

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

**RFA No.2054 to 2057 of 1998
& RFA No.1024 of 1999
Date of decision: 2.2.2018**

Chatro and others

...Appellants

Versus

State of Haryana and another

...Respondents

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

Present: Mr. S.S.Dinarpur, Advocate,
Mr. Subhash Godara and Ms. Pooja Bishnoi, Advocates
for the appellants.

Mr. Sudeep Mahajan, Addl. Advocate General, Haryana with
Mr. Shivendra Swaroop, AAG, Haryana for the respondents.

None for the respondents in RFA No.1029 of 1999.

G.S.SANDHAWALIA, J.

This order shall dispose of five Regular First Appeals, bearing RFA Nos.2054 to 2057 of 1998, filed by the land-owners, against award dated 07.02.1998 and RFA No.1024 of 1999, filed by the State, against award dated 07.11.1998, as common question of law and facts are involved in these appeals. The land measuring 20 kanals 8 marls which was acquired, vide notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") dated 04.02.1997, for the same purpose, namely, for the construction of link road from Sadhaura to Rattuwalla, falling in Village Rattuwalla.

The Collector vide order dated 17.9.1987 assessed the market value at the following rates:-

- i) Chahi ₹ 22,400/- per acre.
- ii) Bag Barani ₹ 14,880/- per acre.
- iii) G.M.Sarak ₹ 3,840/- per acre.

The grouse of the land owners was that no enhancement has been granted by the Reference Court vide its award dated 07.02.1998 passed under Section 18 of the Act.

The State, on the other hand, was aggrieved against the award dated 07.11.1998 of the Reference Court wherein the same Reference Court, 9 months later, had granted compensation by assessing the market value @ Rs.80,000/- per acre. Reliance by the Reference Court was upon the sale deed dated 12.12.1985 (Ext. P-1) wherein 7 marlas of land had been sold for Rs.6000/- (Rs.1,35,000/- per acre), as assessed by the Reference Court, whereas actually it comes to Rs.1,37,142/- per acre. Resultantly, a cut of 33% was applied to determine the market value. The earlier judgment dated 07.02.1998, which is subject matter of challenge in RFA-2054 to 2057-1998, which had been relied upon by the State, was not taken into consideration on the ground that the case was to be decided on the basis of evidence available on the file and if the parties have been able to lead evidence in subsequent litigation, the same relief could not be denied.

Counsel for the State has submitted that sale deeds (Exts. R-1 to R-3) were not taken into consideration and in view of the earlier order passed, the compensation should be maintained at the level which the Collector had awarded.

After considering the evidence on record in both the cases, this Court is of the opinion that the Reference court was not justified in relying upon the same exemplar in one case and granting compensation to the tune

of Rs.80,000/- per acre, for the land which was acquired for the same purpose and declining enhancement in an earlier award. The reason for declining the enhancement was that the sale deed was for construction of the house and the land was abutting the phirni and was quite at a distance of place from the land which was acquired. It was held that the land was situated along with the abadi area and at a distance of about 15 acres of land and therefore, it could not form the basis as to what was the market value and in the absence of any other documentary evidence, the benefit of enhancement was not granted. Similarly, the sale deed (Exts. R-1 to R-3) placed by the State, were not taken into consideration as the sale consideration was less and neither the vendee nor the vendor had been examined.

On the issue of right to obtain interest from the date of taking over the possession of the land, reliance was placed upon the revenue record Ex. P/2 to Ex. P/6 Khasra girdwaries which showed that the land has been shown as Gair Mumkin Sarak in the year 1984 whereas the notification under Section 4 of the Act was published on 4.2.1987. Therefore, the benefit was given to recover the interest on this account from 1.10.1984 till the payment was actually made keeping in view the observations of the Apex Court in **Assistant Commissioner Gadag Sub Division Gadag Vs. Mathapathi Basavanneewa and others** AIR 1995 SC 2492. Resultantly, additional amount of compensation at the rate of 12% per annum from the date of taking of possession i.e. 1.10.1984 till the payment was made was granted under Section 23(1A) besides interest as provided under Section 28 of the Act was granted by award dated 07.02.1998, which the state has

chosen not to appeal against. Section 23(1A) reads as under:-

“23 (1A) In addition to the market value of the land, as above provided, the Court shall in every case award 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, sub-section (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.

Explanation:- In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.”

The State has not challenged this aspect in a separate appeal and therefore, the sole question which arises now is whether the market value is properly assessed and whether once land was acquired for the same purpose, one set of land-owners could be denied the enhancement.

In claim petition the plea taken was that the Land Acquisition Collector had applied different methods of assessing the compensation for three villages i.e. Rattuwalla, Fazalpur and Nussehra and the land of three villages was the same and was of very good quality and had been assessed differently. The land which was acquired was of good quality and the claimants were not given adequate compensation as envisaged under the Act. It was admitted by the State that there was already existing katcha path on which the road had been built and the rate had been paid as per prevalent market rate for specific quality of land.

PW-1 Karan Singh who proved the sale deed Ex. P1 was cross-examined regarding the factum that the land which he was sold was abutting

on Phirni. The claimant Jati Ram (PW-2) had stated that link road was connecting village Sadhaura and that market price was ₹ 80,000 or ₹ 90,000/- per acre. In cross examination of RW-1 Phool Singh, Patwari, office of the Land Acquisition Collector, it was elucidated that possession of the land was taken at the time of award and pucca road had already been constructed at the time of making the award. He also proved the sale deeds Ex. R/1 to Ex. R/3 and the site plan Ex. R/4 to show the location of the acquired land viz-a-viz the land sold.

Keeping in view the usage of land measuring 20 Kanals 8 Marlas which was acquired for the purpose of construction of link road, this Court is of the opinion that the Reference Court fell into an error as such by classifying the same into categories of land and awarding different types of compensation as noticed above. While upholding the order of the Collector once the acquired land was being used for the purpose of link road there was no need to differentiate the type of land and the Reference Court should have extended the benefit of uniform compensation as has been held by the Apex Court in **Subh Ram and others Vs. State of Haryana and another** 2010(1) SCC 444. The relevant observations read as under:-

“9. It is not doubt true that this Court in some decisions has observed that purpose of acquisition will also be relevant. But it is made in a different context. The Land Acquisition Collectors in some cases adopt belting methods for valuation of land, with reference to a focal point, that is either with reference to the distance from the main road, or distance from a developed area. Lands that adjoin a developed area or a main road is given a higher value than a land farther away from the road or the developed area. The Land Acquisition Collectors also award different

compensation depending upon whether the acquired land is a dry land or wet/irrigated land. When different categories of lands (or lands with different situational advantages) are acquired for the same purpose, say for forming of a residential layout, courts have sometimes felt that determination of their value with reference to previous status or situation should be avoided and a uniform rate of compensation should be awarded for all lands acquired under the same notification. The logic employed by the court is that categorising the lands acquired for a common purpose, say for a residential colony, into high value irrigated land and low value dry lands is meaningless, as all lands are to be levelled and used for the same purpose that is for formation of a residential layout and once the layout is formed, it makes no difference whether the land was previously a land with irrigation facilities or a dry land. It is in this context, in some cases, to avoid the need to differentiate the lands acquired under a common notification for a common purpose, and to extend the benefit of a uniform compensation, courts have observed that the purpose of acquisition is also a relevant factor. The said observation may not apply in all cases and all circumstances as the general rule is that the land owner is being compensated for what he has lost and not with reference to the purpose of acquisition.”

The said principle had been followed by the Apex Court in **Haryana State Industrial Development Corporation Vs. Pran Sukh** 2010(11) SCC 165 wherein keeping in mind that the Industrial Model Town at Manesar was being developed and land involved was of different villages and was for the same purpose, it was held that the land owners would be entitled for common compensation. The Reference Court further was not justified to deny enhancement in the award dated 07.02.1998, while granting benefit on the basis of the same exemplar (Ext.P-1) dated

12.12.1985.

Another aspect which the Reference Court failed to take into consideration was that the sale deed in question was dated 12.12.1985 (Ex. P1) and if the benefit of enhancement of 5% is given on the market value of Rs. 1,37,142/-, for a period of one year, keeping in view the principles laid down by the Apex Court in **ONGC Vs. Ramesh Jivanbhai Patel 2008 (14) SCC 745**, an additional amount of Rs.6857/- would be liable to be added to the said sale deed, taking the market value at Rs.1,43,999/- (rounded off to Rs.1,44,000/-). Even if adequate cut, as such, is imposed upon the sale deed to assess the market value, keeping in view the fact that it was close to the village and of 7 marlas of land. If a 40% cut is granted on the said amount, for development charges, keeping in view the fact that it was for a small chunk of land, the market value would still work out to Rs.86,400/-, which is still more than the price which has been awarded by the Reference Court.

Thus, in the above circumstances, this Court is of the opinion that the market value which has been assessed at Rs.86,000/- was well justified and accordingly, RFA-1024-1999, filed by the State, does not merit any consideration whereas the appeals filed by the land-owners bearing RFA-2054 to 2057-1998 are, accordingly, allowed and the land-owners are also granted uniform compensation at the same level of Rs.80,000/- per acre along with all statutory benefits.

February 2, 2018
Pka/sailesh

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No