

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 05.01.2016

1. RFA No.817 of 1995

State of Punjab and others

... Appellants

Vs.

Sushil Kumar

... Respondent

2. RFA No.818 of 1995

State of Punjab and others

... Appellants

Vs.

Anil Kumar

... Respondent

3. RFA No.819 of 1995

State of Punjab and others

... Appellants

Vs.

Bhanwar Lal

... Respondent

4. RFA No.347 of 1996

Sushil Kumar

... Appellant

Vs.

Land Acquisition Officer and others

... Respondents

5. RFA No.348 of 1996

Anil Kumar

... Appellant

Vs.

Land Acquisition Officer and others

... Respondents

6. RFA No.349 of 1996

Bhanwar Lal

... Appellant

Vs.

Land Acquisition Officer and others

... Respondents

7. RFA No.951 of 1997

Surjit Kumar

... Appellant

Vs.

Land Acquisition Officer and others

... Respondents

8. RFA No.1091 of 1997

Shashi Kala

... Appellant

Vs.

Land Acquisition Officer and others

... Respondents

9. RFA No.2257 of 1997

Sunil Kumar and another

... Appellants

Vs.

Land Acquisition Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. C.M. Munjal, Advocate
for the appellant(s) (in RFA Nos.347 to 349 of 1996 &
RFA Nos.951, 1091 & 2257 of 1997) and
for the respondents (in RFA Nos.817 to 819 of 1995).

Mr. Yatinder Sharma, Addl. AG, Punjab for appellant
in RFA Nos.817, 818 & 819 of 1995.

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

RAMESHWAR SINGH MALIK, J.

These nine Regular First Appeals bearing Nos.817, 818 and 819 of 1995 filed by the State of Punjab, RFA Nos.347, 348 and 349 of 1996 filed by land owners and another set of RFA Nos.951, 1091 and 2257 of 1997 filed by land owners, are being decided together vide this common order, as all the appeals 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.817 of 1995 (State of Punjab and others Vs. Sushil Kumar).

Briefly put, necessary facts relevant for disposal of this batch of appeals, are that State of Punjab sought to acquire the land from the revenue estates of more than one villages including the villages Chak Dhabwala, Tahli Wala and Singhpura, Tehsil Fazilka, District Ferozepur, for public purpose namely construction of Khui Khera link drain from RD 38220 to 86000. Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 ('Act' for short) dated 26.06.1980 was issued, which was followed by notification under Section 6 of the Act issued on 11.09.1980. These dates of both these notifications under Sections 4 & 6 of the Act were verified to be correct by learned counsel for the parties, because in the impugned award passed by the learned reference Court, these dates were wrongly typed. Collector, vide his award No.202 dated 19.03.1985 for village Singhpura, assessed the market value of the acquired land at the rate of Rs.4,380/- per acre for Nehri land, Rs.3,280/- per acre for Barani land and Rs.2,500/- per acre for Banjar Kadeem land.

Dissatisfied, land owners filed their objections under Section 18 of the Act and accordingly, two sets of cases, having three references each, were referred to the learned reference Court. Parties led their respective evidence.

One set of cases bearing land reference Nos.31, 48 and 49 of 1992 were decided together by the learned reference Court vide its award dated 16.11.1994. These three references were allowed and the market value of the acquired land was assessed at uniform rate of Rs.30,000/- per acre irrespective of category of land. State of Punjab has challenged the impugned award dated 16.11.1994 passed by the learned reference Court in land references Nos.31, 48 and 49 of 1992 by three Regular First Appeals bearing Nos.817, 818 and 819 of 1995, seeking reduction in the compensation. Land owners have also challenged this very award and are seeking enhancement in the compensation by way of RFA Nos.347, 348 and 349 of 1996.

The other set of three land references bearing Nos.62, 63 and 64 of 1992 were decided by the learned reference Court vide separate award dated 28.11.1996 and all these references were dismissed. Feeling aggrieved against dismissal of their references, land owners have approached this Court by way of three RFA Nos.951, 1091 and 2257 of 1997, seeking setting aside the impugned award and for enhancement of compensation. That is how, all these nine connected appeals are being decided together.

Learned counsel for the State submits that the learned reference Court proceeded on a misconceived approach, while awarding the amount of Rs.30,000/- per acre to the land owners, without there being any sufficient evidence. He further submits that earlier award passed by the learned reference Courts vide Exhibits A2 and R6 were since pertaining to different acquisitions and at a later point of time, cannot be relied upon in favour of the land owners. He submits that since it was a case of no evidence, the State appeals deserve to be allowed and the appeals filed by the land owners are liable to be dismissed. He also supports the later award dated 28.11.1996, whereby three land

references Nos.62, 63 and 64 of 1992 were dismissed by the learned reference Court and prays for dismissal of the appeals filed by the land owners against the said award dated 28.11.1996.

Per contra, learned counsel for the land owners submits that the land owners are entitled for further enhancement from Rs.30,000/- per acre because there was sufficient and cogent evidence available on record. He submits that the appeals filed by the State were wholly misconceived and the same are liable to be dismissed. He further submits that since the land owners of village Chak Dhabwala were granted the compensation at the rate of Rs.60,000/- per acre for their acquired land for same purpose i.e. for construction of Khui Khera link drain, present land owners of village Singhpura are also entitled for the compensation at the rate of Rs.60,000/- per acre because their land was also acquired for the same purpose, though vide different notifications. Learned counsel for the land owners would next contend that at any rate, the impugned award dated 28.11.1996 passed by the learned reference Court dismissing land reference Nos.62, 63 and 64 of 1992 cannot be sustained, as the same is based on a patently illegal approach adopted by the learned reference Court. Once their co-villagers of village Singhpura itself have been awarded the compensation at the rate of Rs.30,000/- per acre by the learned reference Court allowing land reference Nos.31, 48 and 49 of 1992 vide its award dated 16.11.1994, there was no justification for the learned reference Court dismissing the land reference Nos.62, 63 and 64 of 1992 because all the six land references were pertaining to the land of same village i.e. Singhpura arising out of same notification and the entire land was acquired for same purpose. He prays for dismissal of the appeals filed by the State and for allowing all the six appeals filed by the land owners.

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 RFA Nos.817, 818 & 819 of 1995 filed by the State of Punjab and RFA Nos.347, 348 & 349 of 1996 filed by the land owners against the impugned award dated 16.11.1994 passed by the learned reference Court deciding three land reference Nos.31, 48 & 49 of 1992, are without any merit and liable to be dismissed, whereas three RFA Nos.951, 1091 & 2257 of 1997 filed against the award dated 28.11.1996 passed by the learned reference Court dismissing three land reference Nos.62, 63 & 64 of 1992 deserve to be allowed, bringing these land owners at par, awarding them compensation at the rate of Rs.30,000/- per acre for their acquired land. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record that there was neither any sale deed available nor anyone was produced on record by either side. Learned counsel for the State was found justified in contending that since earlier two awards passed by different reference Courts were pertaining to different acquisitions, land owners cannot draw any benefit therefrom. In fact, a bare perusal of para 12 of the impugned award dated 16.11.1994 passed by the learned reference Court would show that earlier judgments Exhibits A2 and R6 were not made the basis for assessing the market value at the rate of Rs.30,000/- per acre. Other evidence which was produced on record by the land owners in the form of Exhibits A3 to A7, coupled with the statements of witnesses and particularly AW1 Anil Kumar-land owner and AW2 Hans Raj Chhabra, Agriculture Development Officer, Fazilka, which has gone unrebutted on record, was rightly made the basis for assessing the market value at the rate of Rs.30,000/-

per acre for the acquired land.

The learned reference Court, while passing the impugned award dated 16.11.1994, whereby three land reference Nos.31, 48 and 49 of 1992 were allowed, has considered the relevant positive and negative determinative factors, before arriving at a judicious conclusion, assessing the market value of the acquired land at the rate of Rs.30,000/- per acre and the same deserves to be upheld. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Viluben Jhalejar Contractor (D) by LRs Vs. State of Gujarat, 2005 (4) SCC 789** and **Maj. Gen. Kapil Mehra and others Vs. Union of India and another, 2015 (2) SCC 262**.

So far as the claim of the land owners for enhancement of compensation over and above Rs.30,000/- per acre is concerned, learned counsel for the appellants-land owners has miserably failed to substantiate any of his arguments in this regard, referring to any relevant material and rightly so, it being a matter of record. No sufficient or cogent evidence has been brought on record by the land owners so as to enable this Court to order any further enhancement of compensation over and above Rs.30,000/- per acre for the acquired land. Having said that, this Court feels no hesitation to conclude that the land owners in RFA Nos.347, 348 & 349 of 1996 are not entitled for any further enhancement for want of any relevant material or evidence in their favour.

Similarly, learned counsel for the State has failed to substantiate any of his arguments justifying any reduction in the compensation awarded to the land owners at the rate of Rs.30,000/- per acre. When confronted with the evidence in the form of Exhibits A3 to A7 and also the statements suffered by the witnesses AW1, AW2 as well as RW1, learned counsel for the State had no

answer and rightly so, it being a matter of record. Land owner Anil Kumar son of Shri Shekhar Chand appeared as AW1 and he was very categoric in his statement before the Court, which has gone unrebutted on all the material aspects.

Relevant part of the statement of AW1 Anil Kumar reads as under:-

“Anil Kumar son of Sh. Shekhar Chand aged 36 years r/o Fazilka claimant on S.A.

Our land was acquired for the construction of Khui Khera drain. The land of other co-hares was also acquired along with my land. The market price of my land acquired was about two lacs per acre. The said land is about 5/6 away from the village abadi. The land is canal irrigated. The land gives three produce i.e. cotton, paddy in kharif and sugarcane in kharif and wheat and sarso in Rabi. The annual income is Rs.14,000/- per acre. Cotton crops are standing when the government took its possession. No compensation is paid. The said drain passes through village Tahlil Wala and Chak Dhabwala and other villages. There was a passage adjoining the acquired land and that passage has been closed due to the drain. No bridge has been constructed. We have to pass about 2/3 kilometers to go to our land. Co-operative Society, Bank, Telephone Exchange, Grain Market are situated in our village. School and hospital are also situated. The acquired land is about 1½ kilometers from Fazilka-Malout Road. Fazilka is about 12 kilometers. The village abadi is extending towards the acquired land. At that time the market value of the land was

2000/2500 per marla and now it is 4000/- per marla. With the existence of the drain the land has been partitioned into two portions. We had to instal bore in one portion on account of this bifurcation of this land. We spent about Rs.40,000/-. We are entitled to compensation at the rate of Rs.14000/- per acre for the standing crop. I produce copy of the judgment dated 18.11.1992 about the compensation given in other land of village Chak Dhabwala which adjoins our village. The site plan Exh.A1 bears my signatures and is correct according to the spot. Exh. A2 is the certified copy of the judgment.”

Similarly, statement of AW2 Hans Raj Chhabra, Agriculture Development Officer, Fazilka and the evidence produced by him on the record, including Exhibits A3 to A7 has gone completely un rebutted. Further, RW1 Barjinder Pal Singh Brar, Sub Divisional Officer admitted in his cross-examination that the acquired land was giving two crops in a year. There was 24 hours water supply to the acquired land. No contrary evidence was produced by the State. In this view of the matter, it can be safely concluded that the learned reference Court committed no error of law, while passing the impugned award dated 16.11.1994, allowing three land reference Nos.31, 48 & 49 of 1992 and the award deserves to be upheld. The appeals filed by the State of Punjab bearing RFA Nos.817, 818 & 819 of 1995 have been found bereft of any merit.

Learned counsel for the parties are ad idem that both the sets of abovesaid six references were pertaining to the land of the same village i.e. Singhpura. The land of Village Singhpura was acquired vide same notifications and for the same public purpose i.e. for construction of Khui Khara link drain. Since the abovesaid judgment dated 16.11.1994 passed by the learned reference

Court allowing three land reference Nos.31, 48 & 49 of 1992, has been upheld, the subsequent impugned judgment dated 28.11.1996 passed by the learned reference Court dismissing three land reference Nos.62, 63 & 64 of 1992, cannot be sustained. It is so said because land owners in all the abovesaid six land references were identically placed and because of this undisputed fact, two sets of land owners could not have been discriminated. Under these peculiar facts and circumstances of the case, appellants-land owners in RFA Nos.951, 1091 & 2257 of 1997 have also been found entitled for the same amount of compensation which has been awarded to their co-villagers in RFA Nos.347, 348 & 349 of 1996 at the rate of Rs.30,000/- per acre, so as to avoid any discrimination and also to do complete and substantial justice between the parties.

It is not in dispute that the land owners were having two crops in a year from their acquired land. Witness produced by the State has admitted that 24 hours water supply was available to the acquired land. As a result of this acquisition, the remaining land of the land owners came to be bifurcated in two parts. This fact has also gone undisputed on record. Thus, considering all the relevant determinative factors, it is unhesitatingly held that the land owners-appellants in RFA Nos.951, 1091 & 2257 of 1997 deserve to be brought at par with their co-villagers, by awarding them the same amount of compensation at the uniform rate of Rs.30,000/- per acre.

Besides two judgments of the Hon'ble Supreme Court referred hereinabove, the view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court: -

- 1. Ambya Kalya Mhatre through LRs Vs. State of Maharashtra, (2011) 9 SCC 325 : AIR 2011 SC (Supp) 625.***

2. *Navanath Vs. State of Maharashtra, (2009) 14 SCC 480 at para 40 : AIR 2009 SC (Supp) 1540 (at para 32 of AIR).*
3. *Special Land Acquisition Officer Vs. Karigowda, AIR 2010 SC 2322.*
4. *State of U.P. Vs. Major Jitendra Kumar, AIR 1982 SC 876.*
5. *Trishala Jain Vs. State of Uttranchal, AIR 2011 SC 2458.*

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 RFA Nos.817, 818 & 819 of 1995 filed by the State of Punjab and RFA Nos.347, 348 & 349 of 1996 filed by the land owners are misconceived, bereft of merit and without any substance, thus, these must fail and the same are accordingly dismissed. The impugned judgment dated 16.11.1994 passed by the learned reference Court is upheld.

Consequently, RFA Nos.951, 1091 & 2257 of 1997 filed by the land owners are hereby allowed, setting aside the impugned judgment dated 28.11.1996 passed by the learned reference Court and the land owners are held entitled for compensation at the uniform rate of Rs.30,000/- per acre for their acquired land. The appellants-land owners in these three appeals shall also be entitled for all other statutory benefits available to them, under the Act.

Resultantly, with the abovesaid observations made, all these nine appeals stand disposed of, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

05.01.2016
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