

Mohammad Yusuf And Ors. Etc. Etc. vs The State Of Haryana And Ors on 16 April, 2018

Equivalent citations: AIR 2018 SUPREME COURT 2248, (2018) 141 REVDEC 675, AIR 2018 SC (CIV) 2049, (2018) 5 MAD LJ 582, (2018) 5 SCALE 698, (2018) 4 ANDHLD 110, (2018) 2 CURCC 438, (2018) 188 ALLINDCAS 264 (SC), 2018 (16) SCC 105, 2018 (130) ALR SOC 59 (ALL), AIRONLINE 2018 SC 28

Author: R.K.Agrawal

Bench: S. Abdul Nazeer, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.3807-3825 OF 2018

(Arising out of Special Leave Petition (C) No. 35281-35299 OF 2016)

Mohammad Yusuf and Others Etc. Etc. Appellant(s)

Versus

State of Haryana and Others. Respondent(s)

WITH

CIVIL APPEAL No.3826 OF 2018

(Arising out of Special Leave Petition (C) No. 3585 OF 2017

AND

CIVIL APPEAL Nos. 3827-3859 OF 2018

(Arising out of Special Leave Petition (C) Nos. 4413-4445 OF 2017

JUDGMENT

R.K.Agrawal,J

1) Leave granted.

2) The above appeals have been filed against the impugned common judgment and order dated 03.06.2016 passed by learned single Judge of the High Court of Punjab and Haryana at Chandigarh in R.F.A. No. 6617 of 2012 (O&M) and other connected matters whereby the High Court partly allowed the appeal filed by the appellants herein while dismissing the cross appeals of the

respondent-State.

3) Brief Facts:-

(a) The Government of Haryana, Revenue Department, vide

Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the LA Act') dated 18.10.2005 has notified the land of Village Ferozpur Namak, Tehsil Nuh, District Mewat for the construction of Mini Secretariat at District Mewat, admeasuring 372 karnals 2 marlas (i.e. 46 acres 4 karnals and 2 marlas). Consequently, the Government of Haryana, vide Notification dated 25.05.2006, issued declaration that the land is required for a public purpose.

(b) Notice under Section 9 of the LA Act was issued to all the landholders and interested persons. The Land Acquisition Collector (LAC), Nuh, Mewat, vide Award No. 1 dated 05.11.2007 assessed the market value of the acquired land at the uniform rate of Rs 16 lakhs per acre along with 30% solatium and 12% additional amount to the landholders.

(c) Being aggrieved, the appellants herein filed a Reference under Section 18 of the LA Act which was registered as LA Case No. 394/01.12.10/19.09.11 before the Land Acquisition Collector-cum-SDO(C) Nuh, Mewat. On 28.08.2012, the Reference Court, enhanced the compensation to Rs. 72,00,000 lakhs per acre and applied the development cut at the rate of 55% and a further cut of 5% on account of waiting period, totaling to 60%. Thus, the compensation was determined at Rs. 28,80,000/- per acre along with the statutory benefits.

(d) Being not satisfied, the appellants herein preferred a Regular First Appeal (RFA) being No. 6617 of 2012 alongwith other set of appeals before the High Court. Respondent-State also filed cross appeals before the High Court. Learned single Judge of the High Court, vide common judgment and order dated 03.06.2016, partly allowed the appeals of the landholders by enhancing the compensation to Rs. 64,80,000 per acre along with other benefits while dismissing the cross appeals filed by the respondent-State.

(e) The landholders, being aggrieved by the judgment and order dated 03.06.2016, has preferred these appeals by way of special leave before this Court.

4) Heard Mr. R.S. Suri, learned senior counsel for the appellants and Mr. P.S. Patwalia, learned senior counsel for the respondent-State and perused the records. Point(s) for consideration:-

5) The short point of consideration arises before this Court is as to whether in the light of present facts and circumstances of the case, any interference is sought for by this Court?

Rival contentions:-

6) At the outset, learned senior counsel for the appellants argued that the High court failed to consider that the land acquired had great future potential for being developed as residential as well as commercial area, hence, the compensation ought to have been awarded accordingly.

Learned senior counsel further contended that the assessment of the compensation has not been done considering the following factors like potential value, location of land, future prospects, the development of land in question and the likely injury to be sustained by the appellants herein for loss of their future earnings etc. It was also contended that the High Court has not considered the facts that the acquired land has immense potential which is situated at a distance of half kilometers from the Nuh City, and also situated within 30 kms from the cyber city and could be directly approachable from Indira Gandhi International Airport, New Delhi.

7) Further, the Reference Court allowed a cut of 55% on account of development for raising infrastructural activities and other amenities and a cut of 5% on account of waiting period which was reduced by the High Court to 10% which is also not in accordance with law vis-à-vis the fact that the acquired land has all the infrastructural facilities on the date of Notification.

8) Per contra, learned senior counsel for the respondent-State submitted that the High Court has rightly determined the compensation while condoning the potentiality of the area and also after having regard to the sale deeds of adjoining areas and a cut of 10% on the assessed value of the acquired land has been applied in accordance with law vis-à-vis the fact that the acquired land has all the infrastructural facilities on the date of Notification.

9) Learned senior counsel further submitted that the compensation awarded is adequate in terms of principles incorporated under Section 23 of the LA Act as also interpreted by this Court in a catena of cases. Learned senior counsel finally contended that the amount of compensation has been awarded considering the factors like potential value location of land, future prospects, the development of land in question and the likely injury to be sustained by the appellants, if any, and no interference is sought for by this Court in the matter.

Discussion:-

10) The intention behind the enactment of the Land Acquisition Act, 1894 was to acquire land for welfare purposes and to compensate the owners adequately. It is well known fact that the Right to Property is a Constitutional Right (earlier it was a Fundamental Right until 1978) as provided under Article 300 A of the Constitution of India. The term “compensation” was interpreted by this Court in a number of cases that it is to be “a just equivalent of what the owner has been deprived of.” Hence, the acquisition must pass the test of compensation being reasonable, just and fair. The term justice as enshrined in the preamble includes justice in economic terms and the term economic justice in itself mandatorily requires compensation to be adequate.

11) In a catena of cases, this Court has held that compensation should be adequate and there must be no injustice with the land owners since they stand deprived from their very vital right i.e., Right to Property. At the same time, it is also to be kept in mind that no hypothetical view shall be taken as it may be harmful to the public exchequer in case of acquisition for public purposes. Hence, courts must maintain balance between both the parties. In the cases of land acquisitions, generally courts confronted with the short but important question that what ought to be the ideal market value for the acquired land. This Court, in Major General Kapil Mehra and Ors. vs. Union of India & Anr. (2015) 2 SCC 262 while dealing with the matter held as under:-

“10. Market Value: First question that emerges is what would be the reasonable market value which the acquired lands are capable of fetching. While fixing the market value of the acquired land, the Land Acquisition Officer is required to keep in mind the following factors:- (i) existing geographical situation of the land; (ii) existing use of the land; (iii) already available advantages, like proximity to National or State Highway or road and/or developed area and (iv) market value of other land situated in the same locality/village/area or adjacent or very near to the acquired land.”

12) For the purpose of deciding compensation of land in case of acquisition, Section 23 of the LA Act is the fundamental section which says that some vital factors to be considered while determining compensation. At this juncture, it is pertinent to re-produce the said section herein below:

23. Matters to be considered in determining compensation.-(1) In determining the amount of compensation to be awarded for land acquired under this Act, this court shall take into consideration-

First, the market value of the land at the date of the publication of the notification under section 4, sub-section(1); Secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

Thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

Fourthly, the damage (if any) sustained by the person interested, at the time of Collector's taking possession of the land ,by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

Fifthly , if , in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and Sixthly, the damage (if any) Bonafide resulting from diminution of the profits of

the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

13) On a plain reading of Section 23 of the LA Act, it is evident that the compensation has to be calculated according to the value of the land to the owner and the question to be considered is whether the person from whom the land was taken was to lose by having it taken from him. The probable use to which the land might be put was necessarily an element to be taken into consideration for calculating the compensation of acquired land. The land owners get compensation on the basis of the value of the land, in its actual condition at the time of the publication of the Notification under Section 4 of the LA Act.

14) In the instant case, the appellants contented and invited our attention to the fact that the valuation of the acquired land should be assessed on urban land criteria since land had all basic amenities like water, sewer, electricity and telephone lines were already present on the date of Notification under Section 4 of the LA Act. However for being an urban area, there must be some other facilities like commercial activities, population growth, education activities, paying capacity of people, healthy public transport, infrastructure etc. It is also a well established rule that in the cases of calculation of compensation, there cannot be a straight jacket formula, hence, each case has to be dealt in the light of circumstances of each case. Common sense is the best and most reliable guide.

15) It is a well settled law that when there are several exemplars with reference to similar land, usually the highest of the exemplars which is a bonafide transaction, will be considered. In the present case, the Reference Court, in Para 20 held as under:-

“.....Here in this case, applying the said authority to the facts and circumstances of this case, I am of the considered opinion that exemplar sale deed Exhibit P1 hold the fields in preference to the other sale deeds. Reason for exclusion of sale deeds Exhibit P2 to P3 is that sale deed Exhibit P1 is of the highest land 1 kanal 6 marlas and is of the highest amount, which is very close to the date of notification because vide sale deed Exhibit P1 dated 5.10.2005, land measuring 1 kanal 6 Marlas, whose nature was “Narmot”, situated in village Ferozpur Namak, Tehsil Nuh, was sold for a sale consideration of Rs. 11,70,000/- by one Mahmood son of Inshe Khan in favour of Smt. Hanisha Khatoon wife of Mohammad Iqbal of the same village. The value per acre of the land, as per the said sale deed is calculated as Rs. 72,00,000/- per acre. The said sale deed was executed on 5.10.2005 whereas notification under Section 4 of the Act for the acquired land was published on 18.10.2005 and thus, this sale deed Exhibit P1 is proximate to the point of time from the date of issuance of notification under Section 4 of the Act. No iota of evidence could be led by the respondents to rebut the veracity of this sale deed. There is nothing on record to show that the sale deed is not Bonafide and a genuine transaction. In fact despite availing number of opportunities, the respondents failed to lead any evidence to rebut the evidence led by the petitioners.”

16) On a perusal of the Map of the concerned area which is produced on record by the appellants, we find that the acquired land in the present case falls within the control area of Nuh and newly constructed Nalhar Medical College is at a distance of 3-4 kms from the acquired land. We also find that the said acquired land is situated on Palwal Road from one side and on Delhi Road on the other. However, it is a matter of record that such acquired land is far away from D.C. office and other offices. Also, Bus Stand as well as Nuh Town is situated far away from the acquired land. Hence, acquired land of Firozpur village in such terms cannot be said to be situated very near to the urban area of Nuh Town. The appellants produced various sale deeds for the perusal of this Court. The vital sale deed dated 05.10.2005, wherein land admeasuring 1 kanal 6 Marlas, situated in village Ferozpur Namak, Tehsil Nuh, was sold for a sale consideration of Rs.

11,70,000/- by one Mahmood s/o Inshe Khan in favour of Smt. Hanisha Khatoon w/o Mohammad Iqbal of the same village. If we calculate the value of per acre in terms of the above sale deed then it stands at Rs 72 Lakhs per acre. It is pertinent to mention here that the date of this sale deed is 05.10.2005 which is proximate to the date of Notification i.e., 18.10.2005 under Section 4 of the LA Act. In the present case, after having regard to the circumstances of the case and perusal of the sale deeds of adjoining area, we are of the considered view that the compensation granted at the rate of Rs. 72 lacs per acre is as per the law and no injustice has been occurred to the appellants herein.

17) Now coming to the point of development charges which applied by the High court @10% on the assessed value of acquired land. Appellants herein contended that the rate of deduction as applied by the High Court was not required as the acquired land is situated in the area already developed and have all the potential for development. It is a matter of record that the Reference Court determined 60% (55% as development charges and 5% for waiting period) in totality towards development charges which later on in appeal reduced by the High Court to 10%. Deductions may be made for a variety of reasons, which may differ in different cases. However, in the backdrop of judicial precedents on this issue, it is well settled position that all deductions should not cumulatively be exceeded the upper benchmark of 75% and at the same time, it should be kept in mind that no hypothetical view shall be taken in order to calculate the percentage of the development charges.

18) In the present case, the appellants contended that the acquired land has all basic facilities such as water, electricity, sewer, telephone etc which respondent-State has not disputed. These are, however, not enough to meet the purpose of acquisition. To make such land suitable for the acquisition purpose i.e. for the construction of Mini Secretariat at Nuh, some further development is sine qua non. For calculating the percentage of development charges, various factors need to be taken into consideration such as location of land, facilities available in nearby area, size of the land, purpose of acquisition etc. The present acquired land of Firozpur Namak village which is located at some distance from the Nuh Town needs to be developed in proper manner like construction of better and wide roads etc., to make it suitable for the acquisition purposes. The fact that facilities already available such as sewer, electricity etc., seems to be taken into consideration properly while reducing the development charges by the High Court from 60% to 10%.

19) In the case at hand, after giving our thoughtful consideration to the facts and circumstance noticed hereinabove, we are of the considered view that a cut at the rate of 10 % is very reasonable towards development of acquired land as some further development would obviously be required to make it fit for the purpose for which it was acquired.

20) In view of above discussion, we are not inclined to interfere with the impugned decision of the High Court. Accordingly, the appeals are hereby dismissed leaving parties to bear their own cost.

.....J. (R.K. AGRAWAL)J. (S. ABDUL
NAZEER) NEW DELHI;

APRIL 16, 2018.