IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.5727 of 2013 and other connected matters
Date of decision: 10.05.2016

Kewal Singh

... Appellant

Vs.

Punjab State and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. K.S. Cheema, Advocate
for the appellant(s) (in RFA Nos.5727 to 5736 of 2013, 390 and 4968 of 2014) and cross-objection No.1-CI of 2015 in RFA No.6486 of 2014.

Mr. M.S. Kang, Advocate
for the appellant(s) (in RFA Nos.4484 to 4486 of 2013).

Mr. R.S. Chauhan, Advocate
for the appellant(s) (in RFA Nos.829 and 2129 of 2014).

Mr. Munish Gupta, Advocate
for the appellant(s) (in RFA Nos.4434 and 4435 of 2014) and
for the respondent(s) (in RFA Nos.9347 and 9348 of 2014).

Mr. Sandeep Bansal, Advocate and
Mr. Arun Bansal, Advocate
for the appellant(s) (in RFA No.5219 of 2014) and
for the respondent(s) (in RFA No.9346 of 2014).

Mr. Anil Bansal, Advocate for
Mr. Pradip Bhandari, Advocate
for the appellant(s) (in RFA Nos.5411 to 5413 of 2014).

Mr. Yatinder Sharma, Addl. AG, Punjab.

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)

Instant batch of 28 appeals, out of which 05 appeals bearing Regular First Appeal Nos.6486, 6487, 9346 to 9348 of 2014 filed by the State of Punjab and remaining appeals bearing Regular First Appeal Nos.4484 to 4486, 5727 to 5736 of 2013, 390, 829, 2129, 4434, 4435, 4968, 5219, 5411 to 5413 of 2014, filed by the land owners and cross-objection No.1-CI of 2015, 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.5727 of 2013 (Kewal Singh Vs. State of Punjab and others).

Briefly put, facts of the case necessary for disposal of the present set of appeals, are that the State of Punjab sought to acquire land out of the revenue estates of as many as eight villages, at public expenses for public purpose namely; for construction of Kandi Canal Stage-II. Accordingly, notification dated 31.12.2004 under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') was issued, which was followed by notification dated 04.05.2005 under Section 6 of the Act. Notifications under Section 6 of the Act for different villages were identical but were issued on different dates. Land Acquisition Collector ('LAC' for short), vide his award No.22 dated 02.07.2007 assessed the market value of the land as under: -

Village Ajjowal Hadbast No.371

Chahi	:	4,35,000 per acre
Barani	:	2,90,000 per acre
Banjar Qadim	:	1,50,000 per acre

Kharkana	:	1,45,000 per acre
G.M. Rasta	:	1,50,000 per acre
G.M. Abadi	:	15,000 per marla

It is pertinent to note here that there was some variance in the amount of compensation awarded by LAC for different villages. Dissatisfied with the market value assessed by LAC, land owners filed their objections under Section 18 of the Act and as a consequence thereof, land references were forwarded to the learned reference Court for its decision. The learned reference Court, vide its award dated 03.12.2012 decided three land references but no amount on account of compensation for the acquired land was enhanced. However, 30% of the market value assessed by LAC was granted by the learned reference Court on account of severance charges. Vide separate award dated 01.04.2013, the learned reference Court decided as many as 29 land references and enhanced the amount of compensation at the uniform rate of Rs.8,000/- per marla. 25% of the abovesaid market value was granted on account of severance charges. This award dated 01.04.2013 passed by the learned reference Court covered the land of as many as six villages, named in para 2 of the impugned award dated 01.04.2013 and at page 38 of the paper book.

Similarly, vide award dated 02.09.2013, learned reference Court decided two land references, wherein abovesaid award dated 01.04.2013 was followed, however, no compensation on account of severance charges was granted. Again, the learned reference Court vide its award dated 02.11.2013 decided three land references, wherein abovesaid award dated 02.09.2013 was followed and 25% of the market value assessed was granted on account of severance charges. Vide award dated 02.01.2014, learned reference Court dismissed three land references only on account of limitation.

Both the parties felt aggrieved. State of Punjab has filed five appeals only against two awards passed by the learned reference Court i.e. award dated 02.09.2013 and 02.11.2013, seeking reduction in the amount of compensation awarded by the learned reference Court. However, the land owners have approached this Court by filing the remaining appeals, seeking enhancement in the amount of compensation for their acquired land. It is pertinent to note here that vide awards dated 03.12.2012 and 02.01.2014, land references were dismissed, so far as the compensation for acquired land was concerned. However, vide award dated 03.12.2012, 30% of the market value assessed by LAC, was granted on account of severance charges, whereas vide award dated 02.01.2014, land references were dismissed in toto and that too only on account of limitation and not on merits. That is how all these appeals are being decided together.

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 peculiar facts and circumstances of the cases in hand, the appeals filed by the State of Punjab have been found without any merit and the same are liable to be dismissed. However, the appeals filed by the land owners deserve to be partly allowed, suitably enhancing the amount of compensation for their acquired land. To say so, reasons are more than one, which are being recorded hereinafter.

So far as the evidence produced by the State of Punjab before the learned reference Court is concerned, it is a matter of record. Sale deeds Ex.R3, Ex.R4 and Ex.R5 were disclosing the market value less than what was granted by LAC. These sale deeds were not only hit by the provisions of Section 25 of the Act but were also liable to be excluded from consideration on their individual merits as well. It is so said because either these sale deeds were the result of distress sales or were undervalued transactions. In either of these two situations, these sale exemplars relied upon by the State were liable to be ignored, in view of the law laid down by the Hon'ble Supreme Court in **Lal Chand Vs. Union of India and another, 2009 (15) SCC 769**.

The relevant observations made by the Hon'ble Supreme Court in para 32 of its judgment in **Lal Chand**'s case (supra), read as under: -

> *"The existence of several other sale deeds showing a much higher value and the fact that the Land Acquisition Collector chose to award a higher rate in regard to some of the acquired lands, leads to an inevitable inference that Ex.R3 to R7 were either undervalued or were distress sales. Whatever be the reason, they are liable to be excluded from consideration."*

Coming to the evidence produced by the land owners, the learned reference Court has referred to numerous sale instances in para 63 of the impugned award. Most of the sale instances were pertaining to small pieces of land measuring in marlas only and also pertaining to an area falling within the Abadi i.e. residential area. Learned reference Court was well justified in ignoring these sale deeds pertaining to residential areas. However, learned reference Court committed a serious error of law, while ignoring best piece of evidence available in favour of the land owners in the form of Ex.A28/2 dated 29.05.2001, whereby land measuring 01 kanal, 14 marla was sold for an amount of Rs.4,08,000/- at the rate of Rs.12,000/- per marla. There was another sale deed Ex.AW15/1, whereby land measuring 01 kanal, 10 marla was sold at the same rate of Rs.12,000/- per marla. In such a situation, there was no scope for the learned reference Court to ignore these sale deeds. In fact, in the given circumstances of the case, sale deed Ex.A28/2 dated 29.05.2001 is the only relevant sale deed, which could have been safely made the basis for assessing the market value of the acquired land. However, the learned reference Court miserably failed to appreciate this material aspect of the matter, because of which the finding recorded by the learned reference Court in para 69 of the impugned award cannot be sustained and the same is hereby set aside.

As noticed above, land measuring 01 kanal, 14 marla was sold by way of this sale deed Ex.A28/2 dated 29.05.2001 at the rate of Rs.12,000/- per marla. Notification under Section 4 of the Act came to be issued on 31.12.2004, thus, there was a time gap of more than three and half years, to be precise, three years and seven months. The land owners shall be entitled for 12% annual increase, on cumulative basis, on the market value disclosed in this sale deed Ex.A28/2.

So far as the belting system is concerned, it was wrongly adopted by LAC and has not been clarified by the learned reference Court, whether it was done away with or not. It is a matter of record that the total land acquired out of the revenue estates of 08 villages was acquired vide same notification under Section 4 of the Act and for the same purpose i.e. for construction of Kandi Canal Stage-II. It goes without saying that every inch of the acquired land was going to be used for same purpose. In such a situation, exact location or quality of any piece of land out of the acquired land, would be hardly of any consequence. In this view of the matter, it can be safely concluded that belting system was not warranted and the learned reference Court ought to have clarified this aspect of the matter. In the circumstances of the case, it is unhesitatingly held that the land owners are entitled for the compensation for their acquired land at the uniform rate, irrespective of its exact location or quality.

The abovesaid view taken by this Court also finds supports from the following judgments: -

1. ***Udho Dass Vs. State of Hayana, 2010 (2) SCC 51.***
2. ***Ashrafi and others Vs. State of Haryana, 2013 (5) SCC 527.***
3. ***Kehar Singh Vs. Punjab State, 1992 (1) RRR 81.***
4. ***Harinderpal Singh Vs. Punjab State through the Collector, Amritsar, 1997 (3) RCR (Civil) 431.***
5. ***Union of India Vs. Dr. Balbir Singh, 1999 (2) RCR (Civil) 546.***
6. ***Pawan Kumar and another Vs. Land Acquisition Collector and others, 2001 (1) RCR (Civil) 598.***
7. ***Harjit Singh @ Kaka Singh Vs. State of Punjab and another, 2004 (1) RCR (Civil) 484.***
8. ***Smt. Mahabiri Devi and others Vs. State of Haryana and another, 2005 (4) RCR (Civil) 142.***
9. ***Gulzar Singh Vs. State of Haryana, 2006 (3) RCR (Civil) 174.***
10. ***Kashmir Singh and others Vs. Land Acquisition Tribunal Ludhiana Improvement Trust through its President and others, 2006 (2) LAR 59.***
11. ***Gursher Singh and others Vs. President, Improvement Trust Tribunal, Jalandhar and others, 2007 (1) RCR (Civil) 429.***

12. ***Baru Ram and others Vs. State of Haryana and another, 2010 (3) RCR (Civil) 754.***

Respectfully following the law laid down by the Hon'ble Supreme Court in **The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and another, 2008 (14) SCC 745** and **Ashok Kumar and others Vs. State of Haryana and others, 2015 (3) Scale 242**, this Court is of the considered view that the appellants-land owners, in the instant set of appeals, are entitled to 12% annual increase, on cumulative basis, on the market price disclosed in the abovesaid sale deed Ex.A28/2 dated 29.05.2001, for time gap of 03 years and 07 months, between this sale deed Ex.A28/2 and date of notification under Section 4 of the Act. Granting the benefit of 12% annual increase, on cumulative basis, on the market price disclosed in sale deed Ex.A28/2, for a period of 03 years and 07 months, the amount comes to Rs.18,039.26 per marla, which is rounded off to Rs.18,040/- per marla. Accordingly, the land owners-appellants are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.18,040/- per marla, from the date of notification under Section 4 of the Act.

Another equally important question of law that falls for consideration of this Court is whether the land owners are entitled for compensation on account of severance charges and if so, to what extent. It is a matter of record that purpose of acquisition was construction of Kandi Canal Stage-II. In the very nature of things, by construction of canal, land would be bifurcated. Neither it would be feasible nor practical for the authorities of the State of Punjab to provide culverts on the canal at small distances because of which the land owners would have to cover long distances to approach their unacquired land for the purpose of its cultivation. The fact of covering long distances by the land owners, would add the expenses to be incurred by the land owners for the purpose of cultivation of their unacquired land, which would substantially reduce the net agricultural income and that too, for all times to come.

In this view of the undisputed fact situation obtaining in the present set of appeals, this Court feels no hesitation to conclude that the land owners are entitled for a just and reasonable compensation on account of severance charges as well. Proceeding on a holistic, pragmatic and constructive approach in this regard, with a view to do complete and substantial justice between the parties, this Court is of the considered view that granting 30% of the abovesaid market value, to the land owners on account of severance charges, would meet the ends of justice. Granting any lesser amount of compensation on account of severance charges would be wholly unjustified. Accordingly, the land owners are held entitled to receive 30% of the abovesaid market value, as compensation on account of severance charges.

So far as the award dated 02.01.2014 passed by the learned reference Court, dismissing three land references on account of delay alone, is concerned, the same has been found patently illegal. Since the claim of these land owners-appellants is not in dispute, the learned reference Court ought to have decided the cases on merits instead of technicalities alone. Having said that, this Court feels no hesitation to conclude that the findings recorded by the learned reference Court cannot be upheld and the same are hereby set aside. The appellants-land owners, in these three appeals, are also held entitled to receive the compensation for the acquired land, as well as on account of severance charges at the same rate, which has been awarded to their similarly situated neighbourers or co-villagers. Ordered accordingly.

Let it be specifically recorded here that no other better evidence or any 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 the appeals filed by the State of Punjab have been found wholly misconceived, bereft of merit and without any substance, thus, these must fail and the same are hereby dismissed. The appeals filed by the land owners deserve to be partly accepted and the same are allowed to the extent indicated above.

The land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.18,040/- per marla, from the date of notification under Section 4 of the Act. The land owners are further held entitled to receive 30% of the abovesaid market value, as compensation on account of severance charges. Besides this, the land owners shall also be entitled for all the statutory benefits available to them, under the relevant provisions of the Act.

Resultantly, with the observations made above, all the abovesaid 28 appeals and cross-objection stand disposed of, in the abovesaid terms, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

10.05.2016
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