

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision : 09.08.2016.
RFA No.1354 of 1998

Basant Singh
Versus
The State of Punjab and others
.....Appellant
..... Respondents

2nd
RFA No.1354 of 1998

Jagbir Singh
Versus
The State of Punjab and others
.....Appellant
..... Respondents

3rd
RFA No.1352 of 1998

Munshi Ram
Versus
The State of Punjab and others
.....Appellant
..... Respondents

4th
RFA No.1353 of 1998

Puran Chand and others
Versus
The State of Punjab and others
.....Appellants
..... Respondents

5th

RFA No.1355 of 1998

Karanvir Singh and others

.....Appellants

Versus

The State of Punjab and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

Present : Mr. R.S.Manhas, Advocate for the appellant.

Mr. K.K.Gupta, Addl. A.G.Punjab.

ARUN PALLI, J. (Oral)

This order shall dispose of RFA Nos. 1354, 1351, 1352, 1353 and 1355 of 1998, for the facts involved in all these appeals are similar and issue involved for determination is common. Facts, however, are being culled out from RFA No.1354 of 1998.

Vide order being assailed, dated 23.10.1997, reference petitions, under Section 18 of the Land Acquisition Act, 1894 (for short 'the Act'), preferred by the landowners, seeking enhancement in the compensation as regards trees, were dismissed by the reference Court. For, the appellants had failed to adduce any evidence in support of their claims, and also, as held by the Hon'ble Supreme Court in State of Haryana Vs. Gurcharan Singh and another AIR 1996 SC 106, no separate compensation could be awarded for the trees;

“Case called several times during the day. None appeared for the applicant. No P.W. Is present. No P.F and D.M has been deposited. It is 3 P.M. The issues in this case were framed on 26.02.1997. Since then no P.F. and D.M. has been deposited. No list of witnesses has been filed. Even applicant is not present to make statement. The onus of both the issues was on the applicant. There is no evidence led by the applicant and even the applicant has not given statement to prove the issues. I find no reason for enhancement of the compensation. Otherwise also the Hon'ble Supreme Court of India vide its judgment reported as AIR 1996 Supreme Court 106 State of Haryana Vs. Gurcharan Singh has held that no separate compensation for the tees is to be awarded. In view of the observations made in the above said ruling both the issues are decided against the applicant. The application is dismissed. File be consigned”.

Learned counsel for the appellant submits that apparently, the reference Court failed to afford due and adequate opportunity to the claimants/landowners to adduce evidence in support of their claims. Therefore, the appellants be only afforded two opportunities to lead and conclude their evidence, else they would suffer an incalculable loss. Further, it is contended that the reliance placed, by the reference Court, upon the decision of the Hon'ble Supreme Court, in the case of Gurcharan Singh (supra), is wholly misplaced. For, the facts involved in that matter reveal that the market value of the land was determined twice over i.e. once on the basis of the value of the land and again on the basis of the yield got from the fruit bearing trees. Whereas, in the matter in hand the appellants

were awarded compensation separately for the acquired land, vide award dated 9.5.1996, rendered by the Collector. Therefore, he submits that the order that is being impugned be set aside and the matter be remanded to the reference Court for re-decision.

Learned State counsel submits, for the landowners failed to adduce any evidence, reference Court was choice-less but to dismiss their claims. However, he does not dispute that the decision rendered by the Hon'ble Supreme Court in the case of Gurcharan Singh (supra) had no bearing on the matter in hand.

I have heard learned counsel for the parties and perused the records.

Undoubtedly, neither did the appellant furnish the list of witnesses nor examined himself as his own witness. But, it is also true that the issues were framed only on 26.02.1997, and the reference Court dismissed the reference petition on 23.10.1997, for want of evidence. *Ex facie*, the appellants were the victim of compulsory acquisition, and had nothing to gain by, either delaying their own cause or not adducing any evidence. In any case, for the counsel for the appellant did not appear on 23.10.1997, it would have been just, and appropriate, if the Court had issued notice to the appellant for an actual date.

In so far as; that no separate compensation could be awarded to the appellants for the trees, it appears that the reference Court drew an impression that the claimants-landowners had already been granted compensation even as regards trees, while assessing and awarding

compensation for their acquired land. The observations, apparently, are mis-conceived and untenable. Indisputably, compensation, as regards the acquired land of the appellant was assessed separately by the Collector vide award dated 9.5.1996. And, in terms of the averments set out in paragraph 8 of the grounds of appeal, which have not been controverted, the Land Acquisition Collector had expressly clarified that the compensation qua trees shall be assessed vide a supplementary award. That is how, collector made a separate award as regards compensation for the trees. Consequently, the landowners were before the reference Court under Section 18 of the Act. Meaning thereby, no compensation was awarded to the landowners for the trees while assessing the market value of their acquired land. Thus, in the given situation, if the reasons assigned by the reference Court is accepted, it would entail a result, that would be wholly erroneous and unsustainable;

- (1) Land Acquisition Collector never adjudicated upon the claim of the landowners as regards trees while assessing and awarding compensation for their acquired land;
- (2) In the opinion of the reference Court, no separate compensation could be awarded for the trees.

Thus, the net result is; claim of the appellants as regards trees remain un-adjudicated.

Likewise, even the reference to the decision of the Hon'ble Supreme Court in the case of Gurcharan Singh (supra) was wholly misplaced. For, the facts involved in the said case reveal that the market value of the land was determined twice over. In fact, the decision in Gurcharan

Singh's case (supra) was considered by the Hon'ble Supreme Court, in a subsequent decision, in **Shri Ambya Kalya Mhatre (d) through legal heirs and others Vs. State of Maharashtra** 2011 (9) SCC 325. And, the Hon'ble Court observed:-

21. "The High Court has also held that once the compensation is awarded for the land, there cannot be additional or separate compensation for the trees. For this purpose, the High Court has relied upon the following observations of this Court in *State of Haryana vs. Gurcharan Singh - 1995 Supp (2) SCC 637* :

"It is settled law that the Collector or the court who determines the compensation for the land as well as fruit bearing trees cannot determine them separately. The compensation is to the value of the acquired land. The market value is determined on the basis of the yield. Then necessarily applying suitable multiplier, the compensation needs to be awarded. Under no circumstances the court should allow the compensation on the basis of the nature of the land as well as fruit bearing trees. In other words, market value of the land is determined twice over; once on the basis of the value of the land and again on the basis of the yield got from the fruit-bearing trees. The definition of land includes the benefits which accrue from the land as defined in [section 3\(a\)](#) of the Act. After compensation is determined on the basis of the value of the land as distinct from the income applying suitable multiplier, then the trees would be valued only as firewood and necessary compensation would be given."

22. We are afraid that the High Court has misread the said decision in regard of valuing the land and trees separately. If the land value had been determined with reference to the sale statistics or compensation awarded for a nearby vacant land, then necessarily, the trees will have to be valued separately. But if the value of the land has been determined on the basis of the sale statistics or compensation awarded for an orchard, that is land with fruit-bearing trees, then there is no question of again adding the value of the trees. Further, if the market value has been determined by capitalizing the income with reference to yield, then also the question of making any addition either for the land or for the trees separately does not arise. In this case, the determination of market value was not with reference to the yield. Nor was the determination of market value in regard to the land with reference to the value of any orchard but was with reference to vacant agricultural land. In the circumstances, the value of the trees could be added to the value of the land".

Apparently, a bare analysis of the dictum of the Hon'ble Supreme Court, crystallize that if the value of the land has been determined

with reference to the sale instance or compensation awarded for a nearby vacant land, then necessarily, that the assessment as regards trees shall have to be made separately. However, if the value of the land was determined on the basis of sale instances or compensation awarded for an orchard, that is land with fruit bearing trees, then there is no occasion of again adding the value of the trees. As indicated above, only the market value of the acquired land was assessed by the Collector, vide an award dated 9.5.1996, on the basis of the sale instances/sale-deeds. And, in so far as the compensation for the trees, it was specifically observed that a separate award shall be made in this regard.

That being so, the order rendered by the reference Court is not sustainable, and is accordingly, set aside. The matter is remitted to the reference Court for re-decision in accordance with law. Parties to the lis shall be afforded two opportunities each to lead and conclude their respective evidence. In the facts and circumstances of the present case, I deem it appropriate to request the reference Court to re-decide the matter, within a period of three months from the date of receipt of the certified copy of this order. Parties shall appear before the District Judge, Pathankot on 1.9.2016.

The appeals are disposed of in the terms indicated above.

09.08.2016

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No