IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA-2155-1990 (O&M)
Date of Decision: November 07, 2017

Raghunath Singh and others

...Appellants

Versus

Union of India and others

...Respondents

and other connected matters, i.e.

Filed By	Case Nos.
Claimant/ Landowners	**RFA Nos. 2156, 2330 & 2331 of 1990 (O&M); 44, 1050, 1051, 1570, 1601 & 2391 of 1991 (O&M); 1640 of 1993 (O&M); XOBJR Nos. 87-CI of 2008 in RFA No. 130 of 1991 and 81-CI of 2008 in RFA No. 131 of 1991 (O&M)**
Union of India	**RFA Nos. 2490, 2491, 2492, 2493 of 1990 (O&M); 129, 130, 131, 132, 133, 134, 135 & 1430 of 1991 (O&M); and 3003, 3006 & 3007 of 2011 (O&M).**

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: **For the Claimant/Landowners**

Mr. M.L. Sarin, Senior Advocate, with
Mr. Ritesh Aggarwal, Advocate,
(in RFA Nos. 1601, 2155, 2156, 2490 & 2492 of 1990; 44 & 135 of 1991)

Mr. Hemant Sarin, Advocate,
(in RFA Nos. 2330, 2331, 2491 and 2493 of 1990)

Mr. Rajan Bhargava, Advocate,
for Mr. Vishal Aggarwal, Advocate,
(in RFA Nos. 129, 132, 133 134, 1050, 1570 & 2391 of 1991; XOBJR Nos. 87-CI of 2008 in RFA No. 130 of 1991 & 81-CI of 2008 in RFA No. 131 of 1991; and 1640 of 1993)

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For Union of India

Mr. Brijeshwar Singh Kanwar, Standing Counsel for UOI,
(in RFA Nos. 2156, 2330 & 2331 of 1990; 129, 130, 131, 132, 133, 1050, 1051, 1430 & 2391 of 1991; 3003, 3006 & 3007 of 2011; XOBJR Nos. 87-CI of 2008 in RFA No. 130 of 1991 & 81-CI of 2008 in RFA No. 131 of 1991)

Mr. Karan Singh, Advocate,
(in RFA Nos. 2155 of 1990; 44, 134, 135, 1570 & 1601 of 1991)

Mr. R.S. Longia, Sr. Panel Counsel for UOI,
(in RFA Nos. 2490, 2491, 2492 & 2493 of 1990; and 1640 of 1993;)

ARUN PALLI, J. (ORAL)

Vide this order and judgment, I shall decide a batch of 26 appeals, of which 11 appeals as also two cross-objections have been preferred by the claimant/landowners and the rest 15 appeals have been filed by the Union of India. Although all these appeals as also the cross-objections have been filed against two separate awards dated 08.06.1990 and 17.09.1990, vide which the acquired land was assessed at different rates, i.e. Rs.1,400/- per marla and Rs.1,625/- per marla, respectively, but as the matter arises out of the same acquisition, these are being disposed of by a common judgment. However, by consensus, the facts are being culled from **RFA No. 2155 of 1990, titled "Raghunath Singh and others v. Union of India and others"**.

Vide notification, dated 23.01.1987, issued under Section 4 of the Land Acquisition Act, 1894, a land situated in village Mamoon (H.B. No. 378), Tehsil Pathankot, District Gurdaspur, was acquired for defence purposes. The final declaration under Section 6 was published on 10.07.1987. Vide Award No. 22, dated 30.12.1988, the Land Acquisition

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Collector assessed the land, categorized, as Barani-I & II at Rs.27,000/- per acre; Banjar Qadeem at Rs.14,000/- per acre; and Gair Mumkin at Rs. 8,000/- per acre. Being aggrieved by the assessment as also the compensation, the claimant/landowners filed objections under Section 18 to the award rendered by the Collector. Resultantly, the dispute was referred to the Civil Court for determination of the true value of the acquired land. On a consideration of the matter in issue, the Reference Court relied upon a judicial precedent, i.e. a judgment of this Court, dated 31.01.1989 (Ex. P-9), vide which the land situated in the same village, acquired vide notification dated 22.12.1969, for the same purpose, was assessed @ Rs.350/- per marla. But as the notification under Section 4 in the present proceedings was issued on 23.01.1987, i.e. after a span of 18 years, the Reference Court awarded **4½** times increase for the time difference between the two notifications, to assess its true value. Accordingly, vide award dated 08.06.1990, the claimant/landowners were awarded compensation at Rs.1,625/- per marla. Whereas, subsequently vide separate awards of an even date, i.e. 17.09.1990, in few of the land references, the Reference Court awarded **4½** times increase and assessed the acquired land at the same rate, i.e. Rs.1,625/- per marla. Whereas, in rest of the cases, the Reference Court awarded only four times increase, and the compensation was awarded @ Rs.1,400/- per marla. Further, I may also point out that RFA Nos. 3003, 3006 and 3007 of 2011 have been filed by the Union of India, impugning the award dated 08.04.1991, whereby the Reference Court, while re-determining the compensation under Section 28-A of the Act, had awarded the same compensation, i.e. Rs.1,400/- per marla, to the claimants. RFA No. 1601 of

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1991 is filed by the landowners, whose claims were also redetermined under Section 28-A, seeking further enhancement. Whereas, in RFA No. 1430 of 1991, filed by the Union of India, award dated 17.09.1990, as also the order dated 09.01.1991, vide which the review application moved by the claimants was accepted, have since been impugned. That is how, as indicated above, the parties are in appeal before this Court. Of course, the claimant/landowners seek further enhancement in the compensation. Whereas, the Union of India has appealed to set aside the impugned awards.

Mr. M.L. Sarin, learned Senior counsel for the claimant/landowners submits that the evidence on record shows that a part of the revenue estate of village Mamoon, was included within the municipal limits of Pathankot. The site plan Ex. P-2 showed that Manoj Nursing Institute and Hospital was situated adjacent to the acquired land. Likewise, Adarsh Bhartiya College, Glacier Factory, several other commercial godowns, nationalized bank and a Government High School was also situated in the vicinity of the land under acquisition. In reference to the statement of Sukhdev Singh (PW-3), he submits that owing to the army establishments all around the city of Pathankot, only the area under acquisition was left that could be used for residential and commercial purposes by the civilians. Resultantly, the value of real estate in the area had appreciated many fold. Thus, he submits that the claimant/landowners ought to have been awarded increase at a much higher rate upon the value of the land assessed by this Court in the relied acquisition, i.e. Rs.350/- per marla. Further he submits that the Reference Court grossly erred as the statutory benefit envisaged under Section 23(1-A) of the Act was not awarded to the

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claimant/landowners. Therefore, it is urged the impugned awards be suitably modified and the compensation awarded to the claimant/landowners be enhanced.

Per contra, learned counsel for the Union of India in reference to the decision of this Court in **Union of India and others v. Jagir Singh and another (RFA No. 2512 of 1990, decided on 28.04.2004) and other connected matters,** submit that in land references arising out of the same acquisition, the Reference Court, vide award dated 02.05.1990, had assessed the acquired land, as regards another set of claimants, at Rs.1,400/- per marla. And the appeals filed by both the parties against the said award were dismissed by this Court and while discarding the method of four times increase adopted by the Reference Court, the compensation awarded to the claimant/landowners at Rs.1,400/- per marla was maintained. It is submitted that the appeals filed against the decision of this Court in **Jagir Singh another (supra)** were also dismissed by the Supreme Court in **Union of India and others v. Jagir Singh and others (Civil Appeal Nos. 6289-6322 of 2008, decided on 26.04.2017)**. Therefore, the appeals preferred by the claimant/landowners as also the Union of India against the award(s), vide which the compensation was assessed at Rs.1,400/- per marla, are required to be dismissed. Whereas, the appeals preferred by the Union of India, against the awards, whereby the acquired land was assessed at Rs. 1,625/- per marla, deserve to be accepted, and as a consequence the appeals filed by the claimants, against those awards, for further enhancement are required to be dismissed. However, it is not disputed that the Reference Court had failed to award the benefit envisaged under Section 23(1-A) to the

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claimant/landowners. And, this Court, although vide its order and judgment, dated 28.04.2004 in **Jagir Singh and another (supra),** had dismissed the appeals filed by both the parties, but the claimant/landowners were awarded the benefit in terms of Section 23(1-A) of the Act. No other argument was advanced.

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

Ex facie, all what forms basis of assessment made by the Reference Court is a judicial precedent or a judgment of this Court, dated 31.01.1989 (Ex.P-9), vide which the land that also formed part of the same revenue estate, i.e village Mamoon, acquired vide notification dated 22.12.1969, was assessed at Rs. 350/- per marla. But as there was a time gap of almost 18 years between the two notifications, i.e. in the relied upon acquisition and the present proceedings, the Reference Court vide awards dated 08.06.1990 and 17.09.1990, awarded **4½** times increase and assessed the acquired land at Rs. 1,625/- per marla. Whereas, vide another set of awards dated 17.09.1990, while placing reliance upon the same decision dated 31.01.1989 (Ex. P-9), the claimant/landowners were awarded four times increase. And consequently the compensation was assessed at Rs.1,400/- per marla. It is not disputed that even vide award (LA Case No. 76 of 1989) dated 02.05.1990, arising out of the same acquisition, the Reference Court had assessed the acquired land @ Rs.1,400/- per marla. And, the appeals filed by both the parties against the said award were dismissed by this Court, vide order and judgment dated 28.04.2004 in **Jagir Singh and another (supra).** Albeit, the rate at which the compensation was

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assessed and awarded by the Reference Court i.e. Rs.1,400/- per marla was sustained, but this Court disapproved the mode or method of assessment/ evaluation adopted by the Reference Court i.e. by awarding four times increase upon the value of the land in the relied upon acquisition. For, on an analysis of the evidence, this Court had concluded that there was nothing on record to suggest that there was a rising trend in the price of agricultural land in the locality. Thus, the increase awarded by the Reference Court was held to be devoid of basis and merely presumptuous. Resultantly, the finding recorded in this regard, was specifically set aside. Having said that, this Court relied upon the sale deed Ex. P-1, vide which an area measuring 220 square feet, situated in the same village, was assessed @ Rs.5,600/- per marla. But owing to the smallness of the area, sold vide Ex.P-1, and the advantage it possessed in terms of it's location, this Court caused 50% deduction on account of smallness of the site and applied a further cut @ 25% because of it's location. Resultantly, value of the acquired land was worked out to Rs.1,400/- per marla, which was 25% of the sale consideration for which the sale deed Ex.P-1 was executed. And as coincedently the rate at which the compensation assessed by the Reference Court, was the same i.e. Rs.1,400/- per marla, this Court maintained the award.

However, as indicated earlier, vide certain awards, i.e. dated 08.06.1990 and 17.09.1990, that have been impugned in these appeals, the Reference Court had assessed the acquired land at Rs. 1,625/- per marla;

> **"16. ……*The Hon'ble High Court in its order dated 31-1-1989, copy Ex.P.9, awarded compensation to said petitioners at the rate of Rs.350/- per marlas. That was for the***

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land acquired in 1969 whereas the land in question was acquired in 1987. During this span of 18 years, as already discussed, prices of land and other commodities have increased by more than 4½ times, this judgment of the Hon'ble High Court cannot be lost sight of.

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18. Learned Govt. Pleader argued that in another case of Hans Raj etc. Versus Union of India etc. (Case No. 48 of 1989) decided by me on 2-5-1990), I had awarded Rs.1400.00 per marla as compensation. It was pointed out that same yardstick should be applied in this case. I find no substance in this argument. In Narinder Nath Versus Union of India, 1990 (1) Recent Revenue Reports 439, our High Court observed that other owners are not bound by the award given by the Court in other cases, that he can get his land evaluated by separate award, that the claimants may or may not take benefit of any other award and that he could not be made to suffer for any lapse on the part of any other land owner who had not brought relevant evidence while having his land evaluated in a separate award. The facts in Hans Raj's case must be different and the material highlighted before me now may not have been brought to my notice by those petitioners."

Apparently, the increase awarded by the Reference Court at **4½** times is without any basis. Even the observations: the facts in the land references in which the acquired land was assessed at Rs. 1,400/- per marla,

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must be different and the material that was now placed before the Reference Court was possibly never brought to the notice of the Court then, are equally erroneous. For, nothing is indicated as to what were those facts and the material that necessitated to evaluate the same piece of land at a different rate. In any case, the mode of assessment that was resorted by the Reference Court in the land reference No. 76 of 1989, by awarding even four fold increase, was deprecated by this Court, and the findings recorded in this regard were specifically set aside in the case of **Jagir Singh and another (supra)**. And, as indicated above, the said decision has since been affirmed even by the Supreme Court. In the wake of this, the argument advanced by the learned Senior counsel that even though this Court had set aside the mode of assessment adopted by the Reference Court in the case of **Jagir Singh and another (supra),** the claimant/landowners could still be awarded 12% increase for the time gap between the two notifications, i.e. 22.12.1969, in the relied upon acquisition, and 23.01.1987, issued in the present proceedings, cannot be countenanced either. For, while maintaining the compensation at Rs. 1,400/- per marla, this Court in its judgment in **Jagir Singh and another (supra),** had not relied upon a judicial precedent or a past acquisition, but a sale deed Ex.P-1, for, there was hardly any evidence on record to show that the value of the real estate in the vicinity of the acquired land had appreciated or escalated. So is the position in the matter at hands. Therefore, the assessment made by the Reference Court at Rs. 1,625/- per marla, is perverse and cannot be sustained. Rather, I am reminded to point out that all these appeals were already pending, when the connected appeals were decided by this Court on 28.04.2004 in **Jagir Singh and**

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another (supra). But somehow these appeals were not listed with the other bunch, and but for that, these too would have been decided by the same judgment. And subsequently, when these appeals were taken up, they were adjourned to await the decision of the Supreme Court in an appeal pending against the decision of this Court in **Jagir Singh and another (supra).** And now when vide order dated 26.04.2017, the Supreme Court has dismissed those appeals, the judgment of this Court in **Jagir Singh and another (supra)**, has since attained finality. In the circumstances, the only and the inevitable conclusion that can be reached is that all the claimant/landowners in these appeals shall be entitled to compensation at Rs. 1,400/- per marla.

As regards RFA No. 1430 of 1991, although the Reference Court had assessed compensation @ Rs.1,400/- per marla, but the landowners were denied compensation for the area comprised in Khasra Nos. 418/1 and 418/3, for, it was held to be a *Khud*. But vide order dated 09.01.1991, the Reference Court reviewed its decision, for on reconsideration it concluded that as there did not exist any evidence to show that land comprised in the above khasra numbers was indeed a *Khud*, it could not be termed as such. Resultantly, the landowners were awarded compensation even for the said portion/area in proportion to their share. Nothing could be shown as to how the order dated 09.01.1991, passed by the Reference Court, was contrary to the record or suffered from any illegality.

In so far as the appeals filed by Union of India against the award rendered by the Reference Court, under Section 28-A of the Act; it is not disputed that the claimants were awarded compensation at the same rate, i.e. Rs.1,400/- per marla, as granted to their co-sharers in a joint *khata*. The

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compensation awarded by the Reference Court was affirmed by this Court as also the Supreme Court in the connected matters. These appeals are pending, post admission, for the past over 25 years. Thus, the question whether application under Section 28-A of the Act, was required to be moved before the Collector or the Reference Court could award the same compensation to the claimants, as had already been granted to their co-sharers, has paled into insignificance and is not being examined. Particularly, when the claimants here even realized the enhanced compensation years ago.

This brings me to the only issue that survives in the present *lis*. Apparently, the Reference Court had not awarded the statutory benefits under Section 23 (1-A) to the claimant/landowners. It is not disputed either by the learned counsel for the Union of India that this Court though dismissed the appeals preferred by both the parties in the case of **Jagir Singh and another (supra),** but the claimant/landowners were found entitled to additional market value in terms of the provisions of Section 23 (1-A) of the Act. That being so, the claimant/landowners even in these appeals shall be entitled to the benefit under the aforesaid provision, in terms of the aforesaid decision.

I am also reminded to point out at this stage that while admitting the appeals preferred by Union of India, in the year 1990, although the prayer for stay of disbursement of enhanced compensation was declined, but it was observed that in the event the enhanced amount is deposited, the same shall be disbursed to the claimant/landowners on their furnishing adequate security. Almost three decades have gone by and in all probabilities, the claimant/landowners must have utilized the compensation.

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Thus, the Executing Court shall ensure that the matters in which the claimant/landowners have been released compensation, not at Rs.1,400/- per marla but @ Rs.1,625/- per marla, the excess amount is first adjusted/off set against the amount they shall be entitled to in terms of the provision of Section 23(1-A). Needless to assert, that thereafter, the balance compensation/amount, if any, shall be released to the claimant/landowners without any further delay.

As a result the appeals/cross-objections filed by the claimant/landowners as also the appeals preferred by the Union of India are disposed of in the above terms. The impugned awards are accordingly modified.

(ARUN PALLI)
JUDGE

November 07, 2017
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Whether Speaking/Reasoned: ✓YES / NO
Whether Reportable: ✓YES / NO

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