

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

**RFA No.96 of 1991
Decided on : 07.12.2018**

Birbal Ram (deceased) through L.Rs. and others

... Appellants

Versus

The State of Haryana and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. C.S. Singh, Advocate
for the appellants.

Mr. Sudeep Mahajan, Addl. AG, Haryana
Ms. Vibha Tewari, AAG, Haryana.

G.S. Sandhawalia, J. (Oral)

The appeal arises out of the Award of the Reference Court, Sirsa dated 17.08.1990, whereby claim of the landowners for enhancement has been dismissed.

Vide notification dated 15.07.1987 issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') the land measuring 5 kanals 16 marlas falling in village Bhuratwala was acquired for the construction of Bhuratwala-Musli link road. The Collector as such had assessed the market value ₹30,000/- per acre for Nehri land and ₹12,000/- per acre for Barani land alongwith all statutory benefits. The claim of the landowners is that the land measuring 1 kanal 8 marlas had been wrongly shown as Bararni, but it was Chahi and the link road was completed earlier and the petitioners as such were deprived of the possession, since the year 1971-1972. Resultantly, it was their case that notification of 1987 was for the purpose of widening of the road and possession had been taken earlier and the road had been constructed and, therefore, they were also entitled for

the compensation from the year 1971-1972.

The Reference Court while examining the evidence in detail came to the conclusion that the link road had been built up on the path as per consolidation record since the year 1971-1972 and the land was acquired for widening of the road in the year 1987 for which the department had already paid the compensation. The suggestion was denied that the possession was taken in the year 1971 and construction was raised on 31.03.1972. It was also noticed that there was no documentary proof on the judicial file nor any effort was made by the petitioners during this period of almost 12 years to seek his remedy if the land had been taken by the State for widening the link road and on such account the claim for compensation from the year 1972 was rejected.

Similarly, the claim for higher enhancement as such was denied, since Ex.P2 was an award of earlier notification dated 21.04.1986, whereby compensation had been granted @ ₹30,000/- for Nehri land and ₹10,000/- for Barani land. The said award was distinguished on the ground that there was a gap of two years and, therefore, the argument raised that the prices are increasing was rejected on the ground that the judgment passed in '**Puran Singh Vs. State of Haryana**', 1986 PLR (1) 453 was pertaining to the land acquired in Faridabad.

The claim for enhancement for the land measuring 1 kanal 8 marlas was rejected on the ground that on an earlier occasion the land had been shown as Barani and no evidence had been brought on record by

examining the Patwari/official as to how and in what manner the land became Nehri from Barani. Therefore, the benefit of enhancement was not given for the land measuring 1 kanal 8 marlas.

Counsel for the appellants has, thus, validly argued that if on an earlier occasion the State itself had awarded a sum of ₹30,000/- per acre for Nehri land and ₹10,000/- per acre for Barani land, vide Award (Ex.P2) for the notification dated 21.04.1986, whereby the land was acquired for the construction of 33 KV Sub-Station in the same village, the trend of increase in prices in the year could not be ignored and the same amount of compensation could not be granted for Nehri land. It is submitted that if the increase had been given from ₹10,000/- per acre to ₹12,000/- per acre for the period of one year for Barani land, necessary increase should have also been given for the Nehri land.

The said argument is well justified, keeping in view the judgment of the Apex Court passed in '**Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another**' **2008 (14) SCC 745**. For the land falling in the rural area, this Court is of the opinion that if 7.5% per annum enhancement is granted, it would be adequate to meet the ends of justice and also keeping in view the fact that the land price would be steadily going up.

Another aspect which is to be kept in mind is that the purpose of acquisition in the present case is for the construction of link road and as per the stand of the State itself the land was used for widening of the road and, therefore, the value would be little higher than

what had been assessed for the land measuring 4.06 acres which was acquired for 33KV Sub-Station in the same village and for which uniform rate of compensation had been granted. It is settled principle of law that land falling on the road is always more valuable than that situated in the interior. Similarly, for the land of Barani category, since it was abutting the road, a uniform rate of compensation is liable to be paid.

Resultantly, a uniform rate of compensation @ ₹32,250/- per acre alongwith all statutory benefits is liable to be granted for all types of land.

However, the argument which was raised that the land had been occupied in the year 1971-1972 as such is not liable to be accepted, as no factual evidence as such has come on record in the form of official witness that the link road was not there on the consolidation path. There is no evidence as such that the landowners had complained about the land being used for the link road and no compensation had been paid, apart from the oral evidence as such. Even otherwise, the Apex Court in '**R.L. Jain (D) by L.Rs. Vs. DDA & others' (2004) 4 SCC 79** has held as under:-

“16. In this connection it will be apposite to refer to Sub-section (1A) of Section 23 of the Act which enjoins payment of an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 4(1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. There are two decisions of this Court, wherein same controversy arose namely, whether the claimant would be entitled to

*additional sum at the rate of twelve per centum on the market value where possession has been taken over prior to publication of notification under Section 4(1). In **Special Tehsildar (LA) PWD Schemes Vijaywada v. M.A. Jabbar** AIR 1995 SC 762 which has been decided by a Bench of two Judges (K. Ramaswamy and Mrs. Sujata V. Manohar, JJ) it was held that claimant would not be entitled to this additional sum for the period anterior to publication of notification under Section 4(1). However in **Assistant Commissioner, Gadag, Sub- Division, Gadag v. Mathapathi Basavanewwa & Ors.** AIR 1995 SC 2492 also decided by a two-Judge Bench (K. Ramaswamy and B.L. Hansaria, JJ) it was held that even though notification under Section 4(1) was issued after taking possession of the acquired land the owners would be entitled to additional amount at twelve per cent per annum from the date of taking possession though notification under Section 4(1) was published later. For the reasons already indicated, we are of the opinion that the view taken in *Special Tehsildar* is legally correct and the view to the contrary taken in *Assistant Commissioner, Gadag (supra)*, is not in accordance with law and is hereby overruled.”*

The said view has been followed by the Apex Court in **‘Special Land Acquisition Officer Vs. Karigowda and others’ 2010 (5) SCC 708**, by holding that compensation cannot be granted for the usage of the land prior to the Section 4 notification and remedy would lie before the Collector. The relevant portion reads as under:-

“78. We are bound by the decision of the larger Bench, which had considered the case of Satinder Singh (supra), on which the reliance has even been placed by the claimants in the present appeal. The larger Bench after detailed discussion on the subject, rejected the claim for payment of interest claimed by the respondents in those cases, prior to the date of issuance of the Notification under Section 4 of the Act. As is evident from the above dictum of the Court, despite dispossession, the title

continues to vest in the land owners and it is open for the land owners to take action in accordance with law. Once notification under Section 4 (1) of the Act has been issued and the acquisition proceedings culminated into an award in terms of Section 11, then alone the land vests in the State free of any encumbrance or restriction in terms of provisions of Section 16 of the Act. The Court, in situations where possessions has been taken prior to issuance of notification under Section 4(1) of the Act, can direct the Collector to examine the extent of rent or damage that the owners of land would be entitled to the provisions of Section 48 of the Act would come to aid and the Court would also be justified in issuing appropriate direction. This was the unequivocal view expressed by the Court in R.L. Jain case (supra) as well. This legal question is no more open to controversy and stands settled by this Court. We would follow the view taken and accept the contention of the appellant-State that the Reference Court as well as the High Court could not have granted any interest under the provisions of the Act, for a date anterior to the issuance of Notification under Section 4 of the Act. However, following the dictum of the Bench, we direct the Collector to examine the question of payment of rent/damages to the claimants, from the period when their respective lands were submerged under the back water of the river, till the date of issuance of the Notification under Section 4(1) of the Act, from which date, they would be entitled to the statutory benefits on the enhanced compensation.”

Resultantly, the claim of compensation for usage of the land prior to the notification is not acceptable.

Accordingly, the present appeal is partly allowed and the market value is assessed @ ₹32,250/- per acre alongwith all statutory benefits for all types of land.

DECEMBER 07, 2018

Naveen

Whether speaking/reasoned:

Whether Reportable:

(G.S. SANDHAWALIA)
JUDGE

Yes/No

Yes/No