IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No. 97 of 1991
Date of Decision: 18.12.2018

Kalawati (deceased) through LRs.

.... Petitioner

Versus

State of Haryana

.... Respondent

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

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

Mr. Abhinash Jain, AAG, Haryana and
Ms. Vibha Tewari, AAG, Haryana.

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G.S. SANDHAWALIA, J. (Oral)

The present appeal has been filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') against the award dated 17.08.1990 passed by Reference Court, Sirsa. The Reference Court has enhanced the compensation to Rs.28,500/- per acre, whereas the Land Acquisition Collector had awarded Rs.25,000/-for Nehri and gair mumkin Makaan Land per acre, for land falling village Madho Singhana. It is pertinent to mention here that the appeal of the state bearing **RFA No.118 of 1991 titled as 'State of Haryana vs. Kalawati'** was dismissed on 16.12.2011.

The reasoning given for enhancement is by placing reliance on Ex.P-6, which is the sale deed of land measuring 08 kanals dated 07.10.1986 which was half kilometer away from the acquired land. The other sale deed's as such, which had been relied upon by the land owners but not taken into consideration is on the ground that the sale deeds were executed just before the notification and had been sold for the purpose of creating evidence. A finding was recorded that the acquired land was not situated near a place having future potentiality for construction of housing colony or an industrial estate.

Learned counsel for the appellant has argued that the land had potential as there was a office situated like electricity office and there were shops of steel furniture, tyres and cycle repair near the acquired land and, therefore, the market value of the acquired land is liable to be enhanced. Learned counsel for the appellant has further submitted that specific case of the landowners was that the possession had been taken in the year 1964 and for the construction of the Sirsa-Ellenabad road on an earlier occasion before the notification under Section 4 of the Act was issued on 13.07.1987 for acquisition of 1.10 acres of land for the said public purpose. Thus compensation is also liable to be paid as the land was in possession of the respondents prior to the date of Section 4 notification.

Learned counsel for the State on the other hand submitted that the Reference Court has rightly rejected the said plea as the whole case was based on a demarcation report and the landowners never put in appearance and the matter had been agitated through power of attorney.

The record has been perused. The Reference Court on the issue of possession of the land prior to issuance of Section 4 notification has examined the evidence threadbare. It has come in the evidence of PW-3 Dharampal, Divisional Accounts Officer, that the earth work for the construction of road from Sirsa-Madhosignhana to Ellenabad was started on 03.08.1966 and payment of the same was made on 01.09.1966, but it was not apparent that the construction was made on the acquired land of the claimants. The said witness could not say that the earth work had been done on the consolidated path and further admitted that the work was done as a measure of famine relief and which is generally done on government land.

Similarly, even PW-4 S.L.Sharma, D.A.O. could not tell about the work done on the consolidation path. The report Ex.PW2/1 was not found acceptable as in the application itself it has been stated that the neighbours had control over the land and there was no allegation that the government had constructed road over the land of the claimants. It was also noticed that PW-2 Nanak Chand, the Naib Tehsildar who had done the demarcation and gave the demarcation report that the road is not passing through the path left during consolidation, had in the cross-examination, stated that he never gave any notice to any of the officials of the PWD(B&R). PW-1 Lajpat Rai was a special power of attorney and was present at both the times but he had never made any written complaint to the higher authority at the time of construction of the road and only oral requests had been made. The attorney had held out that complaints should have been made to the higher authorities.

Accordingly, reliance can be placed upon the statement of the RW-2 Palli Ram, J.E. that possession of the land was taken after the pronouncement of the award. Prior to the notification, the road had been constructed on the consolidation path which was 88 feet in width and the land had been acquired for widening of the road which is already in existence from 12 feet to 22 feet. The witness has admitted that the existing road was constructed in the year 1971 and the earth work was done on the consolidated path and there was no evidence to show that the possession has been taken prior to the passing of the award. The issue of compensation is liable to be paid on account of taking the possession of the land before Section 4 notification stands settled against the land owners by a Three Judge Bench of the Apex Court in '***R.L.Jain (D) by L.Rs. vs. DDA & others' (2004) 4 SCC 79*** wherein it has been held as under:-

> *"16. In this connection it will be apposite to refer to Subsection (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.*
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> *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. JabbarAIR 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."

Thus the issue which now remains for consideration is only qua whether the market value has been rightly assessed to at Rs,28,500/- as noticed in the sale deed which has been taken into consideration dated 07.10.1986, exhibited as P-6 and is of 08 kanals of land, only half a kilometer away from the acquired land. It is 09 months prior in time to the Section 4 notification and therefore the benefit of enhancement as such is liable to be given.

It is relevant to notice that the land has been acquired for widening of the road and therefore, the potentiality of the land as such cannot be denied. Even if the alleged land is situated in the rural area, it is a settled principle of law that land situated next to the road is always more valuable and the potentiality of such land is more from the other land which would be situated away from the road, in the interior.

Thus, this court is of the opinion that benefit of 10% increase is liable to be given keeping in view the judgment of the Apex Court in '***Oil and Natural Gas Corporation Limited vs. Rameshbhai Jivanbhai Patel and another' 2008(14) SCC 745***. Resultantly by giving the benefit of 10% an additional amount of Rs.2,137/- can be added to Rs.28,500/- taking the market value @ Rs.30,637 rounded of to Rs.30,640/-. The claim for further enhancement on the basis of other sale deeds and the argument that the sale deed Ex.P-8 whereby 08 kanals 12 marlas of nehri land was sold on 19.11.1986 @ Rs.39,500/- and the per acre price comes to Rs.36,500 is to be rejected inasmuch as it has been noticed that the said land is three kilometers away from the acquired land which has come in the evidence of RW-1 Din Dayal, Patwari, who has admitted that the land subject matter of Ex.P-6 is just a half kilometer away from the acquired land. Similarly land mentioned in Ex.P-9 is also three kilometers away from the acquired land and therefore the sale exemplar which has been relied upon by the

Reference Court was the relevant one. Even otherwise the state appeal already stands dismissed and the State counsel is not in a position to contend that the sale exemplar is liable to be ignored.

Therefore the present appeal is partly allowed and the market value is is assessed @ Rs.30,640/- instead of Rs.28,500/- per acre along with all statutory benefits for the land acquired.

(G.S. SANDHAWALIA)
JUDGE

December 18, 2018
Sunil Devi

Whether speaking/reasoned	*Yes*
Whether Reportable	*No*