IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.1501 of 2003 and other connected matters
Date of decision: 11.01.2016

Sukhdev Singh and others

... Appellants

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. H.S. Dhandi, Advocate
for the appellant (s) (in RFA Nos.1501 & 1502 of 2003).

Mr. Rakesh Gupta, Advocate
for the appellant (s) (in RFA No.1138 of 2003) and
for cross-objectors (in RFA Nos.4430 & 4431 of 2003).

Mr. Amit Chaudhary, Addl. AG, Punjab
for the appellant (s) (in RFA Nos.4427 to 4431 & 2481 of 2003) and
for the respondent (s) (in RFA Nos.1501, 1502 & 1138 of 2003).

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1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

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RAMESHWAR SINGH MALIK, J. (ORAL)

These nine Regular First Appeals bearing RFA Nos.1501, 1502, 4427 to 4431, 1138 & 2481 of 2003 filed by the State of Punjab and the land owners as well as two cross-objections bearing XOBJ Nos.7-CI of 2007 in RFA No.4430 of 2003 and XOBJ No.8-CI of 2007 in RFA No.4431 of 2003 filed by the land owners in the appeals filed by the State, are being decided together vide this common order, because all the cases are arising out of the same acquisition, raising identical questions of law and facts. However, for the facility of reference, facts are being culled out from RFA No.1501 of 2003 (Sukhdev Singh and others Vs. State of Punjab).

Brief facts of the case necessary for disposal of this batch of appeals are that the State of Punjab sought to acquire 1.79 acres of land from the revenue estates of two villages. 1.55 acres of land was acquired from Village Jhill and 0.24 acres from Village Alipur Arian at public expense, for the public purpose; namely construction of Northern Bye-pass Patiala. Owing to the urgency, State of Punjab invoked the emergency provisions under Section 17 of the Land Acquisition Act, 1894 ('the Act' for short) and issued the notification under Sections 4 & 6 of the Act on 05.08.1993. Possession was taken on 24.12.1993. However, award No.1 of 1996-97 came to be announced by the Land Acquisition Collector as late as on 09.04.1997 and that too, after issuing the direction by this Court in CWP No.123 of 1997 (Mohinder Singh Vs. State of Punjab and others). Collector awarded the compensation at the rate of Rs.150/- per square yard qua the land of Village Jhill and Rs.100/- per square yard for the land of Village Alipur Arian.

Dissatisfied, land owners sought as many as six land references, which were forwarded to the learned reference Court. Five land references were decided together vide common award dated 31.08.2002 by the learned reference Court. However, one land reference bearing LAC No.29 of 2001 was decided at a later point of time on 25.11.2002 by the same reference Court. Learned reference Court granted the compensation at flat rate to the land owners for both the villages at Rs.400/- per square yard, vide abovesaid two separate but identical awards dated 31.08.2002 and 25.11.2002.

Feeling aggrieved, State of Punjab has filed six RFAs. Land owners filed three RFAs and in two cases, they have filed the cross-objections in the appeals filed by the State of Punjab. State of Punjab has sought reduction in the compensation granted by the learned reference Court, whereas the land owners are seeking enhancement thereof.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the totality of facts and circumstances of the case, appeals filed by the State of Punjab have been found bereft of any merit and the same are liable to be dismissed, whereas the appeals and cross-objections filed by the land owners deserve to be partly allowed, for the following more than one reasons.

It is a matter of record that in all these cases, the land was acquired from khasra No.26/24/1 (min). It is pertinent to note here that all these appeals are pertaining to Village Jhill, as no appeal has been filed by the land owners of Village Alipur Arian, as stated by learned counsel for the parties. It is also not in dispute that the land measuring 02 marlas sold vide sale deed dated 09.07.1990 Ex.A19 at the rate of Rs.500 per square yard was also acquired. Learned counsel for the land owners have been found justified in contending that all the three sale deeds in the form of Ex.R-1, Ex.R-2 and Ex.R-3 produced on record by the State of Punjab, whereby land measuring 07 marlas each in sale deed Ex.R-1 and Ex.R-2 and three and half marlas in sale deed Ex.R-3 was sold at the rate of Rs.80/- and

100/- per square yard, are liable to be ignored for the reason that even the Land Acquisition Collector himself has ignored these sale deeds, granting the compensation at higher rate than depicted in these sale deeds. Having been confronted with this factual aspect of the matter, learned counsel for the State had no answer and rightly so, it being a matter of record.

Since the learned reference Court has failed to assign any reason as to why the sale deed Ex.A19 was not taken into consideration, as the best piece of evidence in these cases, because the land sold by way of said sale deed had also been acquired, the impugned award passed by the learned reference Court cannot be sustained. A bare perusal of the impugned award passed by the learned reference Court would show that no reason much less cogent reasons have been assigned by the learned reference Court, while ignoring this material aspect of the matter. It is so said because once the land sold vide sale deed Ex.A19 had also been acquired, that would be the best piece of evidence, so as to assess the market value on the date of its acquisition.

In case the other sale deeds produced by the land owners in the form of Ex.A8 to A16 are taken into consideration as all the sale deeds were pertaining to small pieces of land, the average thereof would come not less than Rs.900/- per square yard. Having said that, this Court feels no hesitation to conclude that in the given fact situation obtaining in the present cases, sale deed Ex.A19 was the best piece of evidence available on record which ought to have been made the basis for assessing the market value.

It is also pertinent to note here that land of each land owner was acquired only in marlas except in one case, whereby acquired land of Sukhdev

Singh was measuring 01 kanal, 06 marlas. Further, since the land was acquired for one and the same purpose i.e. for construction of Northern Bye-pass, Patiala, the learned reference Court was justified, while ignoring the belting system, granting uniform rate for total land acquired from both the villages. Keeping in view the location of the acquired land and other positive determinative factors thereof, including the fact that the acquired land was surrounded by residential, industrial and commercial sites, the land owners were entitled for more compensation.

Site plan Ex.A18 available at page 121 of the lower Court record would show that the acquired land was abutting Sirhind-Patiala Road. On both sides of the acquired land, there were rice mills and residential colonies. Across the road, there was another residential colony known as Aman Bagh Colony and industrial estate was adjoining thereto. In front of the industrial estate, there was another residential colony known as Ghumman Nagar. Thus, it is clearly established on record that the land was commercial in nature and the industrial unit of Sukhdev Singh and others in the name of M/s Rapal Fabricators was already running on this very acquired land.

In such a situation, it would be quite safe to make the sale deed Ex.A19 to be the basis for assessing the market value of the acquired land. Since the land sold vide sale deed dated 19.07.1990 Ex.A19 was sold at the rate of Rs.500/- per square yard, this Court has found no reason nor any has been suggested by learned counsel for the State, to apply any cut on the price of this sale deed, for the reason that land sold vide this sale deed Ex.A19 was also acquired. Since the commercial nature of the land has gone unrebutted on record, as admitted by PW6 Gurmukh Singh, Halqa Patwari that the acquired land was having commercial potentiality, the land owners have been found entitled for annual increase at 15% of Rs.500/- per square yard, as per sale deed Ex.A19, for the time gap. The view taken by this Court in this regard also finds support from judgment of the Hon'ble Supreme Court in **General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and another, 2008 (4) SCC 745.**

It is also not in dispute that there was a time gap of more than three years between the sale deed Ex.A19 and the date of notification under Section 4 of the Act. Sale deed Ex.A19 was dated 09.07.1990, whereas the notification under Sections 4 & 6 of the Act came to be issued on 05.08.1993 i.e. exactly after three years and one month. Thus, at 15% annual increase, the land owners would be entitled for at least 46% increase, which would come to Rs.730/- per square yard, from the date of notification under Section 4 of the Act.

So far as the site plan Ex.A18 available at page 121 of the lower Court record is concerned, the same was duly proved by PW8 Birbal Dass, Draftsman, whose statement is available at page 22 of the lower Court record. He was the approved Draftsman of the office of Municipal Corporation, Patiala. PW6 Gurmukh Singh, Halqa Patwari deposed about the location and commercial nature of the acquired land. In fact, not only the pleadings of the land owners but their evidence has also gone unrebutted on all the material aspects of the matter.

Coming to the compensation granted on account of trees standing on the acquired land of Sukhdev Singh and others in RFA No.1501 of 2003, the learned reference Court has been found to have misdirected itself, while not considering the official record produced before it by the State of Punjab, qua the number of trees as well as value thereof. Firstly coming to the specific averments taken by the land owners in their petition under Section 18 of the Act, a bare reading of para 8 (iii) at page 68 of the lower Court record and reply thereto filed by the State of Punjab at page 77 of the lower Court record would show that the categoric averments taken by the land owners have been denied just for want of knowledge, which would amount to no denial.

Not even a single penny towards compensation has been awarded for 21 undisputed guava trees. The relevant revenue documents available at page 204 of the lower Court record would show that 174 eucalyptus trees were standing on the acquired land owned by Sukhdev Singh and others. 21 fruit bearing guava trees were there. Besides this, 02 kikkar trees, one dhek tree and one mulberry tree were also standing on the acquired land. There could have been no better evidence than the official document available on record, coupled with the fact that specific averments taken by the land owners have gone unrebutted.

AW1 Sarwan Singh who was retired District Forest Officer, has duly proved his report Ex.A6 which is available at page 105 of the lower Court record. He was an expert and was put to cross-examination as well, however, nothing adverse could be elucidated from him which might go in favour of the State of Punjab. AW1 Sarwan Singh, in his report Ex.A6, has assessed the market value of the trees, minus 21 guava trees, at the rate of Rs.1,12,000/-. Since he was not horticulture expert, he did not assess market value of any fruit bearing tree.

However, the learned reference Court granted an amount of Rs.1,00,000/- for all the trees owned by the land owners in this appeal and that too, without recording any reason as to why the amount of Rs.1,12,000/- was not being granted, particularly when there was no contrary evidence produced by the State of Punjab. Thus, the land owners are held entitled to receive an amount of R.1,12,000/- for 174 eucalyptus trees, 02 kikkar trees, 01 dhek tree and one mulberry tree, as this piece of evidence in the form of Ex.A6 has gone unrebutted on record.

So far as 21 fruit bearing trees of guava were concerned, land owners have claimed Rs.700/- per tree in their pleadings which has also gone undisputed on behalf of the State of Punjab. Since the acquired land was situated just on the outskirts of Patiala city and it was also abutting Sirhind-Patiala Road, the land owners would have good income from these fruit bearing trees. In the absence of any evidence in this regard, this Court is left with no other option except to adopt the method of guess work. While doing so, this Court is of the view that it would be just and expedient to grant Rs.500/- per guava tree to the land owners, because granting any less amount would be a mockery with the land owners. Since the fruit bearing guava trees were 21 in number which would be multiplied by Rs.500/-, the total amount for fruit bearing guava trees would come to Rs.10,500/- and the land owners would be entitled to receive this amount of compensation for 21 guava trees.

Coming to superstructure in the form of industrial building on the acquired land owned by Sukhdev Singh and others, wherefrom the industrial unit of M/s Rapal Fabricators was running, land owners have claimed as per para 8 (i) of their petition under Section 18 of the Act Rs.11,00,000/- on account of loss of business and superstructure. There is another relevant document available on record in the form of Ex.A23 at page 131 of the lower Court record, whereby the value of the existing building has been shown as Rs.1,00,990/-. The annual profit which was being earned by the land owners from this industrial unit, as per this project report Ex.A23 was Rs.55,000/- approx.

Thus, let the superstructure and loss of business be put in two different categories. Taking a pragmatic and holistic view of the peculiar fact situation obtaining in the present case, this Court is of the considered view that it would be just and reasonable to apply 25% cut on account of depreciation on the value of the building and thereafter, the land owners would be entitled for an amount of Rs.77,000/- for their superstructure which was existing on the acquired land.

So far as the loss of business was concerned, there is no denying the fact that due to this compulsory acquisition, the land owners were displaced and they were left with no other option except to shut down their business from the acquired land. It is also not in dispute that the land owners were having a running industrial unit which was acquired. Although the land owners have claimed Rs.11,00,000/- on account of loss of business and superstructure, yet striking a balance and with a view to do complete and substantial justice between the parties, this Court is of the view that granting an amount of Rs.6,00,000/- (six lacs) would be just and reasonable amount of compensation under Section 23 (1) (fifthly) of the Act. Ordered accordingly.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the appeals filed by the State of Punjab, having been found bereft of merit and without any substance, must fail and the same are hereby dismissed. Appeals filed by the land owners as well as their cross-objections deserve to be allowed and the same are hereby allowed.

Consequently, the land owners/cross-objectors are held entitled to receive the amount of compensation, under different heads, as indicated above, for their acquired land and other properties, including trees, superstructure, loss of business etc. from the date of notification under Section 4 of the Act. Besides this, the land owners/cross-objectors would also be entitled for all other statutory benefits available to them under the relevant provisions of the Act.

Resultantly, with the observations made above, all the nine appeals and two cross-objections stand disposed of, in the abovesaid terms, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
11.01.2016 **JUDGE**
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