IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RFA No. 3477 of 2010 (O&M)
Date of decision: 22.4.2016

Surinderjit Singh and others

.. Appellants

Vs.

Punjab State and others

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. R.S. Athwal, Advocate
for the appellants
in RFA Nos. 2381 to 2387, 3477 of 2010 and
for the respondents in RFA Nos. 4394 to 4402 of 2010.

Mr. Vijay Kumar Kaushal, Advocate
for the appellants-department
in RFA Nos. 4394 to 4402 of 2010
for the respondents in RFA Nos.2381 to 2387,3477 of 2010.

Mr. Yatinder Sharma, Additional A.G. Punjab.

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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)

This bunch of 17 Regular First Appeals, out of which eight appeals bearing RFA Nos. 2381 to 2387 and 3477 of 2010 filed by the landowners and nine appeals bearing RFA Nos. 4394 to 4402 of 2010 filed by the beneficiary-department, i.e. Punjab Water Supply and Sewerage Division No.1, Jalandhar, is being decided vide this common order, as all these appeals arise out of the same acquisition and raise identical questions of law and facts. However, with the consent of learned counsel for the parties and for the facility of reference, facts are being culled out from RFA No. 3477 of 2010 (Surinderjit Singh and others Vs. Punjab State and others).

Briefly put, facts of the case are that State of Punjab sought to acquire land measuring 604 kanal and 15 marla, out of the revenue estate of three villages; namely Lohar Nangal, Pholriwal and Mithapur, District Jalandhar, at public expenses for public purpose namely; construction of Sewerage Treatment Plant under Sutlej Action Plan. Accordingly, notification under Section 4 of the Land Acquisition Act, 1894, ('the Act' for short) came to be issued on 21.4.2004 which was followed by notification dated 22.11.2004 under Section 6 of the Act. The Land Acquisition Collector, ('LAC' for short), vide his award dated 31.3.2005, assessed the market value of the acquired land at the uniform rate of ₹22 lacs per acre.

Dissatisfied, the landowners filed their objections under Section 18 of the Act and as a consequence thereof, land references were forwarded to the learned reference court. The learned reference court, vide its impugned award dated 1.12.2009, assessed the market value of the acquired land at the uniform rate of ₹42 lacs per acre.

Both the parties felt aggrieved against the abovesaid impugned award passed by the learned reference court. Beneficiary-department is seeking reduction in the amount of compensation awarded to the landowners whereas the landowners are seeking further enhancement in the amount of compensation for their acquired land. That is how, all these appeals are being decided together.

Having heard learned counsel for the parties at considerable length, after careful perusal of record of the cases and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that since appeals filed by the beneficiary-department have been found without any merit, same are liable to be dismissed. However, the appeals filed by the landowners deserve to be partly allowed, suitably enhancing the compensation for their acquired land. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the site plan Ex.PW4/A, which has gone undisputed on record, would show that the acquired land was situated at a prime location. Very many residential colonies as well as commercial establishments were already existing around the acquired land, including officers colony which was situated in the revenue estate of village Lohar Nangal. Kalgidhar Avenue was situated in the revenue estate of village Mithapur. Likewise, Anmol Vihar, Karan Marbles as well as Pholriwal colony were situated within the revenue estate of village Pholriwal. Other commercial establishments, including R.P. Farm (Marriage Palace), Punjab Cold Storage, Swaran Cold Storage, Sant Marbles, Dulhan Palace, Urban

Estate Phase I and Phase II, Jalandhar, were also adjoining the revenue estate of the abovesaid three villages. 125 feet wide road coming from Urban Estate Phase-II was abutting the revenue estate of village Lohar Nangal. In fact, perusal of the site plan would show that revenue estate of these three villages had already been carved out into residential and commercial plots. There was railway line on one side of the boundary of village Lohar Nangal.

Further, witnesses produced by the State itself deposed about the potentiality of the acquired land. Particular reference can be made to the statements of RW2-Roshan Lal, Patwari of village Pholriwal, whose statement is available at page 127 of the lower court record ('LCR' for short), and RW3-Rajinder Singh, Sub Divisional Engineer, whose statement is available on page No. 133 and 135 of LCR. RW2 has categorically deposed that, on one side of village Pholriwal, Municipal Area was situated and on the other hand, there was Jalandhar Cantonment. He further deposed that Urban Estate Phase I and II were near the village and connected the village with metalled road. There were schools, dispensary, godowns and shops in and around the village. This material witness concluded by deposing that land in question could be used for residential as well as commercial purposes at the discretion of owner. In this view of the matter, this Court feels no hesitation to conclude that the land acquired was having immense potentiality and it could have been easily used for residential, institutional as well as commercial purpose.

It is also a matter of record and has gone undisputed that initially, this very land was sought to be acquired for the same purpose way back in the year 1996. However, this acquisition was allowed to lapse. Again, notification was issued for acquiring this land in the year 2001, but this was again allowed to lapse. On both these occasions, the authorities did not disclose any reason, whatsoever, as to why repeated acquisitions were being allowed to lapse.

Learned counsel for the appellants-landowners has been found justified in contending that repeated acquisitions were being allowed to lapse for extraneous reasons and only with a view to peg down the prices of the land. It has been so observed by the learned reference court as well. It is also a matter of record that when the first notification was issued on 18.1.1996, the District Level Price Fixation Committee recommended the market value of the acquired land at the uniform rate of ₹25 lacs per acre. However, when the notification for instant acquisition came to be issued under Section 4 of the Act on 21.4.2004, i.e. after a time gap of eight years, LAC, vide his award dated 31.3.2005, assessed the market value @ ₹22 lacs per acre. Such a patent and glaring lapse on the part of the respondent authorities could not be upheld under any circumstances.

In these days of sky rocketing prices, it does not appeal to reason as to how the market value was assessed at this rate of ₹22 lacs per acre in the year 2004, in spite of the fact that the District Level Price Fixation Committee had recommended the market value at the rate of ₹25 lacs per acre in January, 1996. This seems to be the result of high-handedness and arbitrariness on the part of the authorities concerned, because the landowners had no role to play in the compulsory acquisition.

RW1-Suresh Kumar, Head Registration Clerk, office of Deputy Commissioner, Jalandhar, whose statement is available at page 125 of the LCR, has stated on oath that price of land, which could have been put to commercial use in and around the acquired land, was ₹50,000/- per marla. As noticed above, RW2-Roshan Lal, Patwari of village Pholriwal, has stated on oath that land in question could be used for commercial as well as residential purpose at the discretion of the owners. The market value of ₹50,000/- per marla, as stated by RW1-Suresh Kumar, was for the year 2005, which is the relevant period during which instant acquisition took place. About the location of the land, PW4-Ram Kishan has duly proved the site plan Ex.PW4/1. PW2-Davinder Singh, whose statement is available on page No. 101 of the LCR, duly proved the relevant documents coming from official record, including the documents showing price fixation in the form of Ex.PW1 to Ex.PW5.

PW5-Surinderjit Singh, whose statement is available from pages No. 113 to 123 of the LCR, has also duly proved that ₹25 lacs per acre was recommended by the District Level Price Fixation Committee, at the time of initial acquisition in the year 1996. This market value of ₹25 lacs per acre was conveyed by the Deputy Commissioner, Jalandhar, vide his communication dated 22.5.1998. This witness was put to the detailed cross examination but nothing adverse could be elicited from him as he successfully stood the acid test of cross examination.

In view of what has been discussed hereinabove, it is unhesitatingly held that if the evidence given by RW1-Suresh Kumar is to be accepted, then the market value of the acquired land comes to ₹80 lacs per acre. If the market value assessed by the District Level Price Fixation Committee is made the basis for assessing the market value of the acquired land and granting the benefit of 12% annual increase thereon on cumulative basis, the market value comes to ₹63,75,605.18 per acre, which seems to be more plausible because the District Level Price Fixation Committee must have recommended the value of the acquired land after taking into consideration all the relevant material.

Similarly, if the average market value of per acre land, as taken by the learned reference court in para 3 and 4 of the impugned award, is made the basis for assessing the market value of the acquired land, it would be on higher side. However, keeping in view the totality of facts and circumstances of the cases in hand and proceeding on a holistic, pragmatic and constructive approach, with a view to do complete and substantial justice between the parties, this Court is of the considered view that market value recommended by the District Level Price Fixation committee can be safely made the basis for assessing the market value of the acquired land.

As noticed above, the District Level Price Fixation committee recommended the market value @ ₹25 lacs on 18.1.1996 and purpose of the acquisition was also the same. Thus, while granting benefit of 12% increase on cumulative basis on the abovesaid value for the time gap of 99 months, the amount comes to

₹63,75,605.18 per acre which is rounded of to ₹63,75,606/- per acre. Accordingly, the landowners are held entitled to receive the compensation @ ₹63,75,606/- per acre for their acquired land, from the date of notification under Section 4 of the Act.

The abovesaid view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Registered), Faridkot and others Vs. State of Punjab and others, (2012) 5 SCC 432,** wherein it was held that the landowners are entitled to receive the best price for their acquired land

Again, in the case of **Ashok Kumar and another etc. v. State of Haryana, (Civil Appeal No.2714-2721 of 2012),** decided on 18.2.2016, the Hon'ble Supreme Court has held that court can grant even higher compensation than what has been claimed by the landowners, of course, if the evidence available on record justifies granting of higher compensation. The observations made by the Hon'ble Supreme Court in para Nos. 5, 7 and 8 to 11 of its judgment in **Ashok Kumar's** case (supra), which aptly apply here, read as under:-

> *"Learned counsel appearing for the appellants however points out that in the matter of fixation of just and fair compensation, the Court is not bound by claim made by the owner. It is for the Court, in the facts and circumstances of each case, to award just and fair compensation.*
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> *XXX XXX XXX*
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> *The pre-amended provision put a cap on the maximum; the compensation by court should not be beyond the amount claimed. The amendment in 1984, on the contrary,*

put a cap on the minimum; compensation cannot be less than what was awarded by the Land Acquisition Collector. The cap on maximum having been expressly omitted, and the cap that is put is only on minimum, it is clear that the amount of compensation that a court can award is no longer restricted to the amount claimed by the applicant. It is the duty of the Court to award just and fair compensation taking into consideration the true market value and other relevant factors, irrespective of the claim made by the owner.

Although in the context of the Motor Vehicles Act, 1988, this Court in ***Sanjay Batham v. Munna Lal Parihar*** *held that*

> *"17. It is true that in the petition filed by him under Section 166 of the Act, the Appellant had claimed compensation of Rs. 4,20,000/- only, but as held in Nagappa v. Gurudayal Singh, (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."*

In ***Bhag Singh and Others v. Union Territory of Chandigarh****, this Court held that there may be situations where the amount higher than claimed may be awarded to the claimant. The Court observed –*

> *"3. … It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned single Judge and the Division*

Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where, as for instance, under' agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution, be deprived of land which is not being personally cultivated by him or which is in excess of the ceiling area with payment of little compensation or no compensation at all, but where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms, declares that he shall be paid such market value. …"

*In **Krishi Utpadan Mandi Samiti v. Kanhaiya Lal**, this Court held that under the amended provisions of Section 25 of the Act, the Court can grant a higher compensation than claimed by the applicant in his pleadings –*

"17. Award being in this case between the dates 30th April, 1982 and 24th September, 1984 and as per the Union of India and Anr. v. Raghubir Singh (Dead) by LRs. etc. (Supra), the amended provisions would be applicable under which there is no restriction that award could only be upto the amount claimed by the claimant. Hence High Court order granting compensation more than what is claimed cannot be said to be illegal or contrary to the provisions of the Act. Hence the review itself, as is confined for the aforesaid reasons, has no merit."

*11. Further, in **Bhimasha v. Special Land***

> ***Acquisition Officer and others**, a three-Judge bench reiterated the principle in **Bhag Singh** (supra) and rejected the contention that a higher compensation than claimed by the owner in his pleadings cannot be awarded by the Court. In that case, the High Court had concluded that although the market price of the land was Rs 66,550/- per acre, since the appellant had only claimed compensation at the rate of Rs. 58,500/- per acre in his pleadings, therefore he could only be awarded compensation limited to his claim. This Court, while reversing the decision of the High Court, awarded the petitioner the market value, i.e., Rs. 66,550/- per acre thereby holding that the award would not be limited to the claim made by him.”*

Again, in the case of **Udho Dass Vs. State of Haryana, 2010 (12) SCC 51,** the Hon'ble Supreme Court has held that landowners hardly get compensated in true sense of word in the matters of compulsory acquisition, because they had no role to play either in the price fixation policy adopted by the State or to avoid the acquisition.

If the law laid down by the Hon'ble Supreme Court in the cases referred to hereinabove and particularly in the case of Udho Dass's case (supra) is made strictly applicable to the facts and circumstances of the cases in hand, the amount of compensation would come manifold higher than what is being claimed by the landowners.

So far as the negligible distance is concerned, as sought to be argued by learned counsel for the beneficiary-department, the law laid down by the Hon'ble Supreme Court in **Ashrafi and others Vs. State of Haryana, 2013 (5) SCC 527, Kashmir Singh Vs. State of Haryana, 2014 (2) SCC 165** and **Thakarsibhai Devjibhai and others v. Executive Engineer and another, AIR 2001 SC 2424,** clearly supports the claim of the landowners.

To be fair to the learned counsel for the beneficiary-department, his other arguments are to be noted to be rejected. Referring to the potentiality of the acquired land, learned counsel for the respondent submits that since the land was situated near a drain, its potentiality will not be on higher side. At the time of acquisition, the acquired land was a simple agricultural land. However, despite making his best efforts, learned counsel for the beneficiary-department could not substantiate any of his arguments. When confronted with the evidence given by RW2 and RW3, coupled with the site plan Ex.PW4/1, learned counsel for the beneficiary department had no answer and rightly so, it being a matter of record.

A bare perusal of award No. 1 of 2005 passed by the LAC, which is available at page Nos. 411 to 425 of LCR, would show that claimants at Sr. No. 1 namely Sarv Sh. Makhan Singh, Trilochan Singh, Mukhtiar Singh, Manjit Singh sons of Gurmukh Singh have also claimed severance charges for their land, which has been left unacquired. However, LAC as well as learned reference court did not grant any amount to these claimants-landowners, alongwith their mother Smt. Parkash Kaur in LAC case No.6 of 2005, and that too, without recording any reason whatsoever. It goes without saying that the abovesaid landowners or any other similarly situated landowner for that purpose would certainly be entitled for a reasonable amount on account of severance charges.

It is so said because in the absence of any passage for approaching the unacquired land for the purpose of its cultivation, the landowners would have to cover long distances which will certainly add more expenses, including transportation charges and will substantially reduce the net agricultural income for all times to come. No landowner can be put to such a disadvantageous position for none of his fault. In this view of the undisputed peculiar fact situation, the landowners whose some land remained unacquired, including the abovesaid five landowners, are held entitled for receiving 25% of the abovesaid market value towards severance charges. Granting any lesser amount on account of severance charges would be wholly unjustified.

Let it be specifically recorded that no better evidence or judicial precedents were pressed into service, nor any other argument was raised on behalf of either of the parties.

Considering the peculiar facts and circumstances of the cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that appeals filed by beneficiary-department have been found wholly misconceived, bereft of merit and without any substance, thus, these must fail and the same are hereby dismissed.

Appeals filed by the landowners deserve to be partly accepted and the same are allowed to the extent indicated above.

The landowners are held entitled to receive the compensation for their acquired land, at the uniform rate of ₹63,75,606/- per acre, from the date of notification under Section 4 of the Act. Further, the landowners, whose some land remained unacquired, including the abovesaid five landowners, are held entitled to receive 25% of the abovesaid market value, on account of severance charges, from the date of notification under Section 4 of the Act. Besides this, the landowners shall be entitled to all the statutory benefits available to them under the relevant provisions of the Act.

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

(RAMESHWAR SINGH MALIK)
JUDGE

22.4.2016
AK Sharma