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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

XOBJR-12-CI-2016 in/and
RFA No.103 of 2007 (O&M)
& other connected cases
Reserved on: 13.03.2018
Decided on: 11.05.2018

SDO (Civil), Ajnala, acting as Land Acquisition Collector, Ajnala & another ....Appellant

Versus

Rajiv Puri & others ...Respondents

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

Appeals/Cross-objections filed by the Landowners
RFA-3589, 3672, 2790, 3074, CM-3429-CI-2016 in/and RFA-3072, 3450, 3073, 3075-2006, and Cross-Objection-12-CI-2016 in RFA-103-2007, 125-CI-2016 in RFA-104-2007, 10-CI-2016 in RFA-106-2007, 17-CI-2016 in RFA-107-2007, 57-CI-2016 in RFA-108-2007, 16-CI-2016 in RFA-109-2007, 239-CI-2016 in RFA-110-2007, 233-CI-2016 in RFA-111-2007, 23-CI-2016 in RFA-112-2007, 55-CI-2016 in RFA-113-2007, 13-CI-2016 in RFA-115-2007, 14-CI-2016 in RFA-116-2007, 18-CI-2016 in RFA-118-2007, 94-CI-2016 in RFA-120-2007, 19-CI-2016 in RFA-122-2007, 27-CI-2016 in RFA-121-2007, 232-CI-2016 in RFA-117-2007, 26-CI-2016 in RFA-123-2007, 28-CI-2016 in RFA-125-2007, 20-CI-2016 in RFA-128-2007, 21-CI-2016 in RFA-127-2007, 31-CI-2016 in RFA-126-2007, 22-CI-2016 in RFA-124-2007, 15-CI-2016 in RFA-130-2007, 30-CI-2016 in RFA-131-2007, 25-CI-2016 in RFA-132-2007, 11-CI-2016 in RFA-133-2007, 24-CI-2016 in RFA-134-2007, 58-CI-2016 in RFA-145-2007, 29-CI-2016 in RFA-129-2007, 56-CI-2016 in RFA-114-2007.

Appeals filed by the State
RFA-101 to 135 & 145-2007

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Present: Mr.Shailendra Jain, Sr.Advocate
with Mr.Satyendra Chauhan, Advocate,
for the appellant/land-owners.

Mr.Gautam Pathania, Advocate
for the appellant/land-owners in RFA-2790-2006.

Mr.Rahul Bhargava, Advocate
and Mr.Karan Puri, Advocate, for the cross-objectors.

Ms.Akshita Chauhan, AAG, Punjab.

Mr.Chetan Mittal, Sr.Advocate
with Mr.Varun Issar, Advocate, for UOI.

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G.S. SANDHAWALIA, J.

The present set of 44 appeals and 31 Cross-Objections, as mentioned above, under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') are against the awards of the Reference Court, Amritsar dated 14.02.2006 and 19.04.2006.

The landowners are aggrieved against the assessment of the market value which has been fixed @ Rs.6,60,000/- per acre along with statutory benefits, for the land falling in three Villages, namely, Rajasansi, Radala and Heir, District Amritsar, whereby the market value of the land was assessed as on 18.08.1997, i.e., the date of Section 4 notification. For the first 2 villages, 125 acres 9 kanals 14 marlas of land was acquired whereas for Village Heir, 14 acres 1 kanal 4 marlas of land was acquired. The acquisition was for the purpose of extension and development of the Rajasansi Aerodrome and the Land Acquisition Collector awarded Rs.5 lacs per acre for land close to the road upto one acre and Rs.4.5 lacs for land beyond that. For assessing the market value,

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the Reference Court referred to the sale instances of land measuring 1 kanal 18 marlas each (Exts.P1 to P5) dated 10.03.1995 which had been sold @ Rs.1,96,000/-, which were about 2 years prior to the issuance of the notification, totalling @ Rs.8,25,263/- per acre. However, keeping in view the fact that the sale instances were of 1 kanal 18 marlas each, 1/3rd deduction was applied to bring the price to Rs.5,50,000/- per acre and thereafter, applying a 10% appreciation, a sum of Rs.1,10,000/- was added to the value, to assess Rs.6,60,000/- per acre as the market value of the land acquired. However, Ext.A-7, which was sale deed dated 26.09.1997, for 2 ½ marlas of land, whereby the value came to Rs.32 lacs per acre, was rejected, on account of the smallness of the plot and the fact that it was post Section 4 notification.

In another set of 33 land references, the main case of which was of Shri Rajiv Puri, decided on the same day, i.e., 14.02.2006, five sale deeds dated 20.08.1996, for 4 kanals 19 marlas each of land which were sold for Rs.8 lacs, was kept in mind. Similarly, another sale deed of even date, i.e. 20.08.1996 (Ext.A8) of 2 kanals 6 marlas was also noticed that they had been executed in favour of a charitable institution namely Dioceses of Jalandhar and that the stamp duty was exempted for the purpose of registration of the sale deed. 1/4th cut was put, to assess the market value as Rs.6 lacs per acre and resultantly, 10% enhancement was given for a period of one year, to assess the price at Rs.6,60,000/- per acre.

While deciding another bunch of land references on

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19.04.2006, pertaining to Village Heir, whereby 5 land references were decided and the lead case was of Rachhpal Singh, reliance was placed upon the earlier award dated 14.02.2006, wherein market value has been fixed @ Rs.6,60,000/-, for the same notification and resultantly, the landowners were held entitled to the said amount along with statutory benefits.

In the said case, i.e. RFA-3072-2006 titled *Rachhpal Singh & others Vs. SDO, Amritsar & others,* CM-3429-CI-2016, under Order 41 Rule 27 CPC was filed to adduce additional evidence in the form of sale deed dated 14.02.1995, for 18 kanals of land falling in Village Heir, for a sum of Rs.27 lacs. The certified copy of the site-plan (Annexure A-2) along with the certificate of Khalsa Charitable Society which is running 2 educational institutions, is sought to be placed on record, to show the potential of the land.

The said application has been opposed by filing reply on the ground that the evidence was available to the appellants and it was not intentionally produced and the site-plan had already been produced and therefore, the appellants were not entitled to lead additional evidence and the appellants were not entitled to produce additional documents as the necessary conditions were not satisfied and it was resultantly, prayed that the application be dismissed with costs.

Counsel for the landowners has, accordingly, on the strength of it, submitted that the market value was Rs.12 lacs per acre and therefore, the appeals of the landowners should be allowed. He has,

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accordingly, argued that the percentage of increase should have been cumulative in nature and @ 15% and therefore, the market value has wrongly been assessed. It has further been argued that the cut which has been applied, which is 1/4th to 1/3rd is on the higher side and therefore, the cut should be of a lessor amount and only upto 10%.

It is to be noticed that the compensation has been assessed by the Collector @ Rs.4.50 lacs per acre for the land away from the road and Rs.5 lacs for the land closer to the road.

State, on the other hand, has questioned the award in question, to hold out that the value per acre, as per the sale deeds (Exts.R6 to R10) was much less and was hovering between Rs.54,000/- to Rs.72,000/- and therefore, there has been substantial enhancement by the Reference Court and therefore, asked for reduction of the amount awarded.

A perusal of the Section 18 reference petition, filed by Jasbir Singh and others, which was firstly decided, would go on to show that for land falling in Village Rajasansi, which was acquired, enhancement was sought on the ground that it had residential and commercial value because the Raja Sansi Airport was just opposite the acquired land and was situated at only 1 furlong from the main bazar. It was stated to be at a distance of 2 kms from the limits of Municipal Corporation, Amritsar City, which was expanding towards Rajasansi and beyond that the Raja Sansi Airport was stated to be in existence since 1948. International flights were taking off from there and because of the proximity of the

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acquired land to the Airport, the value and utility of the land was appreciating every year and there were several schools, banks, nursing homes, etc. Reliance was placed upon the 4 sale deeds of 4 kanals 19 marlas and one of 2 kanals 6 marlas, for charitable purpose, for which stamp duty was exempted, which were executed on 20.08.1996 and the total of which would come to approximately 3 acres. The value, thus, worked out to Rs.8,25,000/- per acre and they were of Village Rajasansi itself. Similarly, sale deed dated 16.05.1997 for 8 kanals of land @ Rs.4,90,000/- per acre from the acquired land was also referred to as being the best piece of evidence apart from 2 ½ marlas of land sold on 08.09.1997 for Rs.50,000/-, whereby the value would come to Rs.32 lacs per acre. Resultantly, market value @ Rs.8 lacs per acre was sought.

In the written statement filed by the State, it was averred that the sale deeds produced were for the purpose of securing loans from financial institutions and the market value was less. The land was stated to be at a distance of 10 kms from Amritsar City and far off from Rajasansi.

In the replication filed, the plea taken in the appellants were reiterated.

The respondents examined RW1-Jagmohan Singh, Naib Tehsildar, who, in cross-examination, admitted that the acquired land was situated at a distance of 4 kms from the Municipal limits of Amritsar City. He, however, denied that the area had a potential for development as urban township. He, however, admitted that hotels had come up near

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the Airport and some residential colonies had also been carved out and a 4 lane road has also come up. He admitted that Rajasansi Airport was developing towards Amritsar City.

A perusal of the Section 18 reference petitions, in the case of Rajiv Puri, would also go on to show that it was pleaded that the land was at a distance of 2 kms of the Municipal limits of Amritsar city. Reliance has been placed upon the 5 sale deeds, totalling 22 kanals 1 marla of land, dated 20.08.1996 and the value came to Rs.8,25,000/- per acre. Similarly, reference was made to sale deed dated 16.05.1997, wherein sale had taken place of 8 kanals, for the same khasra numbers which had been acquired. Similarly, reliance has also been placed upon sale deed dated 08.09.1997 for 2 ½ marlas of land and that an area of 3 acres was allegedly also left out for which the severance charges were also sought for on account of the fact that there would be no approach left and there would be no use of the land and resultantly, Rs.8 lacs per acre was claimed.

In cross-examination, Rajiv Puri, PW1 denied the suggestion that the sale deeds (Exts.A-1 to A-8) were situated at a far away distance from the acquired land and that they had higher potential and the acquired land was only being used for agricultural purposes. He deposed that the acquired land may be 4-5 killas away from the land mentioned in the sale deeds and also denied the fact that they pertained to land abutting the Amritsar-Ajnala Highway. He further denied that the acquired land was 4-5 kms from the abadi of Village Rajasansi.

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PW-3, Jitender Singh, Patwari of the village also, in his affidavit submitted that Church had purchased the land in 1996, which was very near to the acquired land. He, in cross-examination, deposed that the Municipal Council for Rajasansi came into existence in 1998 and that Rajasansi was at a distance of 8 kms from Amritsar. Similarly, Jagmohan Singh, Patwari deposed in the same manner which had been done in the case of Jasbir Singh.

Similarly, for land falling in Village Heir, plea taken was that it was 1 km away from the Municipal limits of Amritsar City and was between the main residential and commercial area of Rajasansi. An additional plea was raised that 1 kanal 12 marlas of land was being left out from acquisition and having become inaccessible, severance charges were also claimed for the same on account of the alignment of the canal. It was alleged that the prices of the land of the village were higher than that of Rajasansi and at par with Village Radala and compensation was sought @ Rs.25 lacs per acre. In the written statement, the said facts were denied and it was pleaded that the acquired land was opposite the Airport and that the primary requirement of an aerodrome was that there should be no structure or dense population near the aviation ground and it was at a distance of 10 kms from the Amritsar City.

PW-5, Ajmer Singh, in his cross-examination, admitted that Rajasansi was at a distance of 10 kms from the Amritsar City and his land was between Amritsar and Rajasansi.

Firstly, coming to the application filed under Order 41 Rule

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27 CPC, for the additional evidence in the form of sale deed dated 14.02.1995, for 18 kanals of land falling in Village Heir, would go on to show that it was executed in favour of one firm namely, M/s Ashwani Fabrics Pvt. Ltd. It was also executed at the time the landowners were leading their evidence. Nothing has been averred in the application as to why the same could not be produced which is in favour of a industrial firm and a limited company for whom the land was purchased, as such, it might have a special consideration and a vested interest might be involved. Accordingly, the same cannot be called to be the best exemplar to claim enhancement.

Even otherwise, once the landowners specifically have, on an earlier occasion, in the reference petition itself have referred to the sale deed dated 20.05.1997 and thereafter, have chosen to exhibit the other sale deeds, while leading evidence in the year 2004 and had sufficient opportunity to produce the sale deeds in question, at that point of time, which could have been duly rebutted by the State. The additional evidence, as such, cannot be permitted, for filling up the lacuna once the case has been decided and it would not fall within the parameters of Order 41 Rule 27 CPC and the said sale deed cannot be allowed to be brought on record as additional evidence. Even otherwise, there is sufficient evidence on record as sale deeds to assess the relevant market value and this Court does not feel the need for the additional evidence to pronounce judgment. The Apex Court in ***Satish Kumar Gupta and others Vs. State of Haryana and others AIR 2017 SC 1072***, has held as

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under:

> "20. It is clear that neither the Trial Court has refused to receive the evidence nor it could be said that the evidence sought to be adduced was not available despite the exercise of due diligence nor it could be held to necessary to pronounce the judgment. Additional evidence cannot be permitted to fill-in the lacunae or to patch-up the weak points in the case. There was no ground for remand in these circumstances."

Thus, no case is made out for allowing the application for additional evidence and CM-3429-CI-2016 in RFA-3072-2006, is accordingly, dismissed.

The only issue, thus, remains is as to whether the cut which has been imposed, in the peculiar facts and circumstances, is justified, especially, since the purpose of the acquisition was for the extension of the Airport and as such, the development cut which has been applied, to the extent of 1/3rd in the one case and 1/4th in other cases, in the opinion of this Court, is on the higher side. The sale deeds in question, thus, which have been referred to and which are exemplars, as such, are as under:

Ex.	Date of sale	Sale consideration	Area sold	Value per acre
A1	20.8.96	4,95,000/-	4K-19M	8,00,000/-
A2	20.8.96	4,95,000/-	4K-19M	8,00,000/-
A3	20.8.96	4,95,000/-	4K-19M	8,00,000/-
A4	20.8.96	4,95,000/-	4K-19M	8,00,000/-
A5	20.8.96	4,95,000/-	4K-19M	8,00,000/-
A8	20.8.96	2,30,000/-	2K-6M	8,00,000/-
A6	10.5.97	4,90,000/-	8K-00M	4,90,000/-
A7	8.9.97	50,000/-	0K-2 ½M	32,00,000/-

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Similarly, vide Exts.P-1 to P-5 dated 10.03.1995, land measuring 1 kanal 18 marlas was sold for Rs.1,96,000/- each for the 5 sale deeds, for which the Court has also worked out the value @ Rs.8,25,263/- which was also sold to the Dioceses, Jalandhar which was situated within the Village Rajasansi and it would come to approximately 10 kanals of land, which is slightly over an acre and cannot be said to be a small piece of land.

Similarly, the land which is subject matter of sale deed dated 20.08.1996 of 4 kanals 19 marlas each also comes to 3 acres which was sold @ Rs.8 lacs per acre. The combined area of said sale deeds should have been taken into consideration for the purpose of putting the cut. The average of the 2 sale instances which are in favour of the Dioceses of Jalandhar, thus, range between Rs.8,12,631/- and there is a difference of one year five months between the 2 purchases. They purpose of acquisition also is to be noted that it if for the development of an Airport and the development cut which is in such cases would always be on the lower side. In ***Chakas Vs. State of Punjab & others 2011 (4) RCR (Civil) 211***, wherein the Corporation was setting up its own industry and therefore, most of the acquired land was to be utilized by the Corporation for its own benefits and usage for purpose of roads, sewerage and other facilities was to be the minimum, a cut of only 10% was put. The relevant part read as under:

> "19. The Reference Court committed a grave error in deducting 50% of the value assessed by him, towards development charges and further reduced the said amount for

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the reasons not assigned by him. The learned Single Judge vide the impugned judgment has enhanced the amount of compensation but committed an error in fixing the base price as 2,75,000/- per acre for the acquired land, applying the doctrine of reasonable cut to the average price worked out by him at Rs.3,42,527/- per acre. We do not approve of the reasonings adopted either by the reference Court or by the High Court. How much amount is to be deducted from the base price would depend on various factors.

20. As mentioned hereinabove, in the case in hand the bulk of the land that is almost 525 acres has been given to respondent No.3, the Corporation for setting up its own industry and other infrastructure thereon. Thus, the lands likely to be used towards roads, sewage and other such facilities would be minimum as most of the vacant land would be utilised by respondent No. 3 for its own benefits.

21. Needless to say, once the industry is set up, it would be for the financial benefit and gain of respondent No.3 year after year. Thus, looking to the matter from all angles, respondent No. 3-Corporation would be a great beneficiary at the cost of depriving the appellant-land owner of his sole livelihood of agriculture.

22. Therefore, it is neither desirable nor proper to deduct more than 10% of the amount in the base price fixed by us at Rs. 4,08,000/-. We accordingly do so."

Similarly in ***Subh Ram & others Vs. State of Haryana & others 2010 (1) SCC 444***, the land was acquired for the purpose of Jail and the cut applied of 10% was upheld by the Apex Court, in such circumstances.

This Court is conscious of the fact that the purpose of acquisition is not to be taken into consideration under Clause (4) of

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Section 24 of the 1894 Act. However, the 1/3rd cut in the case of Rajiv Puri's case, on the other hand, on account of the fact that the sale instances were of a small piece of land are not justified. The Court did not keep into consideration that if all the sale instances were taken on one hand, pertaining to the sale deeds dated 10.03.1995, it would work out to one acre of land which cannot be said to be a small chunk of land. Similarly, on the other hand, if all the sale deeds dated 20.08.1996 are taken into consideration, the land was measuring approximately 3 acres.

The argument of the State Counsel that the land value was much less and reference to Exts.R-6 to R-10 etc., has to be repelled, in view of Section 25, since the Collector himself had chosen to fix the price at Rs.4.50 lacs and Rs.5 lacs, respectively, for the land in question and therefore, the sale deeds which has been brought on record by the State, show the market value much below the value of the acquired land and therefore, there is no scope for decreasing the compensation awarded.

In ***Trishala Jain and another Vs. State of Uttaranchal and another 2011 (6) SCC 47***, the land was acquired for a Government Polytechnic Institute and accordingly, the Apex Court held that minimal deduction should be applied to meet the ends of justice and 10% deduction was made from the value of the acquired land. Similarly, in ***Kasturi Vs. State of Haryana 2003 (1) SCC 354***, for the acquired land, 20% cut applied by the High Court for development of residential and commercial area by HUDA, was upheld by the Apex Court.

Resultantly, this Court is of the opinion that the percentage

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of cut, as such, which has been applied in the case of different landowners, to assess the market value @ Rs.6,60,000/- needs to be modified to that extent and a 10% benefit is to be granted over and above what has been awarded. Resultantly, this Court assesses the market value of the land in question @ Rs.7,20,000/- per acre along with all statutory benefits. Accordingly, the appeals and Cross-Objections, filed by the landowners are partly allowed to the extent that all the landowners are entitled to uniform compensation of Rs.7,20,000/- per acre and those of the State are dismissed.

11.05.2018 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No