ of SLP(C) Nos.2450–2451/2023)

JUDGMENT

A.S. Bopanna,J.

1. The irony in all these cases is that the appellants are land losers who have been divested from their land either fully or in part to construct an Express Highway over such land for the benefit of others to travel fast but the process to compensate them with a just and fair quantum of money instead of being on the fast track, has been tardy. It is a couple of years short of two decades from the date of the preliminary notification and the appellants are still litigating to receive what is rightfully due to them.

2. These appeals even otherwise have a chequered history. The appellants are before this Court for the second time. The lands which were owned by the appellants formed a part of the lands that were notified under Section 4 read with Section 17 (2) of the Land Acquisition Act, 1894 (for short 'Act, 1894') by the Haryana Government Industries Department. The preliminary notification was issued on 11.01.2005 and the declaration under Section 6 of Act, 1894 was made on 31.05.2005. The purpose for which the lands were acquired is for the construction of Express Highway Phase VII connecting National Highway No.1, 10, 8 and 2 in village Sultanpur, Sub-Tehsil Farukh Nagar, Tehsil, and District Gurugram. The total extent of land notified for the project was 798 Kanals and 2 Marlas of which, the appellants' lands are also included.

3. The award was passed by the District Revenue Officer-cum-Land Acquisition Collector (for short 'LAO'), Gurgaon on 10.05.2006. The market value was fixed at Rs.12,50,000/- per acre for all kinds of lands as per the rates of the lands supplied by the Collector, Gurugram through the letter dated 03.11.2005. The land losers including the appellants had sought reference under Section 18 of Act, 1894. The Reference Court, through its judgment dated 27.02.2012, after consideration had enhanced the market value to Rs.43,17,841/- per acre. The High Court had an occasion to consider the correctness of the same in appeals filed by both the parties before it. The High Court, on consideration, had through its judgment dated 05.02.2016 enhanced the market value to Rs.62,11,700/- per acre.

4. The land losers as also the State of Haryana were before this Court assailing the common judgment dated 05.02.2016 passed by the High Court. This Court through its judgment dated 25.01.2018 in the case titled as Surender Singh Vs. State of Haryana & Ors. (2018) 3 SCC 278, remanded all the cases to the Reference Court and the parties were permitted to lead further evidence whereupon the Reference Court was required to take a fresh decision in the matter.

5. Accordingly, the parties had tendered evidence and exhibited the sale instances as exemplars. The Reference Court on re-appreciation of the evidence and materials available on record has through its judgment and award dated 10.01.2020, determined the market value of the acquired lands at Rs.22,00,754/- per acre. The parties being aggrieved, were before the High Court. The Haryana State Industrial and Infrastructure Development Corporation Ltd. & Ors. (for short 'HSIIDC') had assailed the quantum of market value determined as excessive, while the land losers had sought further enhancement of the market value. The High Court, through its common judgment dated 07.10.2021 has modified the judgment of the Reference Court and reduced the market value to Rs.14,52,010/- per acre. The land losers being aggrieved by the same are before this Court in these appeals seeking enhancement of the market value in respect of the acquired lands.

6. In the above background, we have heard all the learned counsel for the appellants as also the learned counsel for the respondent-HSIIDC and perused the appeal papers.

7. The gist of the contention on behalf of the land losers is that the lands which are the subject matter of these appeals are situated in Sultanpur which is within the urban agglomeration. As such, though the lands were depicted as agricultural lands, in fact, the said lands have non-agricultural potential, more particularly the lands are urbanized lands being located within the urban area. In that view, it is contended that the market value cannot be determined by either considering the land as agricultural land or by applying the yardstick which is applicable to large tracts of agricultural land. It is contended that though the composite notification to acquire the lands consists of 798 Kanals 2 Marlas of land, insofar as the appellants are concerned, they are land owners of small extent of lands which were to be used as urban land for purposes other than agriculture, and therefore, the market value as determined by the High Court on applying the floor rates fixed by the Government, would not be justified. It is their further contention that on the matter being remanded to the Reference Court, evidence had been adduced wherein sale exemplars were relied on. It is contended that the Reference Court having taken into consideration all aspects of the matter had in fact rightly relied on the sale deed dated 07.12.2004 which was marked as Ex.PX. Having done so, the only error committed by the Reference Court is to deduct 35 per cent of the value towards development charges inasmuch as in the instant case, the question of deducting development charges would not be justified as the entire acquired land has been utilized for the purpose of constructing roads. Hence it is contended that the entire amount, being the sale consideration in the said sale deed dated 07.12.2004 is to be reckoned and the same be determined as the market value to quantify the compensation.

8. The gist of the contention put forth by the learned counsel for the beneficiary of the acquisition, namely HSIIDC is that the Reference Court was not justified in placing reliance on the document at Ex.PX, dated 07.12.2004. The said document related to the purchase of a small extent as compared

to the vast extent of 798 Kanals 2 Marlas of land which was acquired. Hence it does not represent the true value of the acquired lands. It is the further contention that on the other hand, the HSIIDC had relied on, as many as nine sale exemplars between the period 23.07.2004 and 25.11.2005 wherein the larger extent of agricultural land had been sold and the value per acre in all the said instances is lesser than the floor rate which had been taken into consideration. Though the LAO had determined the market value at Rs.12,50,000/□based on the same, the High Court taking into consideration that there was time gap, has adopted the same and added the escalation for the period between the date of the circular indicating the floor rates and the date of the notification. It is contended that the High Court having thus assigned appropriate reasons has determined the market value and awarded just compensation. Therefore, the judgment does not call for interference, is the submission.

9. In the light of the rival contentions, keeping in view that the only question herein is to determine the appropriate market value for the acquired lands, the well□settled yardsticks are to be kept in view and a decision is to be taken as to whether the High Court was justified in interfering with the manner of consideration made by the Reference Court and as to whether the High Court was correct in adopting the amount as indicated in the circular providing for the floor rates for fixing the market value in the teeth of the other documents which were available on record. In this regard, it is noted that the LAO at the first instance while passing the award dated 10.05.2006 has in fact, kept in view the circular dated 03.11.2005 issued by the Collector providing for the floor rates at Rs.12,50,000/□ per acre and has, accordingly, determined the compensation. As narrated earlier, when the parties were before this Court in the first round of litigation in the case titled Surender Singh Vs. State of Haryana & Ors. (supra), this Court having taken note of the governing factors as to the determination of market value had remanded the matter for fresh consideration though the circular relating to the floor rates was also available to the benefit of this Court to be noticed and applied if need be. In that view, in the light of the said circular, without relying on the same, this Court had directed that the evidence be tendered by the parties before the Reference Court so as to make such evidence the basis for fresh determination to be made. Despite the same, the High Court in the present round has merely relied on the circular providing for the floor rates despite other evidence being available on record. Such determination is therefore not justified. From the records, it is pointed out that as contended on behalf of the parties, the sale exemplars were brought on record to aid the Court to determine the market value, the consideration of which was required to be made to arrive at an appropriate market value.

10. While adverting to this aspect of the matter what is necessary to be noted is that the Reference Court before appreciating the evidence, has kept in view the parameters laid down by this Court while considering a reference for the purpose of determining the market value of the acquired lands to arrive at the just compensation. Since the sale exemplars had been placed by the rival parties before the Reference Court, in order to take the same into consideration, the Reference Court has in fact taken note of the decision of this Court in State of Gujarat vs. Kakhot SinghJi VajesinghJi Vaghela (1968) 3 SCR 692. This Court had enunciated the principle that the price agreed between a willing seller and a willing purchaser would be the price which is generally prevailing in the market in respect of the lands having similar advantages which can be the basis to determine the market value of acquired lands if such sale instances are brought on record.

11. Further, the Reference Court had also kept in view the decision of this Court in Atma Singh (Dead) through Lrs. and Ors. vs. State of Haryana and Anr. (2008) 2 SCC 568 wherein it is held that the sale instances of small pieces of land cannot be ignored while determining the compensation for a large extent of land acquired. The rule of deduction on development charges would not be uniformly applicable was also taken into consideration. It is in that light, the Reference Court has placed reliance on the document at Ex.PX dated 07.12.2004 relied upon by the land losers. Under the said document, an extent of 5 Marlas was sold in Sultanpur i.e. the area which is the subject matter of these appeals, for the sale consideration of Rs.1,05,000/- which would amount to Rs.33,60,000/- per acre. On reckoning the said value of land, the Reference Court deducted 35 per cent of the same towards development charges and thereafter added the escalation for 35 days being the difference of the period between the date of the said sale deed and the date of the preliminary notification. It is on the said basis that the market value of Rs. 22,00,754/- per acre was arrived at by the Reference Court.

12. From the judgment of the Reference Court it is noted that the sale exemplars which were relied upon by the respondent-HSIIDC at Ex.R5/R12, Ex.R6, Ex.R9, Ex.R13 to Ex.R16 were discarded since they depict the market value of the land which is lower than the amount awarded by the Collector. To that extent, the reason assigned by the Reference Court is not justified. The documents would have to be taken into consideration, to decide as to whether the lands are comparable and, on the determination, if the conclusion is that they are comparable but the market value depicted is lesser than what is awarded by the SLAO and if there is no other document to indicate a higher market value, it would be open for the Reference Court to confirm the award of the LAO being more beneficial to the land losers.

13. Therefore, since we have already indicated that the High Court was not justified in merely relying on the circular fixing the floor rates when other evidence was available on the record pursuant to the remand made, it is necessary for us to take note as to whether the Reference Court had committed an error in not relying on the sale exemplars produced by the respondents without analysing the comparability. The position of law is well settled that when large extent of lands are acquired and if the sale exemplar, also for the large extent is available on record it would be safer to rely on the same if they are comparable transactions. However, as already noted above, this Court in Atma Singh (supra) has also held that the sale instances of smaller extents cannot be ignored. Further, this Court has reiterated in many cases that the sale exemplars for smaller extent can be relied upon subject to appropriate deduction being provided towards development charges.

14. In the instant case, though the acquisition Notification dated 11.01.2005 was issued in respect of the large extent of lands measuring 798 Kanals and 2 Marlas, the extent of lands which were owned by majority of land losers is a small extent. In fact, the details indicated in the judgment dated 10.01.2020 passed by the Reference Court has referred to about 69 appellants who were before it. Therefore, the extent to which each of the appellants is claiming compensation is a smaller extent. In that background, if the documents relied on by the respondents at Ex.R5 to R16 are noted, the largest extent sold is under Ex.R16 being 32 Kanals and 16 Marlas, while the least being under Ex.R8 measuring 3 Kanals and 8 Marlas. We have referred to this aspect of the matter to indicate that while approving the procedure for placing reliance on the sale deeds of earlier sale transactions

as exemplars, this Court starting from the case of Kakhot SinghJi Vajesinghji Vaghela (supra) and several other cases has emphasized that the basis for the same is that the value under such exemplars would represent the sale consideration agreed upon between a willing seller and a willing purchaser and therefore would represent the true market value.

15. If the above-referred concept is kept in perspective, one cannot loose sight of the fact that when large extent of agricultural land is sold under a document and if the land is to be used for agricultural purpose, the price agreed thereto would be based on the nature of the land and the purpose for which it is put to use. In cases, where the large extent of agricultural land belonging to a single owner is acquired, it would no doubt be safe to rely on such sale exemplars of large extents, more particularly, in circumstances where the land which is classified as agricultural land is also used for agricultural purposes. In such circumstances, to arrive at the market value depending on the nature of the cultivation, the capitalisation method by applying the multiplier to the crop pattern and price derived can be adopted and the market value be determined or determine the market value based on such sale deeds which are comparable exemplars.

16. However, the difficulty arises when a person holds a smaller extent of land which is classified as agricultural land but would have lost its character due to non-cultivation and urbanization when such land is more eminent and fit to be used for non-agricultural purposes. It is in that circumstance, such land though classified as agricultural will have to be treated as a land having non-agricultural potential more particularly for urban use. In that light, in appropriate cases depending on the location and the extent of land held by each of the land losers who is a part of the same acquisition, is required to be kept in view, while applying the yardstick to reckon the appropriate exemplar and arrive at the ultimate conclusion. Therefore, there can be no strait jacket formula that when the sale deeds for the sale of large extent are available and large extent of lands are acquired that alone should be reckoned as the exemplar. What is material is its comparability, which would depend on case to case basis and that is for the Court to analyze based on the evidence available on record.

17. If the above-noted criteria is kept in perspective, in the instant case as already noted and also demonstrated to us at the time of hearing with reference to the final development plan of Gurgaon-Manesar Urban Complex 2031 AD, the lands in issue are within the boundaries of the Municipal Corporation. Further, the very award dated 10.05.2006 passed by the LAO records that no crops are standing on the land. Therefore, in that circumstance when smaller extent of land is available, the same would be used for urban development and not for agricultural purpose. Hence relying on Ex. R5 to R16 which are sale deeds of a large extent of agricultural land, would not be justified unless there was further evidence brought on record to demonstrate that the nature of the lands sold under the said sale deeds and the lands notified are comparable to each other. In that view, though the reason assigned by the Reference Court is not appropriate on that aspect, the ultimate conclusion to eschew the said documents will stand justified.

18. If that be the position, from the documents which were relied upon by the appellants-land losers, the most appropriate document to be relied upon was Ex.PX dated 07.12.2004 since it was earlier to the notification dated 11.01.2005 under Section 4, read with 17 of Act, 1894 and in close

proximity thereto, which has been rightly done by the Reference Court. Since small extents of land belonging to the land losers, having non-agricultural potential in an urban area was notified for acquisition, the said sale exemplar dated 07.12.2004 can be considered as comparable. The Reference Court was, therefore, justified in reckoning the same. Since the two dates are in close proximity, in our opinion, further addition of the escalation value for 35 days was not justified. The escalation of that nature is normally to be taken if there are no documents within close proximity to the date of notification and a document of the larger time gap is the only available document to be taken into consideration, in which case, the escalation for a longer time gap is required to be given.

19. Having arrived at the above conclusion, the next aspect which engages our attention is with regard to the appropriate deduction towards development charges and as to whether the Reference Court was justified in deducting 35 per cent of the value from the market value arrived at based on the document at Ex.PX. The learned counsel for the appellants contend that the acquisition in the instant case is for construction of the road and as such, the deduction was not necessary to be made. The decision in C.R. Nagaraja Shetty (2) vs. Special Land Acquisition Officer and Estate Officer and Anr. (2009) 11 SCC 75 is relied on to contend that in the said case where the land was acquired for widening the national highway, this Court has held that there is no question of any further development, and as such the deduction on account of development charges will not be justified. The decision in Piyara Singh & Anr. vs. State of Haryana & Ors. Etc. (2017) 2 SCALE 323, also a decision where this Court held that the deduction of 40 per cent as made in the said case when the land acquired was roughly 1 kanal to 1 acre per person which ultimately totals up to 305 acres which was acquired, is not justified is relied upon.

20. Having bestowed our attention to that aspect of the matter, we are of the opinion that in the instant case, the said decisions relied upon by learned counsel for the appellants would not be of any assistance to them since they are rendered entirely based on the fact situation arising therein. In fact, this Court in JAG Mahender & Anr. Vs. State of Haryana & Ors. through the order dated 21.09.2017 in Civil Appeal No.15702/2017 arising out of SLP (C) No.16063 of 2016 and connected appeals had taken into consideration the entire perspective relating to the deduction of development charges with reference to the earlier decisions of this Court in Haryana State Agricultural Market Board & Anr. vs. Krishan Kumar & Ors. (2011) 15 SCC 297 and in Sabhia Mohammed Yusuf Abdul Hamid Mulla (Dead) by Lrs. & Ors. vs. Special Land Acquisition Officer & Ors. (2012) 7 SCC 595 wherein on taking note of the nature of development that would be required in the acquired lands and also the general rule of deduction of 1/3rd of the market value towards development cost except in cases where there is no development required, this Court had ultimately arrived at the conclusion that deduction of 25 per cent would be justified.

21. In that background, in the instant facts, the land acquired is for the construction of a new Expressway which would require not just laying of the roads but also providing several amenities through the highway and also creation of service roads, flyovers, underpass to townships across such highway. Land is also to be left as a divider to bifurcate the two-way roads. Therefore, it would not be justified in saying that no development cost at all would be incurred. Hence, taking all aspects into consideration and also taking into consideration that the sale exemplar for a smaller extent is being relied on for the reasons noted above, in the facts and circumstance arising herein, it would be

appropriate to reckon the deduction towards development cost at 25 per cent of the value taken into consideration under the document Ex. PX dated 07.12.2004. Therefore, from the amount of Rs.33,60,000/- which is the value therein, a sum of Rs.8,40,000/- being 25 per cent is to be deducted. Hence the market value to be determined in the present case would be Rs.25,20,000/- per acre, which shall be payable with all statutory benefits as compensation for the lands acquired.

22. Before we part with this matter, one other aspect which was brought to our notice is that in the first round of the case, a higher rate of compensation was determined and before the judgment was set aside and remanded, in some of the cases the execution was levied and the amount was paid to the land losers. In view of the determination of the compensation at a lower rate in the present round of proceedings, the excess amount is being recovered by the respondents. The learned counsel for the appellants contend that if this Court determines the market value at a lesser rate than what has been paid to some of the appellants, such of those land losers who have received the amount, be protected against recovery. Learned counsel for the respondents would vehemently oppose such a request. Having considered this aspect of the matter, we are clear in our mind that it would not be possible for this Court to create two sets of land losers who are otherwise similarly placed, in respect of the same acquisition process after having determined the market value at a particular rate which is applicable to all of them.

23. Therefore, it is needless to mention that if any excess amount has been received by any of the land losers than the extent of the compensation determined herein, the excess amount, in any event, is recoverable. We cannot also lose sight of the fact that such a situation has arisen due to the earlier orders of the Court determining the compensation. Though it is not a mistake of the Court, it has led to the present situation due to the act of the Court. It would therefore be appropriate to invoke the principle of 'actus curiae neminem gravabit' so that both parties are not prejudiced to the extent possible. Taking note that the amount which has been received will be invested or utilised, to enable repayment after making arrangement, we direct that the balance to be refunded, shall be paid back in three half-yearly instalments, free of interest. However, if the amount is not refunded within the time period as provided above, the same shall thereafter carry interest at 9% p.a. and the respondent-HSIIDC would be entitled to recover the same, including the right to make recovery as arrears of land revenue.

24. In the result, we pass the following order;

(i) The judgment dated 07.10.2021 passed by the High Court of Punjab and Haryana at Chandigarh in RFA No.421/2021, RFA No.848/2021 and connected appeals, impugned herein, is set aside.

(ii) The judgment dated 10.01.2020 passed by the Additional District Judge, Gurugram (Reference Court) in LAC Case No. 1426 and connected references is restored and modified.

(iii) In modification, it is ordered that the market value of the acquired land is Rs.25,20,000/□per acre. The same shall be payable with statutory benefits and the costs incurred throughout by the appellants.

(iv) The appeals are accordingly, allowed in part.

(v) Pending applications, if any, stand disposed of.

.....J. (A.S. BOPANNA) .....J. (HIMA KOHLI) New Delhi;

February 15, 2023