IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.2779 of 2001 & other connected cases
Decided on: 03.04.2018

Nazar Khan & others ....Appellants

Versus

Punjab State through Chief Secretary, Punjab & others ...Respondents

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

Present: Mr.Amit Aggarwal, Advocate
Ms.Supriya Garg, Advocate, for the landowners.

Ms. Akshita Chauhan, AAG, Punjab.

Mr.Vijay K.Jindal, Sr.Advocate
with Mr.P.K.S.Phoolka, Advocate, for NFL.

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G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 20 appeals, bearing RFA-2779 to 2783-2001, 4187 to 4190-2001, 1278 to 1285-2002, 2674 to 2676-2002, filed by the landowners, under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') against the awards of the Reference Court, Bathinda dated 30.10.2000 & 23.12.2000. The Reference Court has chosen to give the market value @ Rs.1,30,000/- per acre for the land which was acquired vide notification under Section 4 of the Act dated 23.07.1987. In the first set of cases, the lead case of which was *Naranjan Singh Vs. Punjab State,* land belongs to Bathinda, Joga Nand and Bibiwala whereas in the second set of cases, land only belongs to Village Bibiwala. The purpose of acquisition, which is common, was for construction of a water channel known as New Fertilizer Minor to carry water from the main Bathinda Canal to the National Fertilizer Ltd., Bathinda.

2. The grouse of the landowners was that without acquiring the same under law or without paying any compensation, the land had been used and they had approached this Court by way of filing a writ petition. Resultantly, notification dated 23.07.1987 had been issued, for land measuring 8 kanals 10 marlas in Joga Nand. Vide award dated 20.01.1988, the following amount was awarded as compensation by the Land Acquisition Collector:

"Nehri	=	29,902/- per acre
Chahi	=	25,107/- per acre
Gair Mumkin	=	75,789/- per acre"

3. Vide supplementary award dated 10.03.1998, interest for a period from October, 1975, i.e., the date of taking possession, was given.

4. Similarly, for 3 bighas 16 biswas, situated in the revenue estate of Bathinda, the market value was assessed vide award dated 21.01.1988, as under:

"Nehri	=	43,058/- per acre
Gair Mumkin	=	1,28,039/- per acre"

5. The benefit of interest from the date of taking possession was also granted vide supplementary award dated 17.05.1988.

6. For Village Bibiwala, vide award dated 11.02.1988 and 10.03.1988, for 31 kanals 5 marlas of land, the market value was assessed as under:

"Nehri	=	37,027/- per acre
Chahi	=	37,027/- per acre
Gair Mumkin	=	30,000/- per acre"

7. Similarly, the benefit of interest was granted from the date of taking possession, vide supplementary awards dated 10.03.1998 and 27.04.1988.

8. The landowners filed reference petitions under Section 18, being dissatisfied with the amount of compensation being assessed.

9. The Reference Court, in the first set of cases, came to the conclusion that the land fell in one composite block though in 3 different revenue estates and was liable to be treated as one for the purpose of awarding compensation, as per the evidence brought on record and the site-plan (Ext.A-10). The finding that the three villages are intermingled and are a compact block, has not been challenged by the respondents. It was noticed that the whole of the acquired land was situated at a distance of 60 karams from abadi area of Village Joganand, Bibiwala and at a distance of ½ km from Dr.Gurdial Singh Dhillon Nagar, Fateh Singh Nagar and Amarpur Basti. Resultantly, placing reliance upon Ext.A-19, which was an award passed for notification dated 29.06.1988, after about a year of acquisition whereby the market value had been fixed @ Rs.2,68,000/- per acre, for the purpose of construction of I.T.B.P. Complex, which had been carved out between Villages Bibiwala and Bathinda was considered relevant for the enquiry of the market price. Accordingly, a sum of Rs.1,30,000/- was assessed as the market value. Reliance was also placed upon the judgment passed by the Division Bench of this Court in LPA-425-1989 titled as *Buta Singh & another Vs. Union of India & another*, dated 18.12.1989 (Ext.A-20). Acquisition in

the said case was for cantonment and it had been also noticed by the Division Bench that the land was within 2 kms of Municipal Limits of Bathinda.

10. Under Issue No.3, it was noticed that the possession of whole of the acquired land was taken during October, 1975, and as per the supplementary awards, the interest had been granted from October, 1975. Therefore, it was held that the claimants were also entitled to receive and recover compensation on the amount of enhanced compensation only, @ 9% per annum, for the first year from the date of taking possession during October, 1975 and @ 15% per annum till actual realization of the enhanced compensation, along with other statutory benefits.

11. In the second set of cases pertaining to the award dated 23.12.2000, though it was passed by the same Officer, but there was no reference of the earlier award, though it would have been a relevant piece of evidence also. It was noticed that there was a sale deed dated 03.06.1987 (Ext.A-1), of land measuring 18 marlas, which was sold for Rs.25,000. However, not being a similar plot of land, as the size was small, it was not made the basis for determining the market value and ignored. Similarly, other sale deeds also, Exts.P-4 & P-5 were ignored and Ext.A-2, but sale deed dated 25/27.01.1982 (Ext.A-2) for land measuring 2 kanals 17 marlas, for a sum of Rs.46,428/-, which was executed by Sarwan Singh in favour of Green Park Co-operative House Building Society @ Rs.1.25 lacs per acre was taken into consideration for

determining the market value. Reliance was also placed upon the judgment (Ext.A-6), whereby this Court in LPA-428-1985 titled *Darshana Devi & another Vs. Union of India & others,* decided on 12.12.1991, had awarded compensation @ Rs.16.80 per sq.yard (Rs.2.1 lacs per acre). It is to be noticed that the notification in that case was issued on 20.01.1975 and pertains to Village Bathinda and was for the purpose of Cantonment. Reliance was also placed upon Ext.A-7, which is Land Reference Case titled *Kartar Singh Vs. Punjab State,* which was for the acquisition of land for construction of Indo-Tibetan Border Police Complex at Villages Bibiwala and Bathinda and which was for the notification dated 08.07.1988, almost one year later. 12.5% increase was sought to be added as per judgment dated 18.12.1989, Buta Singh (supra) (Ext.A-8), to come to the conclusion that the price would be higher and could not be less than Rs.1.30 lacs per acre. The sale deeds produced by the respondents (Exts.R-1 to R-3) were not taken into consideration as they were pertaining to the year 1985 and therefore, the value was fixed @ Rs.1,30,000/- per acre. However, the benefit under Section 23(1-A) was denied, in the circumstances of the case where possession had been taken prior to the actual acquisition of the land.

12. The methodology, as such, which has been adopted to assess the market value is liable to be modified in as much as once the sale deeds were there on record as exemplars, the benefit should have been given of the said sale deeds, as they are the best pieces of evidence. If reference is made to Ext.A-9 which is dated 19.05.1985 and which falls

in Village Joginand, which was one kanal of land, sold for Rs.19000/- the value would work out to Rs.1,52,000/- per acre. Even if a conservative enhancement of 7.5% is to be given, keeping in the law laid down by the Apex Court in **ONGC Vs. Ramesh Jivanbhai Patel 2008 (14) SCC 745**, on the principle of cumulative increase, for the 2 years intervening between 19.05.1985 to 20.07.1987, the amount would work out to Rs.1,75,655/- per acre. Keeping in view the amount of land in question of the sale deed and by applying a 20% cut, still the value would work out in the range of Rs.1,40,524/-.

13. Similarly, for Ext-A-1 which is for 18 marlas of land, falling in Village Bibiwala dated 03.06.1987 sold, for a sum of Rs.25,000/- is taken into consideration in RFA-2779-2004, pertaining to the Land Reference Case in Mothu Khan's case, predecessor-in-interest of Nazar Khan, the amount would work out @ Rs.2,22,080/- and since the plot in question (then Ext.A-9) is smaller and 30% cut would bring the value to Rs.1,55,456/-. The potentiality of the land in question has already been noticed by the Reference Court itself and from the statements of the witnesses also that the land is situated only at a distance of 4 kms from the Bathinda Bus-stand and a finding has also been recorded, as such. It has also come on record that the land is situated just outside the Municipal Limits of Bathinda town at the time of acquisition and therefore, the potentiality of using the land cannot be denied for plotting.

14. The argument that the possession of the land was taken in the year 1975 and therefore, the benefit of interest @ 15% should be

granted from the date of taking possession, cannot be accepted, in view of the judgment of the Three Judges Bench of the Apex Court in **R.L.Jain (D) by LRs Vs. DDA & others (2004) 4 SCC 79**. The said view has further been followed by the Apex Court in **Special Land Acquisition Officer Vs. Karigowda & others 2010 (5) SCC 708**. A Division Bench of this Court in **Suraj Bhan & another Vs. State of Haryana & others 2017 (2) Law Herald 1807** also followed the said view, that for seeking the damages, application has to be made before the Collector for the said period, in view of the observations of the Apex Court in **Karigowda** (supra). Same 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."

15. Resultantly, this Court is of the opinion that the market value can safely be assessed @ Rs.1,50,000/- per acre along with all statutory benefits, keeping in view the discussion in paras 12 & 13 above. Accordingly, the appeals filed by the landowners are allowed. The landowners are also free to file applications before the Collector, within a period of 2 months from the date of receipt of a certified copy of this order, seeking damages for the period from 1975 to the date of Section 4 notification. The Collector shall also consider the evidence which has already come on record before the Reference Court and assess the compensation payable to them, in accordance with law, after hearing the concerned parties, as expeditiously as possible.

03.04.2018 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

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