IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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R.F.A No. 1939 of 2013 (O&M)
Date of decision: 20.02.2018

Haryana Wakf Board ...Petitioner

Vs.

Gian Singh & Ors. ...Respondents

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

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Present: Mr. G.N. Malik, Advocate, for the appellant.
(in RFA No. 1938-39 of 2013) and
for respondent No. 3
(in R.F.A No. 2833 and 2834 of 2013 & 4006,
4007, 4533 of 2013)
for respondent No. 4
(in C.R No. 6634 of 2012 and 2891 of 2013)

Mr. Sanjiv Gupta, Advocate for appellant
(in RFA No.2833-34, 4533 of 2013) and
for petitioner in CR No.6634 & 6635 of 2012
Mr. D.D. Gupta, Advocate, for
Mr. R.D. Gupta, Advocate, for the petitioner
(in C.R No. 2891 of 2013)

Ms. Safia Gupta, AAG, Haryana.

Ms. Nupur Chaudhary, Advocate for
Mr. Hitesh Malik, Advocate for respondent no.1
(in CR No.6634 & 6635 of 2012),
for respondent no.3 (in CR No.2891 of 2013),
for respondent no.1 in (RFA Nos.1938 & 1939 of 2013),
for respondent no.4 (in RFA No.2833 & 2834 of 2013),
for Appellant (in RFA Nos.4006 and 4007 of 2013) &
for respondent no.4 (in RFA No.4533 of 2013).

Mr. Athar Ahmad, Advocate for respondent no.4 in
CR No.6635 of 2012.

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G.S.SANDHAWALIA, J. (Oral)

Present judgment shall dispose of 10 cases bearing RFA Nos.

1938, 1939, 2833, 2834, 4006, 4007, 4533 of 2013, C.R Nos. 6634 and 6635 of 2012 and C.R No. 2891 of 2013.

The regular first appeals have been filed under Section 54 of the Land Acquisition Act 1894 (for short, 'the Act') against the award of the Reference Court dated 20.12.2012 at Sirsa. By virtue of the said judgment a sum of Rs.550 per sq. yard (Rs.26,62,000/- per acre) was assessed the market value by the Reference Court qua the acquisition of 49.02 acres falling in village Khairpur, which was for the purpose of setting up commercial and residential for Sector 19-20 in Sirsa. Section 4 of notification was dated 30.11.2004 and land acquisition Collector passed the award on 27.11.2007 whereby he assessed the market value at Rs.15 lakhs per acre for Gair Mumkin and for Rs.8 lakhs on Nahari and Chahi Land.

Appellants Chhinder Kaur and Gian Singh filed LAC Nos. 119 and 120 on 07.06.2008 under Section 18 of the Act seeking enhancement which was opposed by erstwhile Punjab Wakf Board on the ground that there was no record of any lease deed/rent receipt to show that they were tenants, which was the case of the said appellants-claimants. When the proceedings were at the fag end the Wakf Board filed application under Order 14 Rule 5 read with Section 151 C.P.C for framing of additional issues regarding the possession and locus standi of the claimants Gian Singh and Chhinder Kaur. The same was rejected vide order dated 13.12.2012 on the ground that tenant/lessee issue was to be decided in the proceedings under Section 30 of the Act and therefore, the application was dismissed with Rs.1000/- as costs and the case was kept for evidence of the respondents, namely, the Wakf Board and the State. Eventually the impugned order dated 20.12.2012 was passed whereby the market value was assessed at Rs.550/- per Sq. yard (Rs.26,62,000/- per acre). However, observations as such also came on record that the land-owners had locus–standi and they were recorded as lessees of the land in dispute and therefore there were not required to produce any lease deed to prove their status lessee and that Column No.12 of the jamabandi which shows that the rent was being paid on the yearly basis as per chakota (yield). The relevant portion of the award of the reference Court reads as under :-

> "*16. Moreover, judgment of the Land Acquisition Tribunal passed in Budha Ram Vs. State, in the same notification, was much higher i.e. Rs.550/- per Sq. Yard which comes to around Rs.27,00,000/- per acre instead of Rs.15,00,000/- per acre having been granted by Land Acquisition Collector. The land of the petitioners having been acquired by the same notification, the petitioners on parity basis are, therefore, entitled to same amount of compensation as granted to Budh Ram etc.*
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> *17. I do not find any merit in the contention of learned counsel for the respondents to the effect that the petitioners have no locus standi because Jamabandi Ex. PB and Girdawari clearly show that Gian Singh and Chhinder Kaur are recorded lessee of the land in dispute. Thus, they were not required to produce any lease deed on record to prove their status as lessee.*
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> *18. Moreover, RW2 has categorically admitted that both the*

petitioners were recorded lessee of the land in dispute. Furthermore, column No.12 of the Jamabandi would reflect that the rent was being paid on yearly basis as per 'Chakota' (yield).

19. Moreover, it is the admitted case of HUDA that possession of the land in dispute has been taken by HTJDA from the petitioners. Had the petitioners not been in possession as is being alleged by the Wakf Board then the possession of the land in dispute would have been obtained from the Wakf Board.

20. From the above discussion, no benefit can be drawn from the observation made by Hon'ble P & H High Court in case titled as Jit Singh Vs. Umrao Singh and Ors., reported as 2011(2) LJR, 239.

21. Thus, I am of the considered view that onus to prove this issue has been successfully decided by the petitioners and hence, this issue is decided in favour of the petitioners and against the respondents."

Regular First Appeal Nos. 4006-07 of 2013, accordingly, have been filed by Chhinder Kaur and Gian Singh claiming enhancement. The Wakf Board in RFA Nos. 1939 and 1938 of 2013 is accordingly aggrieved against the observations made in the above said paragraphs as to the entitlement of the alleged lessee and also Mr. Malik has contended that since vide order dated 13.12.2012 the Reference Court had held that the matter of apportionment or the entitlement inter se of Section 30 was to be decided separately, the observations would stand in the way of Wakf Board in other reference applications filed by other tenants, sub-tenants, the appellant themselves and interested persons who were in possession of the land at the time of passing of the award. The order dated 13.12.2012 reads as under:-

> "*4. The question of the petitioner being a tenant/lessee or not shall be decided in the separate reference pending between the parties under Section 30 of the Act.*
>
> *5. Therefore, I am considered view that the application seeking framing of issues as to whether petitioner is a lessee of Wakf Board or not and whether the petitioner was in possession of the acquired land or Gian singh Vs. State of Haryana etc., not deserves out right dismissal. Hence it is accordingly ordered. Further the applicant is burdened with cost of Rs.1000/- for filing frivolous application.*"

RFA Nos. 2833 and 2834 of 2013 have been filed by Raj Kumar along with an application under order 1 Rule 10 against the order dated 18.08.12 mainly on the ground that he had filed application for being impleaded which was dismissed. The impugned orders reads as under:-

> "*4. After going through the contentions raised by all the sides as well as the material on record carefully, I am of the considered view that the application is without any merit. Merely because the applicant is claiming to be in possession, he cannot be impleaded as party as there is no document supporting the claim of the application in respect of his*

possession. Moreover as rightly contended by the learned counsel for the Wakf Board that had the applicant been in possession of the property in dispute, the LAC would have initiated proceedings for taking possession from him.

5. Even otherwise, it is settled law that any person failing to seek reference under Section 18 of the L.A Act, cannot be impleaded as a necessary or proper party.

6. My views find support from the observations made by the Hon'ble Supreme Court in Ambey Devi (SMT) Vs. State Bihar and another, 1996(9) SCC 84 wherein it was held that "procedure prescribed under Section 18 and 30 being inconsistent with procedure prescribed under Order 1 Rule 10 C.P.C the co-owner who failed to seek reference under Section 18, cannot be impleaded as necessary or proper party."

7. Similarly, in Muthavalli of Sha Madhari Diwan Wakf, S.J. Syed Zakrudeen and another Vs. Syed Zindasha and Ors, 2009 (12) SCC 280, it has been observed "Land Acquisition Act is self contained code. It not only provides for the mode and manner in which the acquisition proceedings are initiated but also the mode and manner in which the proceedings for making an award as also the mode and manner in which the application for reference by a person dissatisfied therewith is to be made."

8. Thus, in view of the observations made by the Hon'ble Supreme Court, I am of the considered view that the

> *application under Order 1 Rule 10 of CPC is not maintainable under the Land Acquisition Act. Hence, the same stands dismissed."*

A copy of which order has been appended as Annexure R-4/1 in RFA No. 2833 of 2013, since Chhinder Kaur and Gian Singh proceedings had to be consolidated, therefore, he had filed applications in both the cases. Mr. Sanjiv Gupta, Advocate, accordingly, has submitted that he is entitled to file the appeal keeping in view the fact that his application for impleadment as such has been dismissed and since the Reference Court proceeded to decide the matter later on passed an order on 20.12.2012 and the said order has emerged in the final order. It is his grouse that he had filed a petition under Section 30 before the Land Acquisition Collector on 23.01.2012 and the matter had been referred to the Reference Court on 30.03.2012.

Raj Kumar has also filed Civil Revision Nos. 6634 and 6635 of 2012 whereby challenge has been raised to an order dated 20.10.2012 passed by the Reference Court wherein consolidation of the proceedings was refused by the Reference Court on the ground that Gian Singh and Chhinder Kaur had initiated the proceedings in 2008 and therefore, the matter could not be delayed in their petitions as such, on account of belated application filed by Raj Kumar before the Land Acquisition Collector in January 2012, since the award was passed on 27.11.2007. As noticed the proceedings thereby have culminated on 20.12.2012.

Similarly R.F.A No. 4533 of 2013 of Pritam Singh has also been filed along with applications for impleadment as party and taking the plea that he had filed an application under Section 30 before the Land Acquisition Collector, which was referred to the District Judge, and therefore, he is also a necessary party.

C.R. No. 2891 of 2013 has been filed by Sunil Dutt under Article 227 of Constitution of India praying that the Executing Court should withhold the disbursement of the award and the enhanced the land acquisition compensation and has pleaded that Chhinder Kaur was trying to achieve a wrongful gain. He had filed a petition under Section 30 of the Act which has been appended as Annexure P/3, which is dated 15.01.2013, which apparently is much after the order dated 20.12.2012.

It is a common case of parties that on account of interim orders passed in the above said cases, the compensation is now not being disbursed and even proceedings in Section 30 have also been stayed by the Reference Court and they are awaiting further orders by this Court. Another aspect which is to be noticed is that the finality to the market value has been made uptill the Apex Court in as much as the appeals filed by the State of Haryana i.e. RFA Nos. 6552 and 6553 of 2013 against Chhinder Kaur and Gian Singh, respectively, were decided on 23.02.2016 and it was held that qua the notification dated 30.11.2004 the landowners would be entitled to receive compensation @ Rs.768/- per sq. yard along with those statutory benefits. The relevant portion of this order reads as under:-

> " *In view of the above, instant appeal is disposed of in terms of the order dated 2.9.2015 passed in Savinder Singh's case (supra). Should there be any ambiguity, it is clarified that the landowners, whose land was acquired vide notification*

dated 19.12.2002 under Section 4 of the Land Acquisition Act, 1894, ('the Act' for short), would be entitled to receive the compensation @ Rs. 612/- per sq. yard and the landowners, whose land was acquired vide notification dated 30.11.2004 under Section 4 of the Act, would be entitled to receive the compensation @ Rs. 768/- per sq. yard. Besides this, the landowners shall also be entitled for all the statutory benefits available to them under the relevant provisions of the Act.

Disposed of, accordingly."

The said order was further modified by the Apex Court in Civil Appeal Nos. 11005-42 of 2016 arising out of the Special Leave Petition (C) No. 36087-36124 of 2015, ***Piyara Singh & Anr, Etc. Vs. State of Haryana & Ors.***, which was the lead case and which was preferred by the other landowners arising out of the same notification. The 40% cut applied was set aside by the Apex Court and directions were issued that amount be recalculated in those set of cases for the notification dated 30.11.2004 vide order dated 17.11.2016. The relevant portion reads as under:-

" *Insofar as the second acquisition was concerned, namely, under the Notification dated 30.11.2004, the High Court worked upwards for a period of 2002-2004 this time granting an increase of 12 per cent per annum on a cumulative basis which amount came to a figure of Rs.768/-. In the appeals before us, Shri Manoj Swarup, learned Advocate appearing on behalf of the appellants has argued that an increase of 15 per cent per annum cumulatively have been* *granted subsequently by the High Court given the potential of the land as has been held by the High Court itself. Further, the nearness to a National Highway and State Highway was also highlighted by the learned counsel. He also went on to state relying upon G.M., Oil and Natural Gas Vs. Ramesh bhai Jivanbhai Patel (2008)14 SCC page 745 that the increase should have been granted on a cumulative basis from the start and that no cut all was warranted on the facts of the present case inasmuch as Ex.P5 and Ex.P6 were sale of one kanal from the acquired property itself and then therefore this would correctly reflect the market value of the very property in the year 2000. According to him, for the 2004 acquisition there should also be increase at an exponential rate inasmuch as post acquisition of the same area of 2002, prices tend to increase and then, therefore, the 2004 notification should be given a percentage increase which is higher.*

Learned counsel for the State on the other hand sought to defend the judgment by relying upon two charts in which it was stated that ultimately only about 49 per cent of the entire property could be developed and handed over for the purpose of allotment and that huge expenditure had to be made for water supply sewerage, roads, police stations, primary schools, dispensaries etc. and that the expenditure per acre till date had come to a staggering figure of 87.5 lakhs to 111.2 lakhs in sectors 19 and 20 respectively.

Having heard learned counsel for the parties, we are of the view that the justice of these cases will be met if 12 per cent increase is granted cumulatively from the year 2000 itself and if no cut at all is applied. We are of this view inasmuch as the High Court itself recognizes the potential of this land which has been set out by us earlier in this judgment. Also, the reasoning of the High Court for applying a cut of 40 per cent does not commend itself with us for the simple reason that what has been acquired is only roughly 1 kanal to 1 acre per person which ultimately totes up to 305 acres which is acquired by the State. Therefore, it is clear that there is no small versus large chunks of land on the facts of the present case. The Ex. P5 and P6 which are sale instances of one kanal, the same amount for the land as has been acquired will, therefore, have to be applied without applying any cut.

In the result, these appeals are allowed and a re-calculation will have to be made based upon what has been stated herein above. Needless to add, all statutory benefits will also follow. <u>We may also hasten to add that out judgment will apply only to the appellants in the present case before us</u>.

Appeals are disposed of accordingly."

Resultantly this Court is of the opinion that the market value as such thus will have to be calculated @ Rs.768/- per sq. yards. However, since the land in question herein is measuring around 66 kanals belonging to the Wakf-Board which was part of the acquisition of 49.02 acres, therefore, 40% cut applied will continue to a stand as the Apex Court has granted the benefit of not applying the cut since the acquisition in that case was only of 1 kanal and it was clarified that the market value would only be for the said appellant . It settled principle that once a larger chunk of land is to be developed the necessary cut will have to be applied for development charges and other expenses, which would determine the market value. Resultantly, this Court is of the opinion that the appeals as such filed by Chhinder Kaur and Gian Singh are liable to be partly allowed to the extent that market value is fixed to above said tune of Rs.768/- per sq. yard.

It is further held that the observations made in paragraphs 16 to 21 by the Reference Court were only for the purpose of deciding the locus standi as such of the said lessees to maintain the petition under Section 18 of the Act seeking enhancement and nothing said therein shall finally prejudice the Reference Court while deciding the petitions under Section 30 of the Act, which have been filed by Raj Kumar, Pritam Singh, Gian Singh and Chhinder Kaur including others, which are pending before the Reference Court. This fact would be clear from the observations made by the said Court in its two interim orders dated 18.08.2012 and 13.12.2012, reproduced above.

Accordingly, RFA Nos. 4533, 2833 and 2834 of 2013 filed by Raj Kumar and Pritam Singh are disposed of as infructuous as the applications under Section 30 of the Act are already pending. Similarly, revision petitions filed by Raj Kumar bearing C.R. No. 6634-35 are also dismissed as the Reference Court had rightly declined to consolidate the proceedings and club them on the ground that prejudice would be caused as

Chhinder Kaur and Gian Singh who had initiated those proceedings in 2008 and were pending much prior to the one's filed in 2012.

Similarly, Civil Revision No. 2891 of 2013, filed by Sunil Dutt dated 15.03.2013 whereby the stay has granted for disbursement is disposed of with directions to the District Judge, to ensure that all the petitions filed under Section 30 of the Act arising out of the notification dated 30.11.2004 and award dated 27.11.2007 shall be entrusted to one Reference Court, who shall proceed to decide Section 30 petitions arising out of the right apportionment. It is however made clear that till the reference petitions are disposed of under Section 30, the amount of compensation as such shall not be disbursed to any of the stake-holders. It is expected that the said Reference Court shall make endeavor to dispose of the reference petitions at the earliest.

RFA Nos. 1938, 1939 of 2013 filed by Wakf Board are allowed by holding that the observations made by the Reference Court were only for the purpose of deciding the locus standi of the claimants to maintain Section 18 proceedings and , RFA Nos. 4006 and 4007 of 2013 filed by Gian Singh and Chhinder Kaur are partly allowed by fixing the market value @Rs.768/- per sq. yard.

February 20, 2018 **(G.S. SANDHAWALIA)**
tripti **JUDGE**

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