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

**1. Civil Revision No.3853 of 2016
Date of Decision: 28.09.2017**

**STATE OF PUNJAB, THROUGH COLLECTOR, DISTRICT
FEROZPUR AND ANR.Petitioners**

Vs

AJIT SINGHRespondent

2. Civil Revision No.3854 of 2016

**STATE OF PUNJAB, THROUGH COLLECTOR, DISTRICT
FEROZPUR AND ANR.Petitioners**

Vs

MOHINDER SINGHRespondent

3. Civil Revision No.3855 of 2016

**STATE OF PUNJAB, THROUGH COLLECTOR, DISTRICT
FEROZPUR AND ANR.Petitioners**

Vs

SARWAN SINGHRespondent

4. Civil Revision No.3856 of 2016

**STATE OF PUNJAB, THROUGH COLLECTOR, DISTRICT
FEROZPUR AND ANR.Petitioners**

Vs

KABUL SINGH AND OTHERSRespondents

5. Civil Revision No.3857 of 2016

**STATE OF PUNJAB, THROUGH COLLECTOR, DISTRICT
FEROZPUR AND ANR.Petitioners**

Vs

JARNAIL SINGHRespondent

6. Civil Revision No.3858 of 2016

**STATE OF PUNJAB, THROUGH COLLECTOR, DISTRICT
FEROZPUR AND ANR.Petitioners**

Vs
SHINGARA SINGH AND OTHERSRespondents

7. Civil Revision No.3859 of 2016

**STATE OF PUNJAB, THROUGH COLLECTOR, DISTRICT
FEROZPUR AND ANR.Petitioners**

Vs
DARBARA SINGH AND OTHERSRespondents

8. Civil Revision No.3860 of 2016

**STATE OF PUNJAB, THROUGH COLLECTOR, DISTRICT
FEROZPUR AND ANR.Petitioners**

Vs
ANGREJ SINGH AND OTHERSRespondents

9. Civil Revision No.3861 of 2016

**STATE OF PUNJAB, THROUGH COLLECTOR, DISTRICT
FEROZPUR AND ANR.Petitioners**

Vs
GEJA SINGH AND OTHERSRespondents

10. Civil Revision No.3862 of 2016

**STATE OF PUNJAB, THROUGH COLLECTOR, DISTRICT
FEROZPUR AND ANR.Petitioners**

Vs
HARDEEP SINGH AND OTHERSRespondents

11. Civil Revision No.3863 of 2016

**STATE OF PUNJAB, THROUGH COLLECTOR, DISTRICT
FEROZPUR AND ANR.Petitioners**

Vs
PIPAL SINGHRespondent

12. Civil Revision No.3864 of 2016

**STATE OF PUNJAB, THROUGH COLLECTOR, DISTRICT
FEROZPUR AND ANR.Petitioners**

Vs
BAAZ SINGHRespondent

13. Civil Revision No.3865 of 2016

**STATE OF PUNJAB, THROUGH COLLECTOR, DISTRICT
FEROZPUR AND ANR.Petitioners**

Vs

DARA SINGH AND OTHERSRespondents

14. Civil Revision No.3866 of 2016

**STATE OF PUNJAB, THROUGH COLLECTOR, DISTRICT
FEROZPUR AND ANR.Petitioners**

Vs

PARKASH SINGH AND ANOTHER.....Respondents

15. Civil Revision No.3867 of 2016

**STATE OF PUNJAB, THROUGH COLLECTOR, DISTRICT
FEROZPUR AND ANR.Petitioners**

Vs

WASSAN SINGH AND OTHERSRespondents

16. Civil Revision No.3868 of 2016

**STATE OF PUNJAB, THROUGH COLLECTOR, DISTRICT
FEROZPUR AND ANR.Petitioners**

Vs

MEHAL SINGH AND OTHERSRespondents

17. Civil Revision No.3869 of 2016

**STATE OF PUNJAB, THROUGH COLLECTOR, DISTRICT
FEROZPUR AND ANR.Petitioners**

Vs

THAKAR SINGH AND OTHERSRespondents

18. Civil Revision No.4362 of 2017(O&M)

**WASSAN SINGH DECEASED TH LRS AND ORS
.....Petitioners**

Vs

**STATE OF PUNJAB TH COLLECTOR AND ANR
.....Respondents**

19. Civil Revision No.4363 of 2017(O&M)

BAAZ SINGH DECEASED TH LRS

.....Petitioners

Vs

STATE OF PUNJAB TH COLLECTOR AND ANR

.....Respondents

20. Civil Revision No.4364 of 2017(O&M)

ANGREJ SINGH DECEASED TH LRS AND ORS

.....Petitioners

Vs

STATE OF PUNJAB TH COLLECTOR AND ANR

.....Respondents

21. Civil Revision No.4365 of 2017(O&M)

PIPPAL SINGH DECEASED TH LR

.....Petitioners

Vs

STATE OF PUNJAB TH COLLECTOR AND ANR

.....Respondents

22. Civil Revision No.4366 of 2017(O&M)

KABUL SINGH DECEASED TH LR AND ORS

.....Petitioners

Vs

STATE OF PUNJAB TH COLLECTOR AND ANR

.....Respondents

23. Civil Revision No.4367 of 2017(O&M)

AJIT SINGH

.....Petitioner

Vs

STATE OF PUNJAB TH COLLECTOR AND ANR

.....Respondents

24. Civil Revision No.4368 of 2017(O&M)

MOHINDER SINGH

.....Petitioner

Vs

STATE OF PUNJAB TH COLLECTOR AND ANR

.....Respondents

25. Civil Revision No.4420 of 2017(O&M)

MEHAL SINGH AND OTHERSPetitioners
Vs
STATE OF PUNJAB TH COLLECTOR AND ANR
.....Respondents

26. Civil Revision No.4421 of 2017(O&M)

SARWAN SINGHPetitioner
Vs
STATE OF PUNJAB TH COLLECTOR AND ANR
.....Respondents

27. Civil Revision No.4542 of 2017(O&M)

SHINGARA SINGH DECEASED TH LRS AND ORS
.....Petitioners
Vs
STATE OF PUNJAB TH COLLECTOR AND ANR
.....Respondents

28. Civil Revision No.4590 of 2017(O&M)

SHARAM SINGH DECEASED THR LR & ORS
.....Petitioners
Vs
STATE OF PUNJAB TH COLLECTOR AND ANR
.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Charanpreet Singh, A.A.G., Punjab
for the petitioners in CR Nos.3853 to 3869 of 2017 and
for the respondents in CR Nos.4362 to 4368, 4420,
4421. 4542 and 4590 of 2017 (O&M).

Mr. Aashish Chopra, Advocate
for the respondents in CR Nos.3853 to 3864, 3867 to
3869 of 2017 and
for the petitioners in CR Nos.4362 to 4368, 4420,
4421. 4542 and 4590 of 2017 (O&M).

Mr. Saransh, Advocate for

Mr. S.P.S. Sidhu, Advocate
for respondent Nos.1 to 3 and 4(b) and 4(c) in
CR No.3865 of 2016 and
for respondent Nos.1 and 2 in CR No.3866 of 2016.

RAJ MOHAN SINGH, J.

[1]. Vide this common order two sets of revision petitions are being decided. First set of revision petitions i.e. CR Nos.3853, 3854, 3855, 3856, 3857, 3858, 3859, 3860, 3861, 3862, 3863, 3864, 3865, 3866, 3867, 3868 and 3869 has been preferred by the State of Punjab against the order dated 14.01.2016 passed by the Addl. District Judge, Ferozepur vide which objections filed by the petitioners/State of Punjab in Execution Application were dismissed and the petitioners/State was directed to make the payment of compensation after considering the entire land to be *Chahi/Nehri*.

[2]. In the second set of civil revision petitions i.e. CR Nos.4362, 4363, 4364, 4365, 4366, 4367, 4368, 4420, 4421, 4542 and 4590 of 2017 (O&M) the land owners/claimants have assailed the order dated 31.08.2016 passed by the executing Court disposing of the execution petition without implementation of order dated 12.03.1999. For brevity, the common facts are culled out from the aforesaid cases.

[3]. The land of the owners was acquired vide Notification

dated 23.10.1989 under Section 4 of the Land Acquisition Act, 1984 (hereinafter to be referred as 'the Act') for the purposes of construction of Sukkar Nala (drain). Land measuring 24.54 acres of village Mastian was proposed to be acquired by the aforesaid Notification. In pursuance thereof, a Notification under Section 6 of the Act was published on 15.10.1992. The award No.327 dated 30.05.1994 was passed. Compensation was ordered to be awarded from 01.12.1963 along with 30% solatium under Section 23(2) of the Act. An interest on the compensation from the date of acquisition i.e. 01.12.1963 till award in accordance with the amended provisions of the Act was also ordered to be given. In the award, the Collector assessed Rs.50,000/- per acre compensation for *Chahi* land and Rs.20,000/- per acre as compensation for '*gair mumkin land*'.

[4]. Against the award dated 30.05.1994, references were filed under Section 18 of the Act before the Addl. District Judge, Ferozepur. The reference Court decided the references vide judgment dated 12.03.1999. In para No.16 of the judgment, following observations were made :-

“..... No sale deed qua the land of village Mastian is on the file except Ex.A-58 dated 25.09.1997. Jamabandis Ex.A-1 to Ex.A-20 are of different years pertaining to the land of village Mastian. As per

entries of the jamabandi, the acquired land was of Chahi/Nehri situated at a distance of 6/7 kilometers from Abadi as per RW1. In the absence of oral or documentary evidence to assess the market price of the acquired land, I am of the opinion that as per rates supplied by the Deputy Commissioner/Commissioner, Land Acquisition Collector rightly assessed the market price of the acquired land.”

[5]. In para no.20 of the judgment of the reference Court, following recital was made:-

“20. Land of the petitioners was unauthorisedly occupied by the authorities and the drain was constructed in the year 1963, but, as per award interest was not given with benefit under Section 23(1A) of the Land Acquisition Act. So, finding of the Land Acquisition Collector qua the interest and benefit u/s 23(1A) is modified. Petitioners are entitled to benefit u/s 23(1A) with interest at the rate of 9% for the first year and thereafter at the rate of 18% till the date of actual payment from the date of dispossession i.e. in the year 1963, but as per award, Rs.50,000/- was given to the claimants for Chahi land and Rs.20,000/- was given for Banjar land. The award is dated 01.06.1994. Therefore, the issue is accordingly decided partly in favour of the petitioners.”

[6]. In concluding part i.e. para No.21 of its judgment, ultimately the reference Court granted the following relief :-

“21. In view of my findings on issue No.1, the petitioners are entitled to the benefit u/s 23(1A) of the land Acquisition Act @ 50% of the compensation awarded the actual acquired land with interest at the rate of Rs.9% for

the first year i.e. 1963 and thereafter @ 18% till the date of actual payment from the date of dispossession i.e. benefit u/s 23(1A). The petitioners would be entitled to the benefit u/s 23(1A) from the date of taking of possession by the authorities in the year 1963. Memo of costs be prepared and file be consigned to the record room.”

[7]. Feeling aggrieved against the aforesaid judgment of the reference Court, State of Punjab and another filed RFA No.366 of 2000 in the High Court. The said RFA was decided along with bunch of appeals vide the common order dated 14.12.2011 by passing the following order:-

“This order will dispose of R.F.A. Nos. 366 to 384 of 2000, as common questions of law and facts are involved.

This is a bunch of appeals filed by the State impugning the award of the court below only on the ground that certain amount of compensation has been awarded to the land owners from the year 1963, when possession of the land was taken. Notification under Section 4 of the Land Acquisition Act, 1894 (for short, ‘the Act’) was issued on 23.10.1989.

A perusal of the memo of appeals shows that the amount involved in most of the appeals is upto ` 10,000/- , whereas in 3-4 appeals, the amount involved is about ` 30,000/-. Though in terms of the judgment of Hon'ble the Supreme Court in Special Land Acquisition Officer v. Karigowda and others, (2010) 5 SCC 708, the matters have to be remitted to the Collector for assessment of damages for use and occupation of the land for the period prior to the

issuance of notification under Section 4 of the Act, but considering the fact that the amount involved in each of the appeal is quite small, possession of the land was taken from the land owners way back in the year 1963, as is recorded in the impugned award of the court below and the amount has already been paid to the land owners, this court would not like to interfere with the matter on merits considering the aforesaid facts and also that exercise for assessment of damages may involve more amount in terms of time, in case the matters are to be reconsidered in the light of the judgment in Karigowda's case (supra).

Accordingly, without expressing any opinion on the controversy, the appeals are dismissed on account of smallness of amount.”

[8]. Thereafter land owners filed execution of the judgment/award dated 12.03.1999 before the executing Court. The objections were filed by the Sub-Divisional Officer, Drainage Construction Sub Division, C.C. Makhu on behalf of the Collector/judgment-debtor No.1. The objections were dismissed by the executing Court vide order dated 14.01.2016.

[9]. Feeling aggrieved against the aforesaid judgment, the first set of present revision petitions has been filed by the State of Punjab. The sole contention of the objectors was that whether the acquired land resulting in award of the reference Court dated 12.03.1999 was having some part and parcel of other nature of land except that of *Chahi/Nehri*. Para no.16 of the judgment of the reference Court was highlighted wherein

reference was made to revenue records viz. Ex.A-1 to Ex.A-20 and then it was recorded as per entries of the *jamabandi* that the acquired land was *Chahi/Nehri* situated at a distance of 6/7 kms. from *Abadi* as per RW-1. Evidently, the said recital came into being on the basis of testimony of RW-1, who stated that as per the *jamabandi*, the acquired land was *Chahi/Nehri* situated at a distance of 6/7 kms. from the *Abadi*. In the absence of oral or documentary evidence to assess the market price of the acquired land, the reference Court also endorsed the rates supplied by the Land Acquisition Collector.

[10]. In the Regular First Appeals filed by the State of Punjab against the judgment of the reference Court, no such arguments were made in the context of extent of land being *Chahi/Nehri* or *gair mumkin* in terms of revenue record Ex.A-1 to Ex.A-20. The Regular First Appeals were decided only on the premise that since the amount involved in most of the appeals was upto Rs.10,000/- and in three or four appeals, the amount was only Rs.30,000/-, therefore, considering the amount involved being small, the appeals were dismissed vide order dated 14.12.2011. The said order was never assailed by the State of Punjab in any Forum i.e. before the Hon'ble Supreme Court or in the review jurisdiction to seek any clarification in respect of extent of *Chahi/Nehri* and *gari mumkin* land involved in the acquisition.

[11]. In the second set of present revision petitions, the land owners are aggrieved of the order dated 31.08.2016 passed by the executing Court whereby the execution was disposed of without adhering to the judgment dated 12.03.1999 passed by the reference Court.

[12]. In nutshell, the controversy before this Court is whether the entire land has to be treated as *Chahi/Nehri* or 85 *Kanals* 7 *Marlas* of land should be treated as *Chahi* and 53 *Kanals* 11 *Marlas* of land should be treated as *gair mumkin* as per revenue record which was adduced in evidence in the form of Ex.A-1 to Ex.A-20.

[13]. In the revision petitions filed by the State of Punjab, the reference has been made to the *jamabandi* for the year 1989-90 as Annexure A-1, wherein the land of the landowners was described as *Chahi/Nehri* as well as *gair mumkin* with reference to different khasra numbers. The award of the Collector was also specific in terms of finding *Chahi/Nehri* viz-a-viz. *gair mumkin* land for which award of Rs.50,000/- per acre was assessed for the *Chahi/Nehri* land and Rs.20,000/- per acre was assessed for *gair mumkin* land along with consequential mandatory benefits.

[14]. At the time of issuance of notice of motion in the 1st set of revision petitions filed by the State of Punjab, following order was passed on 11.08.2016:-

“CM No.15666-CII of 2016 in CR-3853-2016

Annexure A-1 is taken on record subject to just exceptions. Registry is directed to place the same at an appropriate place

Main case

Counsel for the petitioners has submitted that as per the award passed by the Land Acquisition Collector compensation was assessed in respect of chahi land measuring 134 kanals 09 marlas at the rate of Rs. 50,000/- per acre and at the rate of Rs. 20,000/- per acre for gair mumkin land measuring 61 kanals 18 marlas. 17 land owners filed separate applications for execution in respect of land measuring 138 kanals 18 marlas i.e. chahi 85 kanals 7 marlas and gair mumkin 53 kanals 11 marlas. The petitioner has already deposited the entire compensation alongwith interest by taking into consideration chahi to the extent of 85 kanals 7 marlas and gair mumkin to the tune of 53 kanals 11 marlas. The only dispute between the petitioners and the land owners is with regard to land measuring 53 kanals 11 marlas in respect whereof the petitioners have deposited compensation at the rate of Rs. 20,000/- per acre with enhancement allowed by the reference court. It is further submitted that the Executing court has directed the State to pay compensation to the land owners by treating the entire land as chahi/nehri.

Notice of motion for 2.12.2016.

In the meantime, payment of compensation in

respect of land measuring 53 kanals 11 marlas by taking it as chahi/nehri shall remain stayed.

A photocopy of this order be placed on the files of connected cases.”

[15]. Whereas in the second set of revision petitions filed by the land owners following order was passed on 10.07.2017.

“Learned counsel for the petitioners contends that vide order dated 12.03.1999 passed by Additional District Judge in a reference, entire land was treated to be chahi/nehri.

Vide order dated 14.01.2016, contention of the learned counsel for the State in the context of treating some part of the land as Gair Mumkin was negated, against which civil revisions No.3853 to 3869 of 2016 were filed in the High Court. Those civil revisions are still pending but in the meanwhile, execution filed by the landowners/petitioners has been treated to be partly satisfied. Vide order dated 31.08.2016, execution stands disposed of. The undertaking given by the State was not adhered to before passing the impugned order.

Notice of motion for 31.08.2017.

Till the next date of hearing, operation of order dated 31.08.2016 to the extent of disposing of the execution filed by the petitioners shall remain stayed.

To be heard along with CR No.3853 of 2016.”

[16]. Learned State counsel vehemently contended that as per nature of land available on record on the strength of revenue record, the entire land cannot be held to be

Chahi/Nehri. The *jamabandis* Ex.A-1 to Ex.A-20 were already on record and the perusal of the same would give a *prima facie* information that the entire land was not *Chahi/Nehri* by any stretch of imagination.

[17]. On the other hand, learned counsel for the respondents/land owners vehemently argued that the findings recorded by the reference Court in para no.16 of its judgment were never assailed by the State of Punjab in any further forum and those findings have become final. Even no challenge was made by the State of Punjab to the findings recorded in Regular First Appeals which were dismissed by the High Court on 14.12.2011.

[18]. I have heard learned counsel for the parties.

[19]. Perusal of the contents of para no.16 of the judgment dated 12.03.1999 passed by the reference Court would not give any conclusive finding inasmuch as that it was the statement of RW-1, who suggested that as per the entries of the *jamabadis*, the acquired land was *Chahi/Nehri* situated at a distance of 6/7 kms. from *Abadi*. The reference Court further observed that in the absence of oral or documentary evidence to assess the market price of the acquired land, the Land Acquisition Collector rightly assessed the market price of the acquired land as per the

rates supplied by the Deputy Commissioner/Commissioner.

[20]. In any case, the reading of the aforesaid paragraph would not give any conclusive opinion with regard to the entire land to be *Chahi/Nehri* or some part of it was *gair mumkin* also. Since the Regular First Appeals were dismissed by the High Court on 14.12.2011 without making any reference to the aforesaid controversy in the context of nature of the land whether *Chahi/Nehri* or *gair mumkin*, therefore, any observation made in the aforesaid context would not give rise to any irresistible conclusion with regard to existence of total land as *Chahi/Nehri* or some part of it was *gair mumkin* as well.

[21]. At this juncture, it would be relevant to cull out the real facts on record. Factum of the entire land whether *Chahi/Nehri* or partially *gair mumkin* can only be ascertained from the revenue record which is already on record as Ex.A-1 to Ex.A-20. At the same time, the claim of the State of Punjab in the absence of any challenge to the findings recorded by the reference Court as well as by the High Court in Regular First Appeals has to be appreciated whether such an inaction on the part of State of Punjab would make the findings of the reference Court to be conclusive enough so as to rule out any other hypothesis. Though the executing Court cannot hold any kind of factual enquiry which may have the effect of nullifying the decree, but the executing Court can undertake limited inquiry in respect of jurisdictional error which goes to the very roots of the case.

[22]. Since the factual position in respect of nature of land is already on record as per revenue record, therefore, it would be in the fitness of things that the executing Court may revisit the controversy to ascertain the real nature of the land involved as per revenue record Ex.A-1 to Ex.A-20 and bring out the correct factual position on record and thereafter proceed to decide the execution and objections (if any) in accordance with law.

[23]. In the light of aforesaid, I deem it appropriate to remand all these cases to the executing Court with a direction to make a factual assessment of the land i.e. extent of *Chahi/Nehri* and *gair mumkin* on the basis of revenue record and then proceed to decide the execution petition in accordance with law without being influenced by the impugned orders passed by the executing Court till date. The impugned orders assailed in the present revision petitions are hereby set aside. The executing Court is directed to re-assess the extent of nature of land involved in the acquisition and thereafter arrive at fact finding appraisal in the context thereof.

[24]. Revision petitions are disposed of accordingly.

September 28, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No