

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

-:-

RFA No. 5158 of 2008

Date of decision: 04.04.2018

State of Haryana & Ors.

...Appellant.

Vs.

Chetin Kaur & Anr.

...Respondents

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

Present: Mr. Sudeep Mahajan, Addl. A.G. Haryana and
Ms. Safia Gupta, AAG, Haryana.

Mrs. Anju Arora, Advocate, and
Ms. Amrita Singh, Advocate.

Mr. Vivek Suri, Advocate, and
Mr. Gaurav Gurcharan Singh Rai, Advocate.

Mr. Ashok Gupta, Advocate, for the landowners.

G.S.SANDHAWALIA, J. (Oral)

This order shall dispose of R.F.A bearing Nos. 5158, 5159, 5160, 5161, 5162, 5178, ,4773 & 4774 of 2008 and RFA Nos. 1938, 1939, 1940 & 3836 of 2009 filed by the State as well as by landowners

The present set of appeals are directed against award of Reference Court, Sirsa, dated 13.06.2008 and 14.06.2008, whereby market value of the land acquired had been assessed at Rs.1619/- per Sq. Yards (Rs.78,35,960/- per acre) upto depth of 150 ft. and Rs.681/- per Sq. Yards (Rs.32,96,040/-) for the land beyond 150 ft. The land is situated on National Highway No.64 and acquisition was initiated on 16.05.2002 under Section 4 for 220 kanals12 marlas (roughly around 28 acres) which fell within

Municipal limits of Mandi Dabwali township. The same was acquired for the purpose of construction of Chaudhary Devi Lal Memorial Navodaya Vidyalaya. The Land Acquisition Collector awarded Rs.3 lakhs as per acre in terms of award No.1 dated 02.06.2003. The landowners filed reference petitions aggrieved against the low compensation which included further compensation for two wide kotha and for standing trees etc., for which a separate compensation was awarded.

The Reference Court had consolidated Chetin Kaur & Ors., LAC No. 88 of 2008 as the main case in which the claim of the landowners was to the tune of Rs.10 lakhs per acre. In LAC No. 89, Dalip Kaur had claimed market value of Rs. 1 crore per acre as the acquired land lies within Municipal limits of Mandi Dabwali. It is also contended that it is located at the juncture of four villages i.e. village Killianwali, Birang Khera, Shergarh and Mandi Dabwali, so it is highly potential area. It is pertinent to notice that initially the Coordinate Bench vide order dated 21.04.2016 in RFA No. 4773 of 2008 and other connected cases had enhanced the compensation to Rs.1758/- mainly on the strength of an earlier award dated 23.10.2007, Exhibit P/46, which was pertaining to the notification dated 23.07.1997, wherein compensation had been awarded at Rs.820 per sq. yards for the land upto the depth of 150 ft. and @Rs.350 per sq. yards for the land beyond 150 ft.. This Court had granted 15% increase on the 58 months to fix market value at Rs.85,08,720/-. The said decision had gone up in appeal and the Apex Court has remanded the matter in Civil Appeal Nos. 1779-80 of 2017, *State of Haryana Vs. Chetin Kaur & Anr.* decided on 26.10.2017. The reasoning of the Apex Court mainly was that reliance

upon the earlier awards should not be a sole consideration and cumulative increase should not be granted on that basis and said principle is only applicable to only four or five years. Resultantly, the matters are to re-looked into.

A perusal of the record would going to show that it is a categorical case of the State in its written statement regarding the market value of the said area:-

“d) That sub para (d) of Para 1 of the application is not admitted as alleged. The price of the similarly situated land was not more than Rs.150000/- per acre on the day of notification u/s 4 of the Land Acquisition Act. Vide sale deed No.3116 dated 11.03.2002, land measuring 27 kanal being 1080/2986 out of 74 kanal 13 marla of Village Shergarh was sold for Rs.237000/- as is revealed from the perusal of mutation No.3168 of Village Shergarh which was attested on 21.04.2002. The said 27 kanal sold land is situated just opposite the Dabwali – Chautala road whereas the acquired land is situated on the other side of the said road. Similarly, 15 kanal 12 marla being 312/830 share of total 41 kanal 10 marla, was sold vide registered sale deed No.614 dated 21.05.2002 for a sum of Rs.137000/- of village Shergarh, hadbust No.275 as is revealed from the perusal of mutation No. 3210 attested on 04.03.2003. The said sold land is situated four acres away from the acquired land on the one side of the Chautala – Dabwali road whereas Killas No.9 to 11 Rect. No.7

are situated four acre away on the other side of Chautala – Dabwali road. Hence, petitioners were granted market price more than the prevailing on 16.05.2002 of similarly situated land.”

In the replication, the landowners merely reiterated their claim petitions and claimed the amount as mentioned in the claim petition and did not give any explanation qua the two sale deeds found mentioned above dated 11.03.2002 and 21.05.2002. The judgment under appeal also does not give any reference of the said pleadings which had been filed by the District Education Officer, Sirsa. The record further goes on to show that RW-1 Gurdev Singh, Deputy District Education Officer, Sirsa had tendered his affidavit in evidence wherein the same facts have been necessarily averred. On 28.05.2008, Exhibits R-13 and R-14 were also tendered in evidence along with the certified copies of the sale deeds and the evidence of State was closed. The perusal of the Ex. R/14 would going to show that it is sale deed dated 11.03.2002, whereby land measuring 27 kanals had been sold for Rs.2,37,000/- pertaining to Village Shergarh, whereas Ex.R-13 is a gift deed.

Counsel for the landowners has vehemently argued that it was distress sale as such and the gift deed would not be a proper exemplar. The said argument is not liable to be accepted as the deeds have been mentioned in the written statement and in the replication no such explanation has been given.

The Reference Court has thus failed to consider the documents on record and therefore the judgment as such thus suffers from serious

infirmities as the proper market value of the land has not been assessed, causing prejudice to both sides.

The State was very categorical in its stand that the land is situated across the acquired land on the same road and there is not even a mention of the said pleading in the said award and neither any reference to the evidence on the record.

In such circumstances, mere reliance upon earlier award which is pertaining to acquisition of the land for the Stadium for the construction of sports complex could not have been the sole reliance for fixing the market value by granting 12% increase which has been granted by the Reference Court. No doubt the land is situated within the municipal limits and from the site plan it is clear that it has certain potentials as it is 2 km from the Judicial Court Complex and 04 kms from the Gol Chowk. It is pertinent to notice that on the site plan the stadium has not also been depicted and therefore, the distance as such from the said stadium of the earlier acquired land is also not clarified and therefore reliance as such on the earlier award as such is without any basis. However, keeping in view the site plan Ex.P/1, this Court is of the opinion that an opportunity should be given to the landowners to bring on record relevant material to show what was the market value in the vicinity at the time of Section 4 notification dated 16.02.2002 since the land was acquired under the principle of eminent domain and the landowners are entitled for compensation at market value as such.

Accordingly, the State appeals are allowed and award of the Reference Court dated 13.06.2008 and 14.06.2008 are set aside. The

Reference Court will decide the issue afresh. It will be open to the landowners to bring on record relevant material and the reference Court will grant two adequate opportunities to the landowners for the said purpose. The State will be also given adequate opportunity as such to rebut the material which comes on record. Needles to say that whatever has been received by the landowners for the time being shall not be recovered from them till the reference Court re-decide the petitions. Since the matter is of the year 2002, the Reference Court is requested to complete proceedings within six months from the date of receipt of certified copy of this order.

Resultantly, the appeals of the landowners have been rendered infructuous and are disposed of in the same terms.

April 04, 2018
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(G.S. SANDHAWALIA)
JUDGE

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