

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.885 of 2003
Decided on: 24.01.2018

Dharam Pal Khosla

....Appellant

Versus

State of Punjab & another

...Respondents

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

Present: Ms.Akshita Chauhan, AAG, Punjab.

Mr.Sandeep Khunger, Advocate
and Mr.Kuldip Sanwal, Advocate, for the land-owners.

G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of eleven RFAs bearing RFA-885-2003, RFA-1562, 1563, 2003, 2004, 2338, 2339, 2340-2000, RFA-3412-2002 and 2096 & 2469-2003, involving common questions of law and facts.

The said RFAs are arising out of the notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') issued on 21.05.1990 and the award of the Land Acquisition Collector dated 19.05.1993. Out of the said RFAs, three RFAs bearing RFA-1562, 1563-2000 and RFA-3412-2002 are directed against the award dated 06.02.2001. RFA-1562 & 1563-2000 have been filed by the State of Punjab, which is aggrieved against the market value of the land which was assessed at Rs.4234/- per marla (Rs.6,77,440/- per acre) after enhancing it from Rs.2117 per marla (Rs.3,38,720/- per acre) by the Reference Court.

RFA-2003 & 2004-2000 are directed against the award dated 09.02.2000, whereby the land-owners have been given compensation @ Rs.625/- per marla. Similarly, RFA-2338, 2339 & 2340-2000 are directed

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against the award dated 31.05.2000, wherein enhancement has been made to the tune of Rs.1000/- per marla.

RFA-885, 2096 & 2469-2003 are directed against the award dated 06.09.2002, wherein the market value of the land has been assessed and enhanced from Rs.500/- to Rs.600/- per marla, by another Officer.

It is a matter of record that for the total acquired land measuring 30 acres 5 kanals and 18 marlas for the purpose of setting up the Grain Market, Qadian, the Collector had awarded the following rates on 19.05.1993:

“Chahi	Rs.500/- per marla
Barani Land	Rs.350/- per marla
Gair Mumkin	Rs.2117/- per marla”

In the first set of references, filed by Kapoor Singh and Kuldip Singh, the decision was on 09.02.2000, by Shri G.R.Banyal, Addl.District Judge, Gurdaspur, wherein it was pleaded that the rate of land was between Rs.10,000/- to Rs.15,000/- per marla and the compensation awarded was paltry. In the case of Kuldip Singh, for 3 kanals 4 marlas of land, he has got a sum of Rs.52,993/- and in the case of Kapoor Singh, for 10 kanals 4 marlas of land, he has got a sum of Rs.1,69,493/- plus Rs.42,000/-. Reliance had been placed upon the price-chart (Ext. P-1) and the sale deed (Ext.P-3) of 1 marla of land which pertained to Village Kadian Mughlan, which was, accordingly, not taken into consideration on the ground that it would not throw any light about the market value of the acquired land in the year 1990 when the notification was issued, since the chart pertained to a later point of time.

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The average sale price for the years 1993 to 1997, varied from Rs.1219, Rs.1095, Rs.1020, Rs.1011 per marla and accordingly, the market value was calculated at Rs.625/- per marla. It is a matter of fact that the land in question was just outside the Municipal limits.

Similarly, the 3 references, filed by Kartar Kaur, Dalip Singh and Jasbir Singh, were decided on 31.05.2000 by Shri Naginderjit Singh, Addl.District Judge, Gurdaspur, by consolidating the same. The plea taken by the land-owners was that there was potential value of the land which are surrounded by industries and commercial sites and industrial establishment. That the Quadian town was expanding towards the acquired land and there was demand of plots. Resultantly, the value of the land was alleged @ Rs.4000-5000/- per marla and prayer for compensation was sought @ Rs.3000/- per marla. Sale deed dated 08.12.1988 for 2 kanals executed by Ujjagar Singh in favour of Abdul Rashid was brought on record for Rs.50,000/- (the same sale deed is relied upon in reference wherein the value has been shown as Rs.1,50,000/-). Similarly, sale deed exhibited as A-5 for 10 marlas of land in favour of Kundan Singh for a consideration of Rs.1,20,000/- was also placed on record. The Reference Court took into account the sale deed (Ext. A-2) which formed part of the acquired land and which was executed on 09.02.1982 of 4 kanals, for a sale consideration of Rs.40,000/- to assess the market value @ Rs.500/- per marla on the date of the sale. The Reference Court wrongly relied upon the acquisition and pegged it at 1993, which is the date of the award, without taking into consideration the fact that the date of notification under Section 4 is the

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relevant date for pegging the market value. The market value was, accordingly, assessed @ Rs.1000/- per marla. Accordingly, amount was enhanced to Rs.1000/- per marla and Exts. A-2 to A-6 were ignored on the ground that the land which was subject matter of sale deeds was not similarly situated.

The same Officer, on 06.02.2001, decided 2 land references pertaining to M/s Julka Rice & Oil Mills Pvt. Ltd. and Brij Mohan Julka, whose 22 kanals 8 marlas and 4 kanals of land had been acquired. The ground in the reference applications was that the area was part of the industrial complex and there were various units like Julka Rice, General Mills and Munshi Ram Brij Mohan Oil Mill, Julkan Steel & Allied Industrials, Julka Agro Service Centre Batala Road, Julka Foods, situated in the acquired land, which were used for stacking of paddy of the mill and which was hypothecated with the bank. The claimants had been deprived of the loan facilities because there was hypothecation with the banks. The CC limits of Rs.601 lakhs and the productivity was also adversely affected and financial loss had been accrued to it. Similarly, waste water would pass through the acquired land and goes to the well, which was situated in the acquired land and thus, the acquisition would curb the process and would result in major loss in production.

No specific issue had been framed by the Reference Court regarding the clauses which are part of Section 23 of the Act, as to the damage which a person would sustain on account of taking of the possession by reason of taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession there.

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Thirdly, the damage sustained by a person interested, at the time of the Collector's taking possession of the land by reason of severing such land from his other land; fourthly, the damage sustained by the person interested, at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner or his earnings; fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses incidented to such change; and sixthly, the damage bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and time of the Collector's taking possession of the land. Resultantly, only on the issue of market value, the same was decided inspite of the owners of industrial unit having been examined.

Sucha Singh, Warehousing Manager was examined to prove the severance issue and the Bank Manager proved the mortgage of the land measuring 24 kanals 8 marlas, as per Ext.A-6. Similarly, the owner of the land-Jatinder Mohan also examined himself, whereby he had deposed about the fact that the bank was demanding fresh security in the alternative which they were unable to furnish and the financial loss suffered due to the acquisition. They were paying transportation charges while stacking the paddy in the godown of the warehousing corporation. Similarly, claim of Rs.10-12 lakhs was claimed in the shape of expenditure for making alternative arrangement for the discharge of the waste water. These aspects were never even addressed by the Reference

Court who only proceeded on the ground that if these factors are to be considered, then the rate awarded by the Land Acquisition Collector is too meager. Resultantly, the rate of market value was fixed at Rs.4200/- per marla by enhancing it from Rs.2117/-, which was the rate assessed for gair mumkin land. Accordingly, he doubled the compensation to Rs.4234 and on account of that, on an earlier occasion, in land reference cases pertaining to Kartar Kaur, the compensation had been enhanced from Rs.500/- to Rs.1000/- and on the same parameter, doubled the compensation.

It is, thus, apparent that the Reference Court has been acting on total guess work and not keeping in mind the relevant considerations of assessing the market value on the basis of the sale deeds which has come on record and comparing them and trying to find out the locations from the site-plans, to find out whether a reasonable cut could have been adopted if the sale deed was of the similar piece of land and whether the land was far from the acquired land. As noticed earlier, the exercise of assessing compensation separately under Clauses 4 to 6 of Section 23 has also not been undertaken in proper earnestness.

A Division Bench of this Court in ***Smt. Savitri Devi Vs. State of Haryana 1984 PLR 47***, while assessing the loss of a poultry farm on account of the acquisition of land, has held that loss is to be calculated on the basis of what the person was earning from the trade or business which he was pursuing and compelled to give it up and carry it on elsewhere. It cannot be compared as compensation of land and sheds, godown etc. and the product of labour, skill and loss of income is not

compensation by paying for the land, sheds and structures alone.

Relevant portion of the judgment reads as under:

“4. The loss of income is a factor to be taken into consideration in fixing the market value of land itself which the owner is to get under clause Fourthly of section 23 of the Act. Loss of earnings is to be calculated on the basis of what the earnings would be if the trade or business were pursuing business is compelled to give it up or to carry it on elsewhere. The compensation for the land and sheds, structures and godown et cetera is not the same thing as compensation for the loss of business or even of the poultry farm with its actual and potential income value. The income, which the claimant derives from his poultry is not simply the product of the poultry birds-not to speak of the fixtures alone. It is also the product of labour, skill et cetera. The loss of income is certainly not compensation by paying for the lands, sheds and structures alone.”

This aspect was never taken into consideration by the Reference Court which only dealt with the market value of the land in question and therefore, the value as alleged for the industrial unit is justified. Proper market value for the loss of earnings was to be gone into but the same has not been dealt in proper earnestness by the Reference Court and the matter would have to be necessarily remanded so that the parties do not lose their right for correct valuation for their land. Even otherwise, as noticed, no specific issue, as such, was framed which should have been done, keeping in view the amended pleadings which had been filed wherein all the specific averments had been made regarding the loss. Due to the non-framing of the issue, the Reference Court, thus, could not focus upon this aspect and did not decide the loss

which the industrial unit had faced on account of the acquisition and loss of 26 kanals of land, adjoining these units.

Similarly, while dealing with the 3 references, namely, Bachan Singh, Dharam Pal and Ashwani Kumar, Mrs.Amarjot Bhatti, Addl.District Judge, Gurdaspur, vide award dated 06.09.2002, gave nominal increase of Rs.100/- per marla, inspite of the fact that Bachan Singh had stepped into the witness-box and deposed that he had lost 63 kanals 2 marlas and was only left with 17 kanals of land. Similarly, Dharam Pal had stated that his land was situated at the Batala-Quadian road and three Rice-Shellars were located in the said land. The Octroi post, State Bank and petrol pump were at a distance of 100 yards from the land. He had made a claim for the eucalyptus trees and refuted the claim of Rs.1,54,000/- which was awarded to him and that passed by the Collector, which was inadequate. The sale deed dated 08.12.1988 (Ext. AW 8/1) for a sum of Rs.1,50,000/- was brought on record which had been sold by Ujjagar Singh, as noticed earlier also. A detailed site-plan had also been brought on record (Ext. A-1) wherein the lands of both Dharam Pal and Bachan Singh had been shown in red and blue colours and the fact that there was only the firni separating the land of Dharam Pal from the Industrial Training Centre which was abutting the main Quadian-Batala road. The award dated 06.02.2001 had wrongly been ignored, as such, by holding that the findings given in the award were not binding on this Court. It is settled principle that an award passed for a similarly situated land is relevant piece of evidence and could be a parameter for fixing the market value, as has been held in ONGC Vs.

Ramesh Jivanbhai Patel 2008 (14) SCC 745. Especially, since the industrial unit of M/s Julka Rice Mills was situated in the middle of the land of Dharam Pal, the Reference Court was not justified in ignoring the said award. It is true that in the award dated 06.02.2001, reference has been made to the earlier enhancement made on 31.05.2000 from Rs.500/- to Rs.1000/-, but the same was not exhibited and in such circumstances, the Reference Court held that it was not possible to rely upon that finding.

Similarly, Bachan Singh had specifically alleged that an area of 5 kanals 14 marlas of land and a pond had been left out without any passage which had been acquired along with bore and irrigation facilities and therefore, the land had become useless. Thus, severance charges were also asked for in the said pleadings.

Counsels for the appellant/land-owners, accordingly, have referred to the map, to show the location of the exemplar dated 08.12.1998, which had been duly proved and exhibited as Ext. 8/A and to submit that the same depicted the relevant market value which should have been taken into consideration by applying appropriate cut. The fact that the Patwari himself had submitted that there was only a firni separating the land of Dharam Pal and the ITI and the bus-stand of Quadian was only at a distance of 1 km and the weigh bridge was 2 killas away from the acquired land.

The statement of Abdul Rashid Quadir AW-8 can be referred to whereby he pointed out that the land had been purchased by him and identified the location of the land pertaining to his sale deed and that the

property acquired was for the purpose of grain market and was better than the land purchased by him and his land was on the opposite side of the property purchased. The vendor of the said sale deed had deposed that Dr.Abdul Rashid had purchased the land for construction of a hospital and the entire sale consideration had been received in the presence of the Sub-Registrar, through a cheque. The sale deed, as noticed, was 1 ½ years prior to the notification under Section 4 and therefore, has been wrongly ignored by the Court below. Even otherwise, it was a 2 kanals which was not a very small portion of land and the potentiality and the situation of the land was, thus, ignored and mere guess work had been adopted to grant varying rates of compensation inspite of their being instances of the market value of the adjoining portions.

Resultantly, this Court is of the opinion that the matter will necessarily have to be remanded for fresh decision.

Accordingly, all the appeals are allowed, including the State appeals and the matter is remanded to the District Judge, Gurdaspur for fresh decision, keeping in view the above-said observations. It is open to the parties to file appropriate applications for reframing of the issues wherever required, as noticed above, for purpose of deciding the loss under severance and loss of earnings headings. It is expected that the Learned District Judge will assign all the references to one Court, so that contradictory findings are avoided, as has happened earlier. It is further made clear that the compensation which has been received by the land-owners is not to be recovered and will be subject to re-adjustment, on passing of the final order by the Reference Court, afresh and no recovery

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shall be made from them during the pendency of the reference petitions.

It is also expected that the Reference Court shall decide the issue at the earliest, since the evidence is already complete.

Parties shall put in appearance before the District Judge,
Gurdaspur on 26.02.2018.

24.01.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*