

KASHMIR SINGH

v.

STATE OF HARYANA & ORS.
(Civil Appeal No. 11030 of 2013)

DECEMBER 13, 2013

[SURINDER SINGH NIJJAR AND A.K. SIKRI, JJ.]

Land Acquisition Act, 1894 – ss. 4, 18 & 23(1-A) – Acquisition for public purpose – Land acquired falling in the Revenue Estate of Tohana, Tehsil Tohana, District Fatehabad, Haryana – Compensation – Determination of – Held: The acquisition of land in Fatehabad District itself, which was acquired in the year 1993 was the subject matter of consideration in the Asharfi case – It is clear from the said judgment that price of land in the said area in 1991 was fixed @ Rs.420/- per square yard – Supreme Court had applied the formula of 12% increase per year in the valuation of land and on that basis fixed the market rate at approx. Rs.520/- per square yard and after taking a deduction of one-third, the valuation was arrived at Rs.350/- per square yard in the year 1993 – Going by the formula adopted in the said judgment, 12% per annum increase can be applied on the value of land determined as Rs.520/- per square yard in the year 1993, upto the year 2001 when Notification u/s.4 of the Act was issued in the instant case – However, from 1993 to 2001, there was attrition in the land rates – Therefore, on facts, land value enhanced by applying the formula of 12% per annum increase for a period of 4 years, instead of taking entire period 1993 and 2001 – When calculated in this manner, valuation of land in the year 2001 comes to Rs.770/- per square yard – After making one-third deduction therefrom, the net valuation comes to Rs.514/- per square yard – Compensation accordingly fixed @ Rs.514/- per square yard for the acquired land of appellants.

A Notification was issued under Section 4 of the Land Acquisition Act, 1894 in the year 2001. The land of the appellants was acquired by the Government of Haryana, which falls in the Revenue Estate of Tohana, Tehsil Tohana, District Fatehabad, Haryana. The Land Acquisition Collector (LAC) assessed the market value of the acquired land @ Rs.2,75,000/- per acre for chahi, Rs.1,75,000/- per acre for Tibba/Tall and Rs.3,25,000/- per acre for gair mumkin land. The Reference Court under Section 18 of the Act categorized the land into two categories, namely category-A and category-B and fixed the compensation of Rs.8,00,000/- per acre for category-A and Rs.6,50,000/- per acre for category-B. Under Section 23 (1-A) of the Act, the escalation was fixed at 12% per annum on the assessed compensation. Still dissatisfied and aspiring for further enhancement of the compensation, the appellants filed appeal before the High Court which was dismissed. Hence the present appeals.

Disposing of the appeals, the Court

E HELD: The acquisition of land in Fatehabad District itself, which was acquired in the year 1993 was the subject matter of consideration in the case of *Asharfi*. In that case, the court had dealt with various Notifications issued by different State Governments acquiring lands in their respective States. It included acquisition of lands situated in Fatehabad, District Hissar, Harayana as well. The Court fixed the compensation @ Rs.350 per square yard as on 1993. It is clear from the said judgment that price of land in the said area in 1991 was fixed @ Rs.420/- per square yard. The Court had applied the formula of 12% increase per year in the valuation of land and on that basis fixed the market rate at approximately Rs.520/- per square yard, and after taking a deduction of one-third, the valuation was arrived at Rs.350/- per square yard in the year 1993. Going by the formula adopted in the aforesaid judgment, 12% per annum increase can be applied on the

value of land determined as Rs.520/- per square yard in the year 1993, upto the year 2001 when the Notification under Section 4 of the Act was issued in the instant case. However, from 1993 to 2001, there was a period when instead of increase in the land price, there was attrition in the land rates. Therefore, this Court would like to enhance the value by applying the formula of 12% per annum increase for a period of 4 years, instead of taking entire period 1993 and 2001 (and this would not be treated as a precedent). When calculated in this manner, the valuation of the land in the year 2001 shall come to Rs.770/- per square yard. After making a deduction of one-third therefrom the net valuation comes to Rs.514/- per square yard. Compared to the land value of this very area in 1993 which was fixed at Rs.350/- per square yards, the same is increased by about 50% over a period of 7 years or so, which is quite reasonable as this much compensation is legitimately due to the appellants. Accordingly, the compensation is fixed @ Rs.514/- per square yard for the acquired land of the appellants. [Paras 9, 10, 11] [1087-B-E; 1089-A-B]

Asharfi & Ors. vs. State of Haryana 2013 (5) SCC 527 – held applicable.

Udho Das vs. State of Haryana 2010 (8) SCR 900 – referred to.

Case Law Reference :

2010 (8) SCR 900 cited Para 6

2013 (5) SCC 527 held applicable Para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11030 of 2013.

From the Judgment and Order dated 20.09.2010 of the High Court of Punjab and Haryana in RFA No. 2641 of 2006.

A WITH

C.A. Nos. 11031, 11032, 11033, 11034, 11035, 11036 and 11037 of 2013.

B A. K. Singla, Pankaj Gupta, Mridul Gupta for the Appellant.

Dr. Monika Gusain, Kamal Mohan Gupta, Pragati Neekhtra for the Respondents.

The judgment of the Court was delivered by

C **A.K.SIKRI, J.** 1. Leave granted.

2. In all these appeals, challenge is laid to the judgment of the High Court pronounced on 20th September 2010, whereby number of appeals filed for enhancement of compensation under the Land Acquisition Act, 1894 (hereinafter referred to as the 'LA Act') were dismissed by the High Court. The land of the appellants was acquired by the Government of Haryana, which falls in the Revenue Estate of Tohana, Tehsil Tohana, District Fatehabad, Haryana. The Land Acquisition Collector (LAC) had assessed the market value of the acquired land @ Rs.2,75,000/- per acre for chahi, Rs.1,75,000/- per acre for Tibba/Tall and Rs.3,25,000/- per acre for gair mumkin land. The appellants had filed objections to the said determination of compensation by the LAC and the matter was referred to the learned Additional District Judge, Fatehabad under Section 18 of the LA Act. The learned ADJ passed the award dated 21.2.2006. Vide this award, he categorized the land into two categories, namely category-A and category-B and fixed the compensation of Rs.8,00,000/- per acre for category-A and Rs.6,50,000/- per acre for category-B. Still dissatisfied and aspiring for further enhancement of the compensation, the appellants filed Regular First appeal from the aforesaid orders of the learned ADJ. However, these appeals have been dismissed holding that the compensation as fixed by the learned ADJ is appropriate and does not call for any further enhancement. Feeling aggrieved, present appeals have been

[A.K.SIKRI, J.]

filed. Since the land of all the appellants is situate in Revenue Estate of Tohana, District Fatehabad, Haryana and is acquired by the same Notification, facts pertaining to the said Notification apply to all these appellants. The only difference is in the quantum of land which was owned by these appellants and has been taken away by the State in acquisition. Therefore, taking general note of the particulars of acquisition and the nature of land, would serve the purpose.

3. Notification under Section 4 of the Land Acquisition Act, 1894 was issued on 11.1.2001. This was published in official gazette on 08.01.2002. The land is situate in revenue estate of Tohana, District Fatehabad, Haryana. The public purpose mentioned was the construction of godowns and rice mills at Tohana, for HAFED (Haryana State Co-operative Supply and Market Federation Ltd.). In pursuance to the Land Acquisition Collector's Award dated 19.9.2003, the acquired lands were taken possession on 17.12.2003. The Reference Court under Section 18 of the Act vide its award dated 21.2.2006 assessed the compensation @ Rs.8/- Lac per acre and Rs.6.50 Lac per acre by categorizing the acquired land in two categories, viz. Category-A and Category-B. Under Section 23 (1-A) of the Act, the escalation was fixed at 12% per annum on the assessed compensation. The other statutory benefits were also allowed thereby. The appeals filed by land owners before the High Court, seeking enhancement of compensation and the appeal filed by HAFED seeking reduction of compensation are decided by the High Court of Punjab and Haryana vide a common judgment dated 20.9.2010. Appeals of both the parties have been dismissed as noted above.

4. A perusal of the judgment of the High Court would reveal that though the appellants had produced on record certain sale deeds and other documents showing higher value of the land, the High Court chose to rely upon only one document, namely, Ex.P-15 which is a conveyance deed registered for sale by Haryana State Industrial Development Corporation (HSIDC) to the Central Warehousing Corporation (CWC). Vide this

A Conveyance Deed 34,475 square meters of land was sold by the HSIDC to CWC @ Rs.150/- per square meter. The allotment letter issued in this behalf was dated 4.9.2001 and from this the High Court inferred that process for sale must have been started much prior thereto. In the instant case, since the

B Notification under Section 4 of the LA Act is dated 11.1.2001, in the opinion of the High Court, it was the most approximate date to the aforesaid sale of land in favour of CWC. The High Court also found that the land sold to CWC is located at a link road whereas the land of the appellants which was acquired

C by the Government was located at a crossing of five roads and thus lands sold of HSIDC to CWC was better located. The High Court, thus, relied upon the said sale deed on the basis of which it has concluded that the assessment of compensation by the learned ADJ is most appropriate.

D 5. In an endeavour to find fault with the aforesaid approach of the High Court, Mr. Singla, the learned senior counsel appearing for the appellants submitted that the High Court committed an error in relying upon the said solitary document and in the process ignore other more relevant documents which

E had been produced by the appellants. He submitted that the acquired land is strategically located which the landowners have proved by producing on record the site plans, Ex.P-6 and Ex.P-28. The acquired land is located near the industrial area. There are many commercial establishments located near the acquired

F like viz. FCI godwon, CWC godown, HUDA Colony, Grain Market of Tohana, Mirch Mandi, Railway Station. The land is situated in the fast developing area of Tohana town and all the civil facilities are available there. The acquired land is situated on a State Highway close to industrial and residential area. The

G valuation of the land considering the same merely of agricultural kind is not fair as it had great future potential. Mr. Singla specifically referred to Ex.P-1 and Ex.P-4 which are the Government documents and as per these documents even the State agencies had been mentioning the value of acquired land

H @ Rs.7/- Lac per acre. He also referred to Ex.P-18 which shows the allotment of commercial plot of 100 square yards by

HUDA @ Rs.1193/- per square yard. His submission was that though these arguments and the aforesaid referred documents were specifically taken note of by the High Court but not dealt with and completely ignored. Mr. Singla also drew our attention to the following findings of the Reference Court regarding the nature of the land:

“.....After careful consideration of the case law relied upon by both the parties and after appreciating the evidence brought on record by both the parties, it is held that in view of the cogent and reliable oral as well as documentary evidence coupled with the admissions of RW1, it is clearly proved on the file that as far as the location and potentiality of industrial, commercial and industrial nature and it was not simply agricultural land as found by the learned Land Acquisition Collector while fixing the market rate and as such, the market rate granted by the Land Acquisition Collector was much less than the prevailing rate at that time.”

6. He further referred to the following observation from the judgment of this Court in *Udho Das vs. State of Haryana* 2010 (8) SCR 900:

“....Concededly, the Act also provides for the payment of the solatium, interest and an additional amount but we are of the opinion, and it is common knowledge, that even these payments do not keep pace with the astronomical rise in prices in many parts of India, and most certainly in North India, in the land price and cannot fully compensate for the acquisition of the land and the payment of the compensation in dribblets. The 12% per annum increase which courts have often found to be adequate in compensation matters hardly does justice to those land owners whose land have been acquired as judicial notice can be taken of the fact that the increase is not 10 or 12 or 15% per year but is often upto 100% a year for land

A which has the potential of being urbanized and commercialized such as in the present case.”

B 7. His last submission was that in any case, the matter had now been set at rest by recent judgment of this Court in *Asharfi & Ors. Vs. State of Haryana* 2013 (5) SCC 527 where similar submissions, which are made by the appellants herein, have been accepted by the court.

C 8. Learned counsel appearing for Haryana State Co-operative Supply and Market Federation Ltd. (HAFED), on the other hand, submitted that the High Court has taken into consideration all the relevant documents even including sale deed on which the appellants relied upon, but found that the only relevant document for the purpose of arriving at just compensation was Ex.P-15. He submitted that in preferring to make this document as the basis for compensation, the High Court has given cogent reasons and therefore judgment of the High Court cannot be faulted with. His submission was that the learned ADJ had suitably enhanced the compensation by increasing it quite substantially than what was granted by the D LAC. His further submission was that reliance on allotment letter dated 8.10.2002 (Ex.P-18) during the course of arguments, was totally misconceived as this was not even pleaded in the E memo of SLP filed or the memo of appeals filed before the High Court. In any case, the relevant date for determination of F market price of the land was 11.1.2001 when Notification under Section 4 of the LA Act was issued and relying upon two allotment letters were of subsequent dates which were issued more than 17 months after the date of issuance of Section 4 Notification. Therefore, relying upon these documents was G totally misplaced. Referring to the question of law framed in the SLP, he further submitted that the earlier arguments advanced were neither raised in the SLP nor argued before the courts below and therefore the appellants cannot be allowed to take fresh plea for the first time in this Court. It was also his

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submission that the judgment relied upon by the appellants had no application to the facts of the present case.

9. We are of the view that the matter does not require elaborate discussion inasmuch as the acquisition of land in Fatehabad District itself, which was acquired in the year 1993 was the subject matter of consideration in the case of Asharfi (supra). In that case, the court had dealt with various Notifications issued by different State Governments acquiring lands in their respective States. It included acquisition of lands situated in Fatehabad, District Hissar, Harayana as well. The Court fixed the compensation @ Rs.3.50 per square yard as on 1993 and the following discussion ensued in this behalf in Para 15 of the judgment.

10. It is clear from the above that price of land in the said area in 1991 was fixed @ Rs.420/- per square yard. The Court had applied the formula of 12% per year in the valuation of land and on that basis fixed the market rate at approximately Rs.520/- per square yard after taking a deduction of one-third, the valuation was arrived at Rs.350/- per square yard in the year 1993. The relevant portion of the judgment, in this behalf reads as under:

In regard to the 157.20 acres of land situated in Fatehabad, District Hisar, Haryana, acquired for utilisation and development of residential and commercial purposes in Sector 3, Fatehabad, the compensation in respect thereof has been questioned in Civil Appeals Nos. 319-52 of 2011 by one Mukesh and a number of appeals have been tagged with the said matter, including the one filed by the Haryana Urban Development Authority, being SLPs (C) Nos. 26772-79 of 2009 (now appeals). As indicated hereinbefore, in para 25, the Collector had awarded compensation at a uniform rate of Rs 1,81,200/- per acre along with statutory benefits. The Reference Court determined the compensation at the uniform rate of Rs 206 per square yard. The High Court modified the said

A award and awarded compensation at the rate of Rs 260
 per square yard for the land acquired up to the depth of
 100 meters abutting National Highway No. 10. The value
 of the rest of the acquired land was maintained at Rs 206
 B per square yard. The area in question being already
 developed to some extent, a cut of 50% on the value is, in
 our view, excessive. We agree with Mr. Swarup that
 resorting to the belting system by the High Court was
 improper and that at best a standard cut of one-third would
 C have been sufficient to balance the smallness of the
 exhibits produced. It has been pointed out by Mr. Swarup
 that on a comparative basis, the price of lands in the area
 in 1991 was on an average of about Rs 420 per square
 yard. Given the sharp rise in land prices, the value,
 according to Mr. Swarup, would have doubled to about Rs
 D 800 per square yard by 1993. Even if we have to apply
 the formula of 12% increase, the valuation of the lands in
 question in 1993 would be approximately Rs 527 per
 square yard. Imposing a deduction of one-third, valuation
 comes to about Rs 350 per square yard, which, in our view,
 E would be the proper compensation for the lands covered
 in the case of Mukesh and other connected matters.”

11. Going by the formula adopted in the aforesaid
 judgment, 12% per annum increase can be applied on the value
 of land determined as Rs.520/- per square yard in the year
 F 1993, upto the year 2001 when the Notification under Section
 4 of the Act was issued in the instant case. However, we cannot
 be oblivious to the fact that from 1993 to 2001, there was a
 period when instead of increase in the land price, there was
 attrition in the land rates. Therefore, we would like to enhance
 G the value by applying the formula of 12% per annum increase
 for a period of 4 years, instead of taking entire period 1993
 and 2001 (and this would not be treated as a precedent). When
 calculated in this manner, the valuation of the land in the year
 2001 shall come to Rs.770/- per square yard. After making a
 H deduction of one-third therefrom the net valuation comes to

Rs.514/- per square yard. Compared to the land value of this very area in 1993 which was fixed at Rs.350/- per square yards, we have increased the same by about 50% over a period of 7 years or so, which we think, is quite reasonable as this much compensation is legitimately due to the appellants. We, accordingly, fix the compensation @ Rs.514/- per square yard for the acquired land of the appellants.

12. The appeals are allowed to the aforesaid extent.

Bibhuti Bhushan Bose

Appeals disposed of.