

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

RFA No. 559 of 2006
Date of decision: 15.02.2018

Mandeep Singh and othersAppellant(s)

Versus

The Punjab State and others ...Respondent(s)

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

Present: Mr. Surinder Garg, Advocate,
for the appellants.

Ms. Jasleen Kaur, AAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

The present appeal under Section 54 of the Land Acquisition Act, 1894 (in short 'the Act') has been filed against the order of the Reference Court, Faridkot dated 05.09.2005 whereby, the claim for enhancement on account of acquisition of land was dismissed and the compensation given of Rs.1,90,000/- per acre of the land falling in village Arriyanwala Kalan, Tehsil and District Faridkot for the construction of Bheelewala Minor as per award dated 16.04.2001 was upheld.

Counsel for the appellant has argued that for village Machaki Kalan, sum of Rs.3,00,000/- per acre has been granted vide order dated 29.04.2002 (Annexure PE). It is accordingly submitted that for the adjoining village Machaki Khurd, the Reference Court vide award dated 02.09.2008 granted Rs.3,00,000/- per acre which is post the impugned order. Accordingly, he submits that the same amount of compensation should be granted as the purpose of acquisition was the same namely construction of Bheelewala Minor.

The Reference Court, while declining the relief, came to the conclusion that the awards were passed at different times and there was no evidence to show that the land of the villages were identical and similar. Reliance had been placed upon the site plan Ex.PC that Machaki Kalan was near to Faridkot which was a commercial town and accordingly claim for enhancement had been declined. Similarly, the prayer to grant additional compensation on the ground of severance and the fact that the claimants were to use double irrigation system was rejected on the ground that there was no convincing evidence to prove these facts while dismissing the land reference.

Counsel for the appellants has been able to demonstrate from the record that the findings recorded by the Reference Court are not as per the record and there has not been proper appreciation of evidence.

Firstly, coming to the claim petition itself under Section 18 of the Act, the details of the land which had been acquired falling in Khasra No. 1826, 1827, 1828, 1829, 1830, 1831, 1832 and 1834 for 4 kanals 19 marlas had been mentioned. In para no. 9, it has been specifically averred that the land of the appellants was acquired from the centre of the total land and the remaining land had been bifurcated for which double irrigation system such as the tubewell and separate labour for using canal water was required and this had materially decreased the value and utility of the land. In para no. 10, specific averment had been made that no pahi/puli had been constructed by the department at the time of constructing the minor and the land owners were facing hardship for cultivating their land as there was no path to approach the land.

In reply filed by the State, the plea was denied and it was

averred that the strip of land acquired for the minor is according to the technically approved alignment. The applicant had not given the size of the land pieces on two sides of the minor which may be of big size. However, to facilitate access to both sides of minor, provision of bridges and water course crossings at suitable points were being made. Similarly, in para no. 10, it was mentioned that to facilitate access to both the sides of minor, provision of bridges and water course crossing at suitable points had been made.

The land owner namely Shiv Charan Singh and Mandeep Singh also specifically averred regarding this aspect in their evidence which had been tendered in the form of affidavits and were never cross examined regarding this aspect. A perusal of AW-2, statement of Nirmal Singh, Patwari would go on to show that the State had cross examined him whether there was any approach to acquired land by means of bridges over the canal in his knowledge, which he denied. The land owners brought on record the site plan (Ex.PC) by way of producing Nand Kishore, Senior Assistant from the office of the Deputy Commissioner, Faridkot.

Balkaran Singh RW-1, SDO Rajowala, Canal Sub Division Rajowala had also appeared and in his affidavit never mentioned the factum that there was no such severance. He admitted that the disputed Minor started from village Arrianwala Kalan and then enters Machaki Khurd and then village Machaki Kalan. He did not bring any record regarding the bridges given/constructed over the said minor but in his cross examination only submitted that crossings have been provided wherever they are required and denied the suggestion that they have not been provided at the required places. He did not remember whether any crossing was given in

the present acquired land. The site plan Ex.PC has been perused by this Court also which would go on to show that the minor is dividing the land of the petitioner which is falling in Khasra Nos. 1826, 1827, 1830, 1831, 1834 on one side and on the other side, khasra nos. 1828, 1829, 1832 and 1833 are situated.

Other aspect which is to be noticed that it is not disputed that the acquisition is for the same purpose and the award passed by the Reference Court for village Machaki Khurd has already been dealt with by this Court in ***RFA No. 979 of 2009, Harpal Singh and another vs. State of Punjab and another***. In the said case, the Reference Court vide order dated 02.09.2008 subsequently granted the benefit of enhancement to the land falling in Machaki Khurd only on the ground that Machaki Kalan and Machaki Khurd were adjoining each other and, therefore, compensation was enhanced to Rs.3,00,000/- per acre.

The acquisition being for the same purpose and Aariyanwala being the adjoining village to Machaki Khurd, the land owners would also be entitled for the same compensation as such in view of the judgments of the Apex Court in ***Subh Ram and others vs. State of Haryana and another, 2010 (1) SCC 444***. It has been time and again held that when the land is acquired as such for the same purpose, it will be unfair to deprive the land owners from the uniform compensation. The relevant portion in *Subh Ram's case (supra)* reads thus:-

“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 evidence has already come on record of the witnesses that

the Minor starts from village Aarianwala and thereafter enters to village

Regarding the aspect of severance also, there has been no proper appreciation of the evidence which is already on record, which has been discussed above as to how the land of the appellants falling in various khasra numbers has been left on both sides of the minor. The State could not rebut as such that any benefits have been given for crossing over to the other side and, therefore, the difficulty which is to be faced by the land owners for approaching their portion of the land which is on both sides of the minor for which entitlement under Section 23 of the Act would flow.

Section 23 (1) Clause 3 read as under:

first, the market value of the land at the date of the publication of the [notification under section 4, subsection (1)];

xxxx xxxx xxxx”

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construction of the Satluj-Yamuna Link, benefit of severance was granted to the land-owners. In *State of Punjab Vs. Gurbachan Singh & others 1988 (2) PLR 695*, similar view was taken wherein land had become inaccessible on account of acquisition and in *State of Punjab Vs. Shri Radha Krishan 1990 (1) PLR 270*. The view in *Narinder Kaur* (supra) was upheld by the Division Bench in *State of Punjab Vs. Gopal Singh 2002 (2) PLR 843*, which was further been followed in *Chanan Singh Vs. State of Punjab 2010 (5) RCR (Civil) 283*.

Accordingly, the appellants whose land had been severed, would be entitled to an additional amount of 50% of compensation for their land which had been acquired, on account of severance, over and above what has been granted to them while enhancing the compensation to Rs.3,00,000/- per acre. The appeal stands allowed in the above terms.

15.02.2018
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(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No