IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No. 82 of 2002 (O & M)
Date of decision: 17.01.2018

Ashok Khurana ....Appellant(s)

Versus

State of Haryana ...Respondent(s)

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

Present: Mr. Harkesh Manuja, Advocate,
for the appellant.

Mr. Sudeep Mahajan, Addl. A.G., Haryana.

Mr. Sandeep Punchhi, Advocate,
for the appellant-Punjab Wakf Board
(in RFA No. 3060 of 2007).

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 8 appeals i.e. RFA Nos.82, 659 and 1942 of 2002; 5793 of 2001; 111, 2520, 2646 of 2003; 192 of 2006 and 3060 of 2007 filed both by the State and by the land owners seeking reduction and enhancement respectively since the Reference Court decided the petition under Section 18 of the Land Acquisition Act, 1894 (in short 'the Act') on 28.08.2001 and 13.10.2001, 28.08.2001, 18.12.2001 28.09.2002, 24.03.2003 and 22.10.2005. Facts are being taken from ***RFA No. 82 of 2002, Ashok Khurana vs. State of Haryana***.

In principle, the Reference Court, in all the cases, has assessed the market value of the land in question @ Rs.178.40 per square yard which translates to Rs. 8,63,456/- per acre. The reasoning given by the Reference Court is that on an earlier occasion on 31.07.2001, the award had been passed in similar circumstances in L.A. Case No. 123 of 1997 titled as Suresh Kumar vs. State of Haryana. The notification in question under Section 4 dated 02.03.1993 is common to the set of cases for acquisition of land in the revenue estate of village Taraf Afgan, Malik Ugra Kheri and Ugra Kheri at Panipat was, thus, the exemplar relied upon by the Reference Court to follow the earlier view taken to peg the market value at the above mentioned rate. The Collector, vide the award dated 28.02.1996, had assessed the market value of the 3 villages at the following rates:-

"Sr. No.	*Name of village*	*Kind of land*	*Rate D(Per acre)*
1.	*Taraf Afgan*	*Chahi*	*6,00,000/-*
2.	*Malik Ugrakheri*	*Chahi*	*4,00,000/-*
		Barani	*3,50,000/-*
		Gair Mumkin	*2,75,000/-*
3.	*Ugra Kheri*	*Chahi*	*4,00,000/-*
		Barani	*3,50,000/-*
		Gair Mumkin	*2,75,000/-"*

The said rates, as noticed, have been enhanced by the Reference Court on an earlier occasion in *Suresh Kumar's case (supra)* and respectively followed thereafter.

It is not disputed that in an earlier bunch of 158 cases, the lead case of which was ***RFA No. 4778 of 2001, Daljeet Singh vs. State of Haryana and another*** decided on 03.02.2010, the Co-ordinate Bench assessed the valuation of the entire acquired land @ Rs.206 per square yard with all statutory benefits. The relevant portion reads thus:-

"The relief granted to the land owners in this bunch of appeals is summed up as under:-

(i) As far as valuation of entire acquired land is concerned, the same is determined at Rs. 206/- per square yard with all statutory benefits thereon.
(ii)The claim regarding damages on account of severance is rejected.
(iii)The Land owners in RFA Nos. 938 and 940 of 2002 have been held entitled to compensation for the acquired land to the extent, the amount has been spent on the purchase thereof plus 9%, on account of time gap along with statutory benefits.
(iv)Claim regarding damages under Section 48 of the Act is rejected.

The appeals and cross-objections are disposed of accordingly."

In such circumstances, even four cross appeals filed by the State of Haryana seeking reduction of compensation was dismissed on 06.11.2015, the lead case of which is ***RFA No. 5120 of 2001, State of Haryana and another vs. Krishan Kanihya and others***. Similarly, the cross appeal of the State against the land owner Ashok Khurana was also dismissed in ***RFA No. 921 of 2002, State of Haryana and another vs. Ashok Khurana*** on the same date. The matter had been taken to the Apex Court by the State of Haryana in *Daljeet Singh's case (supra)* and the Civil Appeal No. 7493 of 2010 has also been dismissed on 04.12.2014. Resultantly, it is apparent that the market value has already been pegged at Rs.206 per square yard and, therefore, the land owners are entitled for the compensation alongwith statutory benefits in the same terms as *Daljeet Singh's case (supra).*

Mr. Sandeep Punchhi, Advocate for Punjab Wakf Board also could not point out any fault in the order of the Reference Court whereby, the apportionment as such was given as 75:25 between the tenant and the land owner and, therefore, the apportionment also as such would be at the same rate regarding RFA No. 3060 of 2007 filed by the Punjab Wakf Board.

Accordingly, the appeals filed by the State of Haryana i.e. RFA Nos. 659 of 2002 and 2520 of 2003 merit dismissal and the appeals of the land owners i.e. RFA Nos. 82, 1942 of 2002; 5793 of 2001; 111, 2646 of 2006 and 192 of 2006 are allowed to the extent, as noticed above in *Daljeet Singh's case (supra).*

The only additional issue which arises in RFA No. 82 of 2002 in which an application for additional evidence has been filed is whether the matter should be remitted for fresh consideration on the issue of severance. Mr. Manuja has pointed out from the record that on account of acquisition of 33 kanals 17.875 marlas out of the land of 37 kanals 10.875 marlas in village Taraf Afgan, he had been left with 3 kanals 13 marlas of land out of Killa No. 42, 3/1 and 3/2. The said land was not left with any source of irrigation and there was no approach for that portion of land which would hence go waste and could not be treated as an agricultural unit. He has accordingly sought severance charges @ 12% as provided under Section 23 of the Act, which is specifically mentioned in para no. 2(I) of the claim petition.

In the reply as such which was as per prescribed performa by the State, the issue of severance was admitted as per clause 5 and the same was strictly according to the award which had been assessed. The award dated 28.02.1996 would also go on to show that it was merely mentioned that no damage was caused to any land owner due to severance of the land and, therefore, no claim was made out.

From a perusal of site plan, which has now been placed on record by way of additional evidence, the factum of severance has been *prima facie* demonstrated. The application has necessarily been opposed by the State by filing reply on account of the fact that no effort as such was made to bring the necessary facts on record before the Reference Court.

A perusal of the zimini orders would go on to show that initially the petition had been preferred by Lajpat Rai Khurana, who had expired during the pendency of the proceedings and resultantly, the present appellant was brought on record vide order dated 12.11.1999. Thereafter, the issues were framed on 21.01.2000 and the relevant issue regarding severance was never framed by the Reference Court in spite of the specific pleadings. Evidence was tendered on record in the form of the certified copy of judgment in Suresh Kumar vs. State of Haryana and thereafter closed on 25.08.2001 and resultantly, the matter was decided on 28.08.2001 as noticed on the ground that the market value had already been assessed in an earlier award.

In such circumstances, this Court is of the opinion that in order to substantiate the loss caused on account of severance, it would be necessary that the appellant is given an opportunity to bring on record additional evidence as such to show that the loss as such was caused on account of the severance of 3 kanals and 13 marlas which has been specifically pleaded but could not be proved in view of the above facts and circumstances. Reliance can be placed upon the judgment of the Apex Court in ***Wadi vs. Amilal and others, 2015 (1) SCC 677*** that interests of justice are of paramount consideration and for pronouncement of satisfactory judgment. If a matter remains obscure and can be filled up, it could be allowed to be filled up by way of additional evidence as has been held in ***Gurdev Singh and others vs Karnail Singh and others, 2016 (1) PLR 264.***

In such circumstances, this Court is of the opinion that in RFA No. 82 of 2002, the appeal is liable to be remanded only on the account of non decision qua the point of severance though the market rate as such is pegged @ Rs.206/- per square yard. The matter is accordingly remanded for fresh decision as to the entitlement of the claimants for the severance of the land as mentioned above. The appeal is, however, partly allowed in such circumstances qua the fixing of the market value. Parties are directed to appear before the District Judge on 19.02.2018.

RFA Nos. 1942 of 2002; 5793 of 2001; 111, 2646 of 2003; 192 of 2006 and 3060 of 2007 are allowed by enhancing compensation to Rs.206/- per square yard with all statutory benefits. The appeals of State i.e. RFA Nos. 659 of 2002 and 2520 of 2003 are dismissed.

17.01.2018 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No