

4

I.L.R. PUNJAB AND HARYANA

2015(1)

(supra) the Hon'ble Supreme Court has, as a point of principal laid down that over payment paid to employees cannot be retained by them.

(6) In my considered opinion the arguments of both learned counsels are too extreme. In any case in view of the decision of the Hon'ble Supreme Court in *Chandi Prasad Uniyal* (supra) the recovery of amount cannot be ordered to be made and consequently the same is set aside. The respondents are directed to release the gratuity amount of ₹3,50,000/- to the petitioner within a period of one month from today failing which the petitioner will be entitled to recover the amount with interest at the rate of 8 % p.a. from the date of retirement till the date of payment.

(7) With respect to the refixation , in my view it would be in the interest of justice if the petitioner files a representation to respondent No. 3 within a period of one month from today putting forth his point of view and the reasons why, in his opinion, the pay could not be refixed. The respondent No. 3 is directed to consider the same and pass a speaking order thereon within a period of three months. Thereafter, and, in case the petitioner is found entitled to any relief, the same be released to him within a further period of three months.

(8) Petition disposed of.

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**S. Gupta**

**Before K. Kannan, J.**

**ANTU SON OF SEHZADA SON OF DIWANA AND  
OTHERS—Appellants**

*versus*

**STATE OF HARYANA THROUGH THE LAND  
ACQUISITION COLLECTOR, KAITHAL AND  
ANOTHER—Respondents**

**RFA No. 2973 of 1994**

December 17, 2012

***Land Acquisition Act, 1894 - Ss. 4, 6 and 18 - Enhancement -  
Basis - Comparable sale deeds - Claimants sought enhancement of***

ANTU AND OTHERS v. STATE OF  
HARYANA AND ANOTHER (K. Kannan, J.)

5

***compensation alleging that sale deeds produced by land owners were not considered for purpose of assessment of fair value - Held, that awards were to be modified on basis of comparable sale deeds available four years back with suitable escalation and deduction adjustments for present village property having huge holding and, thus, value was to be enhanced from ₹38,000 per acre to ₹1,20,000 per acre - State shall assist the Court for an objective assessment - Guidelines laid down and ordered to be circulated to all civil Courts dealing with land acquisition compensation cases for applying the principles.***

*Held*, that the best price that the appellants have been able to show through the transaction is for 2 kanals 3 marlas at ₹1,19,069. Since prices vary prodigiously and there was no unusually spiked valuation. This sale was for the year 1979 and if there should be an escalation of price for another 4 years since the concerned notification in appellant's case was dated 18.11.1983, there has to be also a deduction applied for the fact that the transactions were for small extent of properties of 1 or 2 kanals. Since the property is situated in a village, an average rate of escalation should be taken at 7.5% and for 4 years the property valuation would have escalated by 30%. The fact that the acquisition of property was for an extent of 138 kanals which is equivalent to about 18 acres. What should obtain as percentage of enhancement viz. at 30% would be subjected to deduction at 30% in this case, because relatively smaller extent of property is taken as exemplar for a larger extent of land that is acquired. They even themselves out and a price closer to the highest value at ₹1,20,000/- per acre is adopted as an appropriate determination for the property acquired.

The value of the property as assessed by the reference Court would stand modified and enhanced from ₹38,000/- per acre to ₹1,20,000/- per acre. The additional amount brought through these awards will also attract all the statutory benefits provided under the Land Acquisition Act.

(Paras 6 and 7)

*Further held*, that the State is not an adversary in the conventional sense and shall assist the Court to appraise the Collector's valuation to make for an objective assessment:

- (a) It shall produce a rough sketch, even if the landowner does not, locating the properties which are covered through the sale instances relied on by the State as well as the sale instances relied on by the landowners;
- (b) If not located in the sketch, the similarity or otherwise of the sale instances to the property acquire that could serve as exemplars or not shall be explained;
- (c) The circle rate or Collector's rate for the property acquired at the relevant date of acquisitions shall be furnished.

(Para 8)

A.P.S. Sandhu, Advocate, *for the appellants.*

D.D. Gupta, Addl. AG and Kunal Garg, AAG, Haryana, for the respondents.

**K. KANNAN, J. (Oral)**

(1) All the appeals are for enhancement of compensation for the properties acquired. The issue is simple and the calculations are just as well not complicated. This genre of litigation constitutes the biggest influx to the Court, more than even accident claims, with no matching results of disposal. We need a strategy for quicker disposal with optimum details graphically brought out not only for easier compensation but also for more accurate results that could bring a higher quotient of litigant satisfaction. I would suggest a judicial approach for the lower Courts to follow so that a greater output is achieved. It shall be the endeavour of the Court to detail the date of notification issued under Section 4, the total extent of property acquired, the purpose of acquisition and the assessment made by the Collector. If there are also additional details such as the location of the property as conducting for higher assessment, the same should be set forth. The special features of the property like existence of trees or structures are also to be given. This shall constitute the preamble of the judgment.

(2) While dealing with the several documents cited, it has been the experience that parties rely on sale instances prior to notification as

ANTU AND OTHERS v. STATE OF  
HARYANA AND ANOTHER (*K. Kannan, J.*)

7

well as after notification. It shall be appropriate that the Court tabulates the necessary details of sales with reference to the exhibit numbers, the dates, the extent, the consideration, the value per acre and the information of whether the sale instances are located in any rough sketch filed by any of the parties. The determination of valuation already made through awards passed by a reference Court or in a higher forum are also cited as exemplars and the Court shall set down the details with reference to the date of notification, the extent and the village where the property is situated and the compensation awarded by the Court to the extent to which they are relevant for consideration at the time when the Court determines compensation. This makes way for a quicker comprehension for a litigant to know how the valuation is assessed and if such an award is challenged in a higher forum, for the higher Court to come to grips with the facts without much ado. It could bring to pellucidity its approach to the factual details brought through documentary and oral evidence. I would suggest the following as a kind of template for the trial Court to adopt and I incorporate the details that pertains to this case:

**I. DETAILS OF AWARD**

<b>Date of notification u/s 4</b>	<b>18.11.1983</b>
Village	Dhand (District Kaithal)
Total extent acquired	138 Kanal/ Khasra No.87 and 112
Purpose of acquisition	For establishing a Grain Market
Collector's award	Dated: 23.03.1995 @ ₹ 38,000/- per acre
Reference Court	Ld. ADJ, Kaithal Dated: 17.09.1994 @ ₹ 40,000/- per acre

**II. SALE INSTANCES**

Ex. No.	Date	Extent	Consideration	Value Per Acre/ Sq. Yd/ Sq. ft/ Sq. Mtr.
1	2	3	4	5 (per acre)
Ex.P7	06/12/78	3K-1M	₹ 15000/-	₹ 40000/-
Ex.P8		1K-18M	₹ 10000/-	₹ 40000/-
Ex.P9		7½ M	₹ 3000/-	₹ 60000/-
Ex.P10	30/03/79	2K	₹ 15000/-	₹ 60000/-
Ex.P11	11/06/79	2K-3M	₹ 32000/-	₹ 119069/-

**Post notification**

Ex.P12	06/1984	1K-2M	₹ 13949/-	₹ 104000/-
Ex.P13	06/1984	1K-7M	₹ 17000/-	₹ 130000/-
Ex.P14	08/06/84	1K	₹ 12500/-	₹ 100000/-
Ex.P15	18/05/84	6M	₹ 24000/-	₹ 250000/-

**Previous award**

Ex. No.	Award of District Court/ High Court	Village	Notification u/s 4	Award Compensation per acre
Ex.R1	District Court	Kaul (357 Kanals)	06/10/83	₹ 38000/-

(3) While tabulating the sale instances with particulars, the following factors are kept in mind, which incidentally are relevant in the instant case as well:

- (i) Sale instances shall be preferably within 4-5 years from the date of notifications. Rate of escalations could be 10-15% per year for urban properties and half the said rate for rural properties. [*ONGC Ltd. v. Rameshbhai Jivanbhai Patel*(1)]

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(1) (2008) 4 SCC 745

ANTU AND OTHERS v. STATE OF  
HARYANA AND ANOTHER (*K. Kannan, J.*)

9

- (ii) In case of several exemplars principle of averaging shall be adopted only if prices range in a narrow bandwidth [*Anjani Molu Dessai v. State of Goa and another*(2)]
- (iii) Court shall not keep out of reckoning sale values, merely because they are less than Collector's valuation [*Lal Chand v. Union of India*(3)]
- (iv) If averaging cannot be adopted, the highest value can be adopted [*Mehrawal Khewaji Trust v. State of Punjab*(4)]
- (v) Small instances pertaining to small plots of land could be relied on even for acquisition of larger extents of land, if suitable instances of comparable sales as regards of large extents and equal quality are not available. But suitable deductions could be applied, depending on need for development, character of land, locational advantage, etc. [*Prabhakar Raghunath Patil v. State of Maharashtra*(5). It could range between 10% to 67% or for special reasons, upto 75%.]

### III. THE LOCATION OF THE PROPERTY:

In order to assimilate the data, it is essential to examine the special features that pertain to the particular case at hand.

Ex.P1 is a site plan prepared that gives the details of acquired land. It is seen to be running South-East of metalled roads from village Dhand on the West to village Kaul on the East; immediately North of the road is the agricultural land of the University and along the road towards East are the Stadium of the University and Research Center, Punjab National Bank, College building and Gram Panchayat Bhawan. Alongside the acquired land towards the East are the agricultural land belonging to Janta High School, Mini Bank, Vetrernity Hospital, Government High School etc. The property acquired are comprised in a portion of khasra

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(2) (2010) 13 SCC 710

(3) (2009) 15 SCC 769

(4) (2012) 5 SCC 432

(5) (2010) 13 SCC 107

Nos.87 and 112. The field sketch relating to properties situated near the acquired land is brought through Ex.P5. The sketch shows the properties in khasra No.125 are near Janta College. It cannot, therefore, be denied that the property had potential for sales for non-agricultural purpose although the acquired lands are agricultural lands. The consideration of the value could, therefore, take note of the potentiality of the land as not merely agricultural land but the property acquired as fit for non-agricultural purposes.

(4) Amongst the sale instances, which have been elicited in the tabulation above, it could be noticed that the sales have been relatively in respect of small parcels of land, all of which are less than quarter of 1 acre. The sale price for the years 1978-79 are in the range of ₹40,000/- to ₹1,19,069/- per acre. There are also post notification sales of the year 1984 that have dealt with the property to an extent of about 6 marla to 1 kanal 7 marla in the range of ₹2,50,000/- to ₹1,30,000/-. The post notification sales are generally not to be preferred when there are sales prior to the notification itself and I would take them only as reference points representing the higher end of valuation beyond which valuation shall not be fixed. I will discard them as exemplars and take a focus only on the value of the property as given in Ex.P7 to Ex.P11 as relevant.

(5) Ex.R1 is the only document on the basis of which the reference Court itself has proceeded to fix the valuation and, therefore, it becomes relevant also to consider the same. Ex.R1 is a judgment of the district Court for acquisition of property to an extent of 357 kanals through a notification issued under Section 4 dated 06.10.1983. The judgment has relied on an earlier determination made in contemporaneous acquisition for the land in the adjoining village at Kaul. On reading through the judgment, it is evident that the Court had relied on an earlier judgment of the High Court which was in relation of a property acquired in the year 1981 at ₹38,000/- per acre. The judgment in Ex.R1 itself refers to the fact that the judgment of the High Court, which it was relying on, was itself subject to an appeal before a Division Bench and the case was pending. At least to this extent, it cannot be taken that the Court was justified in relying on merely Ex.R1 when the particular judgment on the basis of which the district Court was delivering a judgment under Ex.R1 was not on a final adjudication rendered by the High Court. Since there

ANTU AND OTHERS v. STATE OF  
HARYANA AND ANOTHER (*K. Kannan, J.*)

11

are documents brought specifically from the same village in respect of transactions before Section 4 notice, I would find that Ex.P7 to Ex.P11 would afford better guidance for valuation of property than Ex.R1.

(6) The best price that the appellants have been able to show through the transaction is under Ex.P11 for 2 kanals 3 marlas at ₹1,19,069/-. I have not adopted averaging, since prices vary prodigiously and Ex.P11 does not appear to be an unusually spiked valuation. This sale was for the year 1979 and if there should be an escalation of price for another 4 years since the notification which we are concerned was dated 18.11.1983, there has to be also a deduction applied for the fact that the transactions were for small extent of properties of 1 or 2 kanals as the tabulation would show. Since the property is situated in a village, I would take note of an average rate of escalation at 7.5% and for 4 years the property valuation would have escalated by 30%. I would take note of the fact that the acquisition of property was for an extent of 138 kanals which is equivalent about 18 acres. What should obtain as percentage of enhancement viz. at 30% would be subjected to deduction at 30% in this case, because relatively smaller extent of property is taken as exemplar for a larger extent of land that is acquired. They even themselves out and a price closer to the highest value at ₹1,20,000/- per acre is adopted as an appropriate determination for the property acquired.

(7) The value of the property as assessed by the reference Court would stand modified and enhanced from ₹38,000/- per acre to ₹1,20,000/- per acre. The additional amount brought through these awards will also attract all the statutory benefits provided under the Land Acquisition Act.

(8) Before parting, I would also suggest what the State, which defends actions for enhancement, shall do. The State is not an adversary in the conventional sense and shall assist the Court to appraise the Collector's valuation to make for an objective assessment:

- (a) It shall produce a rough sketch, even if the landowner does not, locating the properties which are covered through the sale instances relied on by the State as well as the sale instances relied on by the landowners;



- (b) If not located in the sketch, the similarity or otherwise of the sale instances to the property acquired that could serve as exemplars or not shall be explained;
- (c) The circle rate or Collector's rate for the property acquired at the relevant date of acquisitions shall be furnished.

(9) It is most desirable that circle rates themselves are fixed after public consultations and by involving several of stakeholders, including colonizers in a transparent manner, citing in the proceedings the basis for fixation of circle rates such as the data relating to sale instances that reflect the market trends. This shall move towards a degree of certitude which in course of times could be basis for determination of values of acquired lands. This way, the mismatch between the landowners' expectations of higher price and the Collector's valuation will be narrowed and pave way for greater satisfaction of all parties concerned. The highest influx of cases in the High Court is only in the area of land acquisition cases, since the level of litigation satisfaction is very low and chances of modification of the awards in appeals are perceived as bright, which are themselves the incentives to prefer appeals. As a matter of information, as on 1<sup>st</sup> January 2012, there were 28,399 appeals for compensation in land acquisition cases on the file of this High Court. Between 1<sup>st</sup> January 2012 to 30<sup>th</sup> November 2012, 6487 cases (i.e. more than 500 per month) were instituted. The number of cases disposed of were 5605 and as on 30<sup>th</sup> November 2012, there were 29,274 cases pending, if more cases than how we opined the year. The most unsavoury spectacle that this statistics does not reveal is that nearly half the number of cases are pending for more than 10 years. Certain classes of litigation which involve merely mechanical (and less cerebral) activities of addition, multiplication, division and straight forward application of judicial principles must give place to more serious issues that place more exacting standards of judicial reasoning and interpretative forensic skills that cry for judicial adjudication in appeals. It is through innovative judicial approaches with the active cooperation of the bar that the objective of quick disposals could be achieved. In Countries that have seen less pendency, the mantra is not creating barriers to institution of new cases. Such an attempt is contrary to the constitutional scheme for maximizing access to justice; the technique is to secure greater

KRISHNA v. KANTA AND OTHERS  
(K. Kannan, J.)

13

participation of the bar in the adjudicatory process itself by meaningful assistance to the bench in a participative, collaborative way. This is more relevant in cases that deal with compensation claims, be they land acquisition cases by compulsory deprivation of property or injury/death cases by accidental deprivation of limbs or injuries to the body.

(10) The awards stand modified and the appeals are allowed to the above extent, as set out in para 6 above.

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**A. Jain**

**Before K. Kannan, J.**

**SMT. KRISHNA WIFE OF SHRI RAM KUMAR—Petitioner**

*versus*

**SMT. KANTA WIDOW OF ANAND SARUP  
AND OTHERS—Respondents**

**CR No. 3029 of 2012**

September 4, 2013

***Code of Civil Procedure, 1908 - O. 39, Rls. 1 and 2 - Temporary injunction - Status quo - Ex-parte interim injunction was granted by passing status quo order - Held, that it is inappropriate for a judge to pass an order of status quo without stating what the status quo is - Status quo is a manner of preserving the property, if prima facie case seeking for injunction is established - However, in ordering police protection, Court recorded that plaintiff-sub-lessee was in possession of suit land under the lessee and, hence, possession was required to be protected - Although reasoning was unsatisfactory but on over all consideration of all facts Court had come to the correct conclusion - Ultimate decision of Court was to be maintained.***

*Held*, that it is grossly inappropriate for a Judge to pass an order of *status quo* without stating what the *status quo* is. In a preventive relief of injunction, as opposed to the mandatory relief, the courts are guided by 4 factors: (I) the party's *prima facie* case, who seeks for injunction; (ii) balance of convenience in his favour; (ii) irreparable loss and hardship, if injunction is not be granted; and (iv) preservation of *status*