

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

RFA No. 2802 of 2011 (O & M)

Date of decision: 04.05.2018

Holiday Home Hotel

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

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

Present: None for the appellants.

Ms. Akshita Chauhan, AAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 7 appeals i.e. RFA Nos. 2802 to 2807 and 4360 of 2011 as common questions of facts and law are involved in all the appeals. Reference is being made to ***RFA No. 2802 of 2011, Holiday Home Hotel vs. State of Punjab and others.***

The present appeals have been filed under Section 54 of the Land Acquisition Act, 1894 (in short 'the Act') by the land owners who are aggrieved against the award of the Reference Court, Hoshiarpur dated 13.12.2010. The Reference Court has declined to grant the enhancement by coming to a conclusion that the amount awarded by the Collector on 13.09.2002 was justified as he has assessed the rates of various types of land fairly and did not call for any further enhancement. Similarly, in the absence of any evidence that there was any severance as such, compensation was not granted on the severance issue also. The possession having been taken from 01.07.1993, the benefit of 9% interest was given till 30.06.1994 and thereafter, 15% interest was granted per annum till the date of final

payment of the compensation amount.

The notification under Section 4 of the Act was issued on 05.11.1997 for 136.62 acres of land situated in village Chohal, Hadbast No. 494, Tehsil and District Hoshiarpur. The public purpose was for the construction of the reservoir area of Chohal Dam. Section 6 notification was issued on 10.11.1997. The award was passed on 13.09.2002 whereby, the market value was assessed by the Collector for the various types of land as under:-

Market value of 692 kanals 15 marlas G.M.Pahar land @ Rs.237.52 per marla
Market value of 599 kanals 1 marla Banjar Qadim land @ Rs.475/- per marla
Market value of 110 kanals 7 marlas GM those land @ 237.52 per marla
Market value of 13 kanals 16 marlas GM abadi land @ 7601/- per marla
Market value of kanal marlas kabarsthan land @ Rs.237.53 per marla
Market value of 2 marlas GM Rasta land @ Rs.237.52 per marla

It is also pertinent to notice that it is not disputed that possession of the land had already been taken in the year 1993 which is also part of the award whereby 01.07.1993 was the date whereby the possession was considered by the Land Acquisition Collector also. Resultantly, the Collector also in the award had taken note of the letter of the Government that the land owners were entitled for the interest from the date of possession but the Government had taken a decision to pay interest from the date of Section 4 notification. The land owners being aggrieved approached this Court also being aggrieved by the non-passing of the award and eventually, directions were issued in CWP No. 8504 of 2000 on 06.02.2001 to pronounce the award within 3 months and disburse the compensation

which had already been deposited.

The claim of the land owners under Section 18 of the Act was that the Soa and Babool trees were planted on the land acquired and that the land had high potential value and the main building of the Holiday Home Hotel and adjoining shops were situated in the adjoining khasra number and it was meant for making a part of the hotel complex for creating amusement park. Accordingly, the claim was also made for loss of business in development of water games and construction of marriage palace had been affected on account of the acquisition of land. Similarly, on account of fencing caused, severance charges were also prayed for and compensation @ 11,00,000/- per acre was asked for.

The State, in its reply, took the plea that there were no trees and no super structure was there on the acquired land and, therefore, no compensation was given and the acquired land was not under plantation and no trees were planted on the acquired land. The hotel of the claimants had become more commercial and attractive and tourists were coming on the place to take a view of the lake and the dam. The factum that the land was on the national highway was also denied being wrong and incorrect. The following issues were framed by the Reference Court:-

“1. Whether the market rate of the acquired land assessed by the land acquisition Collector is inadequate, if so whether the same is required to be enhanced, if so, to what amount?OPA

2. Whether the land of the applicants had been severed as a result of acquisition, if so whether the applicants are entitled to compensation for the severance?OPA

3. Whether any trees were standing in the

acquired land, if so, whether petitioners are entitled to compensation for the same, if so, to what amount? OPA

3A Whether the claim petition has been filed within time? OPA

3B Whether the acquired land is not located on National Highway and neither situated near the market of the village and the acquired land is Banjar Kadim and Gair Mumkin Pahar? OPR

4. Relief.”

The claimants led evidence in the form of 13 witnesses whereas, the State examined 2 witnesses. The sale deed Ex.P-1 of 5 marlas of land dated 25.01.1993 which was sold for Rs.60,000/- was rejected on the ground that it pertained to the *abadi* land and not to *gair mumkin pahar* or *banjar qadim* land which was subject matter of consideration. It was noticed that the sale deed comprising of commercial/*abadi* land could not be taken into consideration for determining the market value of other types of land including agricultural land. Similarly, sale deed of the State Ex.RW2/C dated 22.11.1996 was rejected as there was no mention as to what type of land was the subject matter of the sale deed.

Keeping in view the oral evidence in account and the revenue record, it was noticed that the *abadi* of the village was situated at a distance of 400-500 yards from the acquired land. The value of the acquired land, thus, could not be equated with *abadi* land and resultantly, the rate list on which the registration fee was being charged by the administration was kept into consideration to give a finding that the award had given higher rate than the prevailing market rate of the land. Therefore, enhancement has been denied and resultantly, finding was recorded as to the type of land and whether it was *banjar qadim* or *gair mumkin pahar* under issue no. 3B

which was decided against the land owners.

On the issue of the factum of the trees standing on the land in question, the reports produced by the land owners and by the expert who had appeared as PW-10 and was a retired Conservator of the Forest Department, the report was not accepted on the ground that he had visited the site on 07.01.1999 and report had been prepared on the basis of the details furnished by the land owners. Thus, it was held that reliance could not be placed upon the reports and the said issue was also decided against the land owners. The issue of limitation was, however, decided in favour of the land owners on the ground that they were not present at the time of passing of the award and notice having only been issued under Section 12(2) on 27.01.2003 and the land references were filed on 27.02.2003 and were within the period of limitation.

It is settled principle that for assessing the market value, it was for the land owners as such to place relevant material on record as to the value of the land in question for getting proper sale exemplars. The onus of proving the market value of the land in question is always upon the land owners and once they failed as such to bring on record to show the sale deeds were executed between a willing seller and the person willing to purchase at a higher amount, the enhancement as such cannot be granted.

It is pertinent to notice that on an earlier occasion on 29.04.2015, 27.01.2016 and 01.03.2016, none had put in appearance on behalf of the appellants. On 27.07.2016, counsel had put in appearance and taken time to argue the matter. Today also, none is present on behalf of the appellants and, therefore, the matter is being decided on merits.

A perusal of the record Ex.AW13/A would show that the land

was subject matter of acquisition on account of the proposed Chohal Dam project which was set up in the Kandi Track of Hoshiarpur District for harnessing water for irrigation and to minimise flood fury during monsoon season. The 26 meters high Chohal Dam was to be constructed about 0.5 km. u/s of Chohal village for providing adequate flood protection and development of agricultural land. The stored water in the reservoir will irrigate 900 hectares of CCA and the area to be reclaimed from floods will be 125 hectares. The land, thus, which was acquired was of uneven and hilly nature and in such circumstances, keeping in view the nature of the land, the Collector awarded different types of compensation, as noted above.

A perusal of the statement of AW7 would show that the land was sub merged in water which was of *barani* nature and, therefore, would be in the nature of *khad*, which is also proved from the statement of Paramjit Singh, Halqa Patwari AW-8 wherein, in the cross examination, it has come that in the revenue record that *khad* was mentioned for the passage which was leading to the dam. AW-9 Jang Bahadur, ARC, also in cross examination admitted that the land was not situated on the national highway and it is situated in the foot hill area. The Soa and Babool trees had a wild growth of grass which was used for the purpose of fodder for the cattle and no wood can be got from the said trees and there was no super structure or any trees standing there. The evidence and the revenue record has also been discussed in detail by the Reference Court who has, on the basis of the possession which was taken prior to the acquisition, also granted interest @ 9% from 01.07.1993 to 30.06.1994 and, thereafter at 15% till the final payment of the compensation and the adjustment has been granted

accordingly.

In such circumstances, the award which has been passed as such by the Reference Court does not seem to be suffering from any infirmity which would warrant interference.

Accordingly, the appeals are dismissed.

04.05.2018
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No

