

Mehrawal Khewaji Trust(Regd) ... vs State Of Punjab & Ors on 27 April, 2012

Equivalent citations: AIR 2012 SUPREME COURT 2721, 2012 AIR SCW 2822, (2012) 1 CLR 1005 (SC), (2012) 4 ALLMR 470 (SC), (2012) 2 CLR 41 (SC), (2012) 2 KCCR 55, (2012) 3 JCR 47 (SC), 2012 (2) CLR 41, 2012 (2) HAR LR 252, 2012 (4) SCALE 628, 2012 (1) CLR 1005, 2012 (4) ALL MR 470, 2012 (5) SCC 432, (2012) 114 ALLINDCAS 268 (SC), AIR 2012 SC (CIVIL) 1478, (2012) 2 KER LT 542, (2012) 3 ICC 8, (2012) 2 GUJ LH 318, (2012) 117 REVDEC 289, (2012) 114 CUT LT 696, (2012) 4 CIVLJ 251, (2012) 4 MAD LW 109, (2012) 4 SCALE 628, (2012) 4 ALL WC 3431, (2012) 2 CURCC 216

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Bench: P. Sathasivam, J. Chelameswar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

1

2 CIVIL APPEAL NO. 4005 OF 2012

3 (Arising out of SLP (C) No. 26866 of 2009

Mehrawal Khewaji Trust (Regd.),
Faridkot & Ors.

.... Appellant (s)

Versus

State of Punjab & Ors.

.... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

- 1) Leave granted.
- 2) This appeal is directed against the final judgment and order dated

06.01.2009 passed by the High Court of Punjab and Haryana at Chandigarh in R.F.A. No. 998 of 1988 (O&M) along with seven other appeals by which the High Court declined to interfere with the order dated 11.02.1988 of the Additional District Judge, Faridkot in L.R. No. 20 of 1984.

3) Brief facts:

(a) Colonel Sir Harindar Singh, since deceased, was the former ruler of the State of Faridkot. In 1979, 259 Kanals and 16 Marlas (33 acres) of land owned by him had been acquired by the Punjab Government for extension of existing Grain Market at Faridkot vide Notification No. 14(68)M-iv-78/17315 dated 22.12.1979 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") which was published in the Punjab Government Gazette. Notification under Section 6 of the Act was issued on 19.02.1982. The award by the Collector was announced on 02.10.1982 and possession of the land was also taken on that day. The Collector awarded compensation at the rate of Rs.15,000/- per acre for Nehri land, Rs.10,000/- per acre for Barani land and Rs.25,000/- per acre for Banjar Kadim land and Ghair Mumkin land. The total compensation awarded including solatium at 15% was Rs.4,85,202.86/-.

(b) Aggrieved by the award passed by the Collector, on 27.10.1982, the appellants filed an application for reference under Section 18 of the Act. The Additional District Judge, Faridkot, by order dated 11.02.1988 in L.R. No. 20 of 1984 disposed of the reference by enhancing the compensation to Rs.1,00,000/- per acre.

(c) Against the aforesaid order, the appellants preferred R.F.A. No.998 of 1988 before the High Court. The High Court, by the impugned common order and judgment dated 06.01.2009, declined to interfere with the order passed by the Additional District Judge and did not enhance the compensation as claimed by the appellants.

(d) Aggrieved by the order passed by the High Court, the appellants have filed this appeal by way of special leave before this Court.

4) Heard Mr. Dhruv Mehta, learned senior counsel for the appellants, Mr. Vivek Goyal, learned Additional Advocate General for the State of Punjab and Mr. T.S. Doabia, learned senior counsel for respondent No.2.

5) The only point for consideration in this appeal is whether the appellants have made out a case for higher compensation as claimed.

6) The materials placed before the Land Acquisition Collector and the Reference Court show that the land is of great potential value inasmuch as the same being strategically located at a commercial hub abutting main roads and surrounded by commercial building including that of Canal Colony,

Godowns of Food Corporation of India, private and Government Residential Colonies, Red Cross Bhawan, Government Medical College, existing Grain Market and Godown of Warehousing Corporation. It was also pointed out that one pocket of the land known as “Tikoni” is having main roads on three sides.

7) In support of their claim for higher compensation, the appellants have relied upon various sale deeds in the reference under Section 18 of the Act. It was further seen that the Reference Court discarded all the sale instances related to area less than one kanal and proceeded to consider other sale instances. It was pointed out that the State of Punjab did not challenge the said criteria adopted by the Reference Court. By pointing out the same, it was argued on the side of the appellants that the exemplars for sale of one kanal or more are available to be relied upon.

8) The Reference Court has taken into consideration three sale exemplars which are Ext.A-48, Ext. A-52 and Ext.A-61. It is the grievance of the appellants that in the place of relying upon the highest exemplars, the Reference Court erroneously determined the market price of the appellants land by averaging the prices of all the three exemplars and thereby awarded a compensation of Rs. 1 lakh per acre. The High Court upheld the said order of the Reference Court.

9) The appellants are aggrieved on two aspects, firstly the highest exemplar, namely, Ext. A-61 should have been relied upon in the place of averaging the prices and secondly, the Reference Court did not grant interest on solatium.

10) The Reference Court held the following three sale transactions relied upon by the appellants as relevant for determination of the market value of the land in dispute:

Sale Deed	Date	Area	Price (K - M)	(Rs. K - M)	(Rs. / acre)
Ex. A-48	29.05.1979	3-4 31,000	77,500	Ex.A-52 20.03.1978	1-5.25 19,000 1,21,600
Ex . A - 61	22 . 07 . 1977	1 - 3	20 , 000	1 , 39 , 130	

Considering all these transactions including other references, the Reference Court disposed of the matter by a common order whereby the compensation was enhanced to Rs.1,00,000/- per acre.

11) Since the measurements of the land under acquisition are in kanals and marlas in the State of Punjab, the conversion of these units in acres and square yards is being set out as under:

20 marlas = 1 kanal 8 kanals = 1 acre 160 marlas = 1 acre 1 acre = 4840 sq. yds.

1 kanal = 605 sq. yds.

1 marla = 30.25 sq. yds.

12) As pointed out above, the Reference Court failed to take note of the highest exemplar, namely, the sale transaction under Ext.A-61 dated 22.07.1977. In this regard, it is useful to refer the decision of this Court in Sri Rani M. Vijayalakshamma Rao Bahadur, Ranee of Vuyyur vs. Collector of Madras, (1969) 1 MLJ 45 (SC). In this case, this Court has held thus:

“... where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. In any case we see no reason why an average of two sale deeds should have been taken in this case.”

13) In State of Punjab and Another vs. Hansraj (Dead) by LRS. Sohan Singh and Others, (1994) 5 SCC 734, this Court has held that method of working out the ‘average price’ paid under different sale transactions is not proper and that one should not have, ordinarily recourse to such method.

This Court further held that the bona fide sale transactions proximate to the point of acquisition of the lands situated in the neighbourhood of the acquired lands are the real basis to determine the market value.

14) This Court in Anjani Molu Dessai vs. State of Goa and Another, (2010) 13 SCC 710, after relying upon the earlier decisions of this Court in M. Vijayalakshamma Rao Bahadur (supra) and Hansraj (supra) held in para 20 as under:

“20. The legal position is that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bona fide transaction, will be considered.” Again, in para 23, it was held that “the averaging of the prices under the two sale deeds was not justified.”

15) It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation.

16) Based on the above principles, the market value as per Ext.A-61 dated 22.07.1977 was Rs. 1,39,130.43 per acre (approx. Rs.1.40 lakhs per acre).

The said sale deed was two and a half years prior in time than Section 4(1) notification dated 22.12.1979. There is no reason to eschew the above sale transaction. It is also pointed out that the lands covered under Ext.A-61 are nearer to the lands of the appellants under acquisition. This Court has time and again granted 10% to 15% increase per annum. In *Ranjit Singh vs. Union Territory of Chandigarh* (1992) 3 SCC 659, this Court applied the rule of 10% yearly increase for award of higher compensation. In *Delhi Development Authority vs. Bali Ram Sharma & Ors.* (2004) 6 SCC 533, this Court considered a batch of appeals and applied the rule of annual increase for grant of higher compensation. In *ONGC Ltd. vs. Rameshbhai Jivanbhai Patel* (2008) 14 SCC 745, this Court held that where the acquired land is in urban/semi-urban areas, increase can be to the tune of 10% to 15% per annum and if the acquired land is situated in rural areas, increase can be between 5% to 7.5% per annum. In *Union of India vs. Harpat Singh & Ors.* (2009) 14 SCC 375, this Court applied the rule of 10% increase per annum. Based on the above principle, we fix the annual increase at 12% per annum and with that rate of increase, the market value of the appellants' land would come to Rs.1,82,000 per acre as on the date of notification.

17) Though the Reference Court relied on the sale transaction covered under Ex. A-48 dated 29.05.1979 and fixed compensation @ Rs.1 lakh per acre inasmuch as under Ex. A-61 dated 22.07.1977, i.e., even two and a half years prior to notification under Section 4(1) of the Act, the adjacent lands have fetched higher price and in the light of the principles laid down in the above decisions, we are of the view that exemplar Ex.A-61 dated 22.07.1977 is quite reasonable and acceptable. However, as rightly pointed out by the learned counsel for Respondent No.2 and considering the fact that the area of land under Ex. A-61 dated 22.07.1977 is a smaller one, it is but proper that appropriate deduction should be made for the same. In *Trishala Jain & Anr. vs. State of Uttaranchal & Anr.*, 2011 (6) SCC 47, this Court has held that the value of sale of small pieces of land can be taken into consideration for determining the value of large tract of land but with a rider that the Court while taking such instances into consideration has to make a reasonable deduction keeping in view of other attendant circumstances. Similar view has been expressed in *State of Madhya Pradesh & Ors. vs. Kashiram (dead) by L.Rs. & Ors.*, 2010 (14) SCC 506 and *Prabhakar Raghunath Patil & Ors. vs. State of Maharashtra*, 2010 (13) SCC 107. In view of the same, it would be just and reasonable to allow deduction @ 20%. By applying the above method, the market value for the acquired land is fixed at Rs.1,82,000/- minus Rs.36,400/- (towards 20% deduction) equivalent to Rs.1,45,600/- rounded at Rs.1,45,000/- per acre which is quite fair, reasonable and acceptable.

18) The other grievance of the appellants is that interest on solatium and additional market value was not granted. This aspect has been considered and answered by the Constitution Bench in the case of *Sunder vs. Union of India*, (2001) 7 SCC 211. While considering various decisions of the High Courts and approving the decision of the Punjab and Haryana High Court rendered in *State of Haryana vs. Kailashwati*, AIR 1980 P&H 117, this Court held that the interest awardable under Section 28 would include within its ambit both the market value and the statutory solatium. In view of the same, it is clear that the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The above position has been further clarified by a subsequent Constitution Bench judgment in *Gurpreet Singh vs. Union of India*, (2006) 8 SCC 457. Based on the earlier Constitution Bench decision in *Sunder* (supra), the present Constitution Bench held that the claimants would be entitled for interest on solatium and additional market value

if the award of the Reference Court or that of the appellate Court does not specifically refer to the question of interest on solatium and additional market value or where the claim had not been rejected either expressly or impliedly. In view of the same, we hold that the appellants are entitled to interest on solatium and additional market value as held in the above referred two Constitution Bench judgments.

19) In the light of the above discussion, the appellants have made out a case for enhancement of compensation. Accordingly, the same is fixed at Rs.1,45,000/- per acre with all other statutory benefits including interest on solatium and additional market value. The appeal is allowed to the extent mentioned above. No order as to costs.

.....J. (P. SATHASIVAM)J. (J.
CHELAMESWAR) NEW DELHI;

APRIL 27, 2012.
