IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.979 of 2009
Decided on: 08.02.2018

Harpal Singh & another

....Appellants

Versus

State of Punjab & another ...Respondents

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

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

Ms.Akshita Chauhan, AAG, Punjab.

G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 7 appeals bearing RFA-979, 980, 981, 982, 1677, 2952 & 3496-2009, of the land-owners involving common questions of law and facts, filed against the award dated 02.09.2008, passed by the Reference Court at Faridkot under Section 18 of the Land Acquisition Act, 1894 (for short, the 'Act'), whereby the Reference Court has enhanced the market value of the land falling in Village Machaki Khurd, to Rs.3 lakhs per acre, from Rs.1,90,000/- per acre, against the award of compensation by the Land Acquisition Collector, Faridkot dated 16.04.2001.

The notification under Section 4 was issued on 15.10.1998 and under Section 6 on 26.10.1998, for the purpose of construction of Beehlewala minor, by the Punjab State. Aggrieved by the market value assessed by the Collector, reference petitions were filed under Section 18 of the Act, claiming higher compensation to the tune of Rs.15 lakhs per acre. The ground taken was that the land was situated near Faridkot town and there was abadi and residential buildings, a big cantonment, colleges and schools near the acquired land and it had great potential for residential and commercial purposes.

In the cases of appellants-Harpal Singh-RFA-979-2009, Jarnail Singh-RFA-2952-2009, Sukhdev Singh-RFA-982-2009, Gurnek Singh-RFA-3496-2009 and Nachattar Singh-RFA-980-2009, it was their specific claim that their land had been divided into 2 parts by the construction of the minor and it was very difficult to manage the land on both sides of the canal. Specific plea was taken in para No.11 in Harpal Singh's case, which is the main case.

The defence of the State, in its reply, was only of denial.

Keeping in view the evidence which was led, while assessing the market value and keeping in view the statements of as many as 11 witnesses, the Reference Court came to the conclusion that the onus of proving the market value was upon the claimants. They had only led oral evidence and have not been able to substantiate their case. There was nothing to show the commercial potential of the area as to the exact distance from the nearest town, habitation, road or such like amenities, had also not been placed on record. No sale deed of the area where the land was situated had been placed on record. The assessment was, thus, on the basis of an award dated 29.04.2002, which was belonging to Villages Machaki Kalan and Kila Nau, whereby value had been fixed at Rs.3 lakhs by the Land Acquisition Collector, which is more than 3 years later, to come to the conclusion that the market value was Rs.3 lakhs. Reliance was placed upon the map (Ext. A-9), prepared by Maan Singh, Civil Engineer (AW-8) and Ext.A-11, map produced by Nand Kishore, Reader, that the villages were adjoining. Similarly, the claim of compensation for the trees was rejected on the ground that there was no pleading as such.

Counsel for the appellants has also not been able to point out from the record that any sale deed was placed on record to show that the market value of the land in the said revenue estate was more than what has been assessed. It is also not disputed that the award was passed at subsequent point of time, though reliance has been placed upon it. The State has not challenged the said aspect and is satisfied with the award.

However, one aspect which the Reference Court has failed to take into consideration and ignored the evidence on record and has wrongly recorded that there was no evidence led that there was any loss caused to the land-owners on account of their land having been divided into 2 parts by construction of the minor on account of acquisition, which is not borne out of the record. Rather, as noticed the witnesses, AW1-Harpal Singh, AW2-Sukhdev Singh, AW3-Kulwant Singh, AW4-Nachhattar Singh, AW5-Gurnek Singh, AW6-Sham Singh, AW7-Jarnail Singh, in their affidavits, have specifically pleaded that loss has been caused to them on account of their land having been divided into 2 parts by construction of the minor and that it was very difficult for them to manage their land on both sides of the minor. The said witness has not been cross-questioned on this aspect.

Section 23 of the Act provides that while determining the amount of compensation for the acquired land, various factors have to be kept in mind and under clause (3), severance is one such factor and the damage having been sustained by the person on account of taking possession of the land and by reason for severing such land by another land which is an aspect which is to be kept in mind. Section 23 (1) & (3) read as under:

"23 (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration:
first, the market value of the land at the date of the publication of the [notification under section 4, sub-section (1)];
xxxx xxxx xxxx
thirdly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;
xxxx xxxx xxxx"

The land-owners have also produced on record the statement of the expert-Maan Singh, Civil Engineer as AW8 and the technical report (A-10), wherein it has been recorded that Harpal Singh and Massa Singh, both sons of Bikkar Singh's Khasra No.365 has been divided in two parts; Jarnail Singh and Karnail Singh, both sons of Sardara Singh's electric motor has been left on the right side of minor and the land has been left on left side in Khasra No.71; Sukhdev Singh, Sukhchain Singh and Tar Singh, sons of Jit Singh's fields have also been divided; Gurnek Singh son of Jugraj Singh, Kulwinder Singh son of Gurnam Singh, Atma Singh, Resham Singh, Pritam Singh, sons of Harnam Singh, got their Khasra Nos.110, 111 and 113 divided; Nachhattar Singh, Jagrup Singh, Sukhmander Singh, sons of Ajmer Singh, have been affected as the land in Khasra Nos.82 & 83 had been divided into 2 parts by the minor. The direct approach from the left to right side portion has been cut-off and that an aqueduct underneath the minor had to be constructed to irrigate the right side portion of the fields and there was no passage.

A perusal of the site-plan (Ext.A-9) also confirms the said factum that the land of Nachhattar Singh, Gurnek Singh, Sukhdev Singh, Jarnail Singh and Harpal Singh have been affected on account of severance, which was their specific claim in their pleadings and in the evidence which has been led by them. Thus, the Reference Court did not appreciate the evidence in its proper perspective regarding this aspect and the appellants, have, therefore, been denied the benefit of severance. A perusal of the cross-examination of AW-8-Maan Singh Brar also goes on to show that nothing has been elicited and nothing has been cross-examined in this aspect at all by the State. Thus, it has been brought beyond on record beyond a anvil of doubt that the land-owners would be entitled for the benefit of severance charges, which has been held by various judgments of this Court, to be 50% of the market value.

In **Smt.Narinder Kaur v. The State of Punjab and others 1980 P.L.R,473**, 50% of the market price of the un-acquired land was granted on account of damages of severance and there was no approach left and accordingly, on account of diminishing the value of the un-acquired land, 50% of the market price was given. Similarly, in **Tehal Singh and others v. The State of Punjab and another 1987 RRR 495 (P&H)** due to the 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 above-said land-owners 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 by the Reference Court.

Accordingly, RFA-979, 980, 982, 2952 & 3496-2009 are allowed, to that extent. The appellants shall also be entitled to all statutory benefits on the enhanced amount of severance, as provided under the Act. RFA-981-2009 titled *Kulwant Singh Vs. State of Punjab & another* and RFA-1677-2009 titled *Mukhtiar Singh & another Vs. State of Punjab & another,* however, stand dismissed.

08.02.2018 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*