

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RFA-1145-2004 (O&M)
Date of Decision: September 26, 2017

Maya Devi and others

...Appellants

Versus

State of Haryana

...Respondent

**and other connected matters, i.e. RFA Nos. 1146 to 1152, 1165 and 2187
of 2004 (O&M)**

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. R.S. Mamli, Advocate.
for the appellant(s).

Mr. Shivendra Swaroop, Assistant Advocate General, Haryana,
for the respondent.

ARUN PALLI, J. (ORAL)

Vide this order and judgment, I shall decide a batch of ten appeals that have been filed by the claimant/landowners. For the matter arises out of the same acquisition and all these appeals have been preferred against a common award, dated 22.11.2003, these are being disposed of by a common judgment. However, by consensus the facts are being culled from **RFA No. 1145 of 2004, titled "Maya Devi and others v. State of Haryana"**.

Vide notification, dated 05.06.1997, issued under Section 4 of the Land Acquisition Act, 1894, a land measuring 9.07 acres, situated in the revenue estate of village Badopal (Hadbast No. 46), Tehsil and District Fatehabad, was sought to be acquired for construction of Badopal Left

The Land Acquisition Collector classified the acquired land in three categories, i.e. *Nehri*, *Tal* and *Tiba*. And vide award dated 14.01.1999, the land that was *Nehri* was assessed at Rs.1,00,000/- per acre; *Tal* at Rs.60,000/- per acre; and *Tiba* at Rs.50,000/- per acre. The claimant/landowners being dissatisfied with the assessment as also the compensation awarded by the Collector, 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. The Reference Court enhanced the compensation to Rs.1,10,000/- per acre as regards *Nehri*, whereas as *Tal* and *Tiba* was uniformly assessed at Rs.60,000/- per acre. Further, notwithstanding the nature and quality of their landholdings, the claimant/landowners were also awarded Rs.10,000/- per acre on account of severance. That is how, as indicated above, the claimant/landowners in these appeals seek further enhancement. Whereas the State has not chosen to file any appeal and has accepted the award rendered by the Reference Court.

Learned counsel for the claimant/landowners submit that the Reference Court erred in ignoring the sale deed, dated 12.11.1997 (Ex.P-1), vide which an area measuring 4K-17M, which also formed part of the same revenue estate, i.e. village Badopal, was alienated at Rs.1,20,000/- per acre. He submits that even though the said sale deed was executed post notification under Section 4, in the present proceedings, but yet it could be relied upon by applying an appropriate/suitable reverse cut. Further, it is urged that as the purpose of acquisition was; construction of Badopal Left Minor, as a result of the acquisition the landholdings of most of the

claimant/landowners stood bifurcated into two parts. He asserts, for it was difficult to access and irrigate the un-acquired land, and the same could not be utilized to its optimum potential any longer, the Reference Court ought to have awarded, at least, 50% of the market value of the acquired land as compensation on account of severance. Reliance is placed upon the decisions of this Court in State of Punjab v. Mohan Lal, 1997 (3) R.C.R. (Civil) 693; and State of Haryana and another v. Santokh Singh and others (RFA No. 3356 of 2010, decided on 05.05.2016).

Per contra, Mr. Shivendra Swaroop, learned State counsel submits that the sale deeds Exs. P-1, P-2 and P-3, proved on record by the claimant/landowners, were rightly discarded by the Reference Court, for, these were executed post notification dated 05.06.1997, issued under Section 4. Further, the *bonafides* of the sale deed, dated 12.11.1997 (Ex.P-1), were in issue, therefore, it could never form basis of assessment. Rather, he submits that no cogent reason has been assigned by the Reference Court to enhance the compensation awarded by the Collector from Rs.1,00,000/- per acre to Rs.1,10,000/- per acre. But, it is urged as the State has not chosen to assail the award, the issue, if any, loses its relevance. However, he admits that owing to the acquisition, the land of most of the landowners stood bifurcated into two parts. And, for they were not awarded any compensation in this regard by the Collector, they were suitably compensated by the Reference Court by awarding Rs.10,000/- per acre irrespective of the nature of their lands. Thus, no further enhancement is feasible.

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

Concededly, the notification under Section 4, was issued on 05.06.1997 and, thus, value of the acquired land was to be assessed in relation thereto. Undoubtedly, the claimant/landowners had proved on record the sale deed, dated 12.11.1997 (Ex.P-1); the sale deed, dated 23.05.2000 (Ex.P-2) and sale deed, dated 24.11.1998 (Ex.P-3), but apparently all the sale deeds were executed post notification under Section 4. Thus, it was neither safe nor suitable to rely upon such sale instances. The argument advanced by the learned counsel for the claimant/landowners that vide sale deed Ex.P-1, a land situated in the same village, i.e. Badopal, measuring 4K-17M, was alienated at Rs.1,20,000/- per acre, therefore, the same could be relied upon by causing an appropriate deduction or a suitable cut cannot be countenanced either. What needs to be noticed is that even vide sale deed, dated 23.05.2000 (Ex.P-2), executed three years after, a land situated in the same village was alienated at the same price, i.e. Rs, 1,20,000/- per acre, which is why the Reference Court had observed that the value at which the sale deed, dated 12.11.1997 (Ex.P-1), was executed was arbitrarily hiked or inflated. Not just that, even vide sale deed dated 24.11.1998 (Ex.P-3), a land that also formed part of the same revenue estate, was sold at Rs.80,000/- per acre. Therefore, for the bonafides of the sale deed (Ex.P-1) were in issue, it indeed was unsafe to be relied upon. In fact, on an analysis of the evidence on record, the Reference Court had reached a conclusion that as regards location and potentiality of the acquired land, it was only being used for agricultural purposes and a major part thereof was ***Tiba***. And, the only advantage it possessed was that it was located near village Badopal (village *abadi*), which is why compensation was enhanced

from Rs.1,00,000/- to Rs.1,10,000/-. Rather the observation recorded by the Reference Court is; that it was the admitted case of all the claimants that after construction of the canal, the irrigation facilities had improved in the area and even value of the land had also increased manifold. Thus, in conspectus of the above, no further enhancement is feasible as regards compensation for the acquired land.

As regards the argument that the Reference Court awarded only Rs. 10,000/- per acre on account of severance, grievance of the claimant/landowners is not devoid of merit. Therefore, the short issue that arises for determination is **as to at what rate the claimant/landowners ought to have been awarded compensation on account of severance?**

Learned counsel for the claimant/landowners has placed reliance upon the decision of this Court in **Mohan Lal's case (supra)**, wherein the claimant/landowners were awarded 50% of the market value of the acquired land as compensation as regards the land falling across the canal and away from village *abadi*. And, @ 20% of the market value of the land falling on the side of the village up to the area of five acres. Concrete and specific evidence was led to show that the land falling across the canal was not accessible. Sham Lal, Patwari (PW3), working in the office of the Land Acquisition Collector, proved the site plan Ex.A-2 and testified that the tubewells of the landowners had been left out on one side of the canal while their severed lands fell on the other side. So much so, the testimony of witness examined by the State, i.e. Kewal Krishan, Kanungo (RW1) also proved the claim of the landowners. In this view of the matter it was concluded that the lands of the claimants located across the canal was

rendered useless and a total loss.

Whereas in the case of **Santokh Singh (supra)** this Court on the basis of the site plans on record had arrived at a conclusion that it was neither feasible nor practically possible for the authorities of the Irrigation Department to provide culverts to the landowners at short distances and in the absence thereof, the claimants were to cover a long distance to access their un-acquired land. Resultantly, compensation @ 30% of the market value of the acquired land was awarded on account of severance.

What is the position in the matter at hands? Concededly, the claimant/landowners in these proceedings have led no evidence in this regard. Resultantly, nothing exists on record to depict the position on the spot and the hardship that was being faced by the claimant/landowners. Likewise, this was not the case of the claimant/landowners that there indeed was no other alternate passage or the un-acquired portion was no longer accessible. All what the claimant/landowners stated in their examine-in-chief was/is **“no compensation for severance of the land has been granted”**. Thus, in the absence of any cogent or specific evidence, it could not be concluded that un-acquired land of the claimant/landowners was completely in-accessible and was reduced to a total loss. Therefore, the decision of this Court in the case of **Mohan Lal (supra)** as also in **Santokh Singh (supra)** shall have no bearing on this matter.

But it is equally true that landholdings of the claimant/landowners stood severed owing to the construction of Badopal Left Minor. And as a consequence the perpetual difficulty to access their un-acquired parcels of land, to irrigate the bifurcated portions, inability to

utilize the un-acquired area to its optimum potential, was inevitable. As indicated earlier, all what the Reference Court has awarded by way of compensation on account of severance is Rs. 10,000/- per acre, which as regards the land that is *Nehri*, works out to 9.09% of the market value of the acquired land. And, as regards *Tal* and *Tiba*, to 16.67% of the market value of the said land.

Thus, in the conspectus of the position as sketched out above, I am of the view that all the claimant/landowners whose land has indeed been bifurcated into two portions, shall be entitled to damages on account of severance at a uniform rate, i.e. 25% of the value of the acquired land. Needless to assert, the claimant/landowners shall also be entitled to all the statutory benefits as admissible in law.

Accordingly, the appeals are disposed of in the above terms.

(ARUN PALLI)
JUDGE

September 26, 2017
Pkapoor

Whether Speaking/Reasoned:
Whether Reportable:

✓ YES / NO
✓ YES / NO