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

(466) **RFA No.2368 of 1990**
Decided on : 30.01.2019

M/s Sham Lal Ram Nath

... Appellant

Versus

State of Punjab and another

... Respondents

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

Present : Mr. Rajiv Kataria, Advocate &
Ms. Richudeep Bajaj, Advocate for the appellant.

Ms. Simran Grewal, AAG, Punjab.

G.S. Sandhawalia, J. (Oral)

The present appeal filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') is directed against the Award dated 05.02.1990 passed by the Reference Court, Ludhiana, whereby a sum of ₹4,82,943/- had been awarded in respect of the acquired land and the super-structure for the notification dated 31.01.1974 issued under Section 4 of the Act. The amount is awarded in the second round of litigation is in as much as for the first round of litigation an Award had been passed by the Reference Court on 30.11.1978, whereby compensation @ ₹50,000/- per acre had been awarded. The enhancement was from a sum of ₹15,153/- which was awarded by the Land Acquisition Collector (for short 'the LAC') for the land of the appellant which measures 35 kanals 10 marlas.

2. The land was acquired for the purpose of setting up of Industrial Estate at Khanna and the land was falling in village Bullapur, Hadbast No.222, Tehsil Samrala, District Ludhiana. A cross-appeal had been preferred against the Award dated 30.11.1978.

3. It was noticed that the LAC had not passed any supplementary award concerning the super-structure and, therefore, the benefit of capitalization as such could not be granted to the appellant by the Reference Court. Resultantly, this Court in the first round of litigation in **RFA No.1592 of 1979** decided on 23.09.1980 held that the piecemeal valuation by the LAC was not justified, as the land and building constitute one unit and the value of the entire unit should be determined with all its advantages and potentialities. However, keeping in view the fact that out of 35 kanals 10 marlas, 17 kanals was vacant land, it was held that the market value could be assessed @ ₹67,500/- per acre for the said portion in view of the judgment passed in **RFA No.640 of 1979**. Accordingly, the case was sent back for re-determination of the compensation payable to the appellant-firm for the acquired land as a finding was recorded that the area under the building and super-structure erected by the appellant-firm was not properly assessed.

4. The Reference Court now vide its impugned order dated 05.02.1990, accordingly, divided the assessment into three portions and has awarded the below stated amounts:-

Sr. No.	Area	Value
1.	18 Kanals 10 Marlas (Constructed Portion)	₹2,39,818/- (as per Government Valuer)
2.	18 Kanals 10 Marlas (Portion under the super-structure)	₹1,51,875/- (@ ₹67,500/- per acre)
3.	17 Kanals (Vacant Land)	₹91,250/- (@ ₹67,500/- per acre)
	Total=	₹4,82,943/-

5. Counsel for the appellants has vehemently submitted that the potentiality of the land which was under construction was immense, as it was being used for a godown and, therefore, the valuation of the land as such could not be assessed at the same rate as was given to the vacant land around the godown. It was further pointed out that the valuation for the 17 kanals vacant land was also wrongly made as there was a mathematical error in as much as once the value was assessed @ ₹67,500/- per acre for the said land, it would come to ₹1,43,437/- for the same and not ₹91,250/- and, therefore, the total valuation as such would come to ₹5,35,130/- instead of ₹4,82,943/-. Counsel for the State as such could not point out that the argument which has been raised by Mr. Kataria suffers from any infirmity and, thus, there is an mathematical error in calculating the market value for the vacant land measuring 17 kanals @ ₹67,500/- per acre.

6. The argument as such which has been raised for further enhancement for the vacant land is without any basis, as in the second round of litigation no further evidence was brought on record though as many as three witnesses were examined to show that the market value would be higher than what was assessed by this Court in the earlier round of litigation. The only question, thus, arises whether for the land which was under construction the value as such should be more, since an argument has been raised by counsel for the appellant that the land was being utilized for a godown and, therefore, the claim of rent which was being raised was also lost out. The argument, thus, raised is that for the

constructed area the market value should be as such at a higher rate.

7. The said argument is not liable to be accepted, as noticed that Section 3 (a) of the Act provides that the land includes benefits which arise of the land and things attached to the earth or permanently fastened to anything attached to the earth. Section 3 (a) reads as under:-

> "(a) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth."

8. This Court on an earlier occasion had noticed that the Apex Court in the case of **'State of Kerala Vs. P.P. Hasan Koya' AIR 1968 Supreme Court 1201** has held that the definition of land would mean a single unit including things attached to the earth or fastened to anything attached to the earth, which was notified for acquisition. Relevant portion reads as under:-

> "When land-which expression includes by Section 3 (a) of the Act benefits to arise out, of land and things attached to the earth or fastened to anything attached to the earth-is notified for acquisition, it is notified as a single unit whatever may be the interests which the owners thereof may have therein. The purpose of acquisition is to acquire all interests which clog the right of the Government to full ownership of the land, i.e. when land is notified for acquisition, the Government expresses its desire to acquire all outstanding interest collectively. That is clear from the scheme of the Land Acquisition Act. Under Section 11 of the Land Acquisition Act, the Collector is required to enquire into the objections raised by the persons interested in the land and into the value of the land at the date of. the publication of the notification under Section 4, sub Section (1) and into the respective interests of the persons claiming

the Compensation, and then to make an award determining (i) the true area of the land; (ii) the compensation which in his opinion should be allowed for the land; and (iii) the apportionment of the compensation among all the persons known or believed to be interested in the land, Whether or not they, have respectively appeared before him. By the compulsory acquisition of land, all outstanding interests not vested in the Government are extinguished. It is, therefore, the duty of the Land Acquisition Officer determine in the first instance compensation which is to be paid for extinction of those interest 'and then to apportion the compensation among the persons known or believed to be interested in the land. The Subordinate Judge had also, when a reference was made to him, to assess the value of the unit and then to apportion the compensation among persons entitled thereto.

It has further been observed:-

In determining compensation payable in respect of land with buildings, compensation cannot be determined' by ascertaining the value of the land and the "break-up value" of the building separately. The land and the building constitute one unit, and the value of the entire unit must be determined with all its advantages and its potentialities."

9. The landowners had never raised any challenge to the amount of ₹67,500/- which was awarded for the vacant land on an earlier occasion and that has become final *inter se*. Resultantly, the Reference Court is well justified in fixing the rate @ ₹67,500/- per acre for the whole land measuring 35 kanals 10 marlas. It is also to be noticed that from the evidence it would be clear that though it was claimed that the land was being used for a godown and it has been averred that the same has been let to the Food and Supplies Department at a monthly rent of

₹1,100/-, but in cross-examination it has come on record that the premises had been vacated two years earlier and there is no document to show that whether the premises were let out to the Food and Supplies Department, apart from Mark-X, which has been produced by the landowners. Thus, there is nothing to show that godown as such was getting any rent, which the landowners had lost on account of the acquisition.

10. A perusal of the Mark-X would go on to show that it was a demand for issuance of a certificate and there was a endorsement made by the Inspector, Food and Supplies Department, Khanna and the said officer was never produced for proving the said fact.

11. On an earlier occasion the remand was on account of the fact that the supplementary award had not been passed on account of the super structure and it was in such circumstances, this Court has held that it would be averse to the interest of the landowners. It was the case of one of the landowner AW-1 Satya Pal, partner of the appellant-firm that the cost of construction would be ₹90,000/- and they had maintained books of accounts for construction, but he had not brought any books of accounts. Similarly, in the cross-examination it had also come on record that he had not brought any deed with regard to letting out, though he had claimed that certificate regarding the rent had been issued by the Food Supplies Department, but no person was produced from this department to prove this fact.

12. In spite of the matter having been remanded, no categorical evidence further was produced in proof of loss which the appellant might

have incurred, which would come within the ambit of Clause four of Section 23 of the Act, which pertains to damages if any sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings.

13. It was only on account of the remand, the appellant put forward the claim as such of the building and claimed compensation for ₹5,50,450/- by producing AW-4 Ajit Singh Kanwar, Architect. In cross-examination, however, he stated that he had prepared his report Ex.AW4/1 on 25.05.1989, which, thus, is much latter, as the proceedings for acquisition were notified on 31.01.1974 and the Award was passed by the LAC on 13.09.1974. Therefore, the valuation report as such which was prepared 15 years later as such would have no value and has not rightly been relied upon by the Reference Court. Preference has been given to the valuation made by the official witness, wherein the assessment of the super-structure was made, as per the supplementary Award dated 26.03.1982 (Ex.AW5/2).

14. An effort as such was made to get the market value enhanced @₹200/- per square yard on account of an writing Ex.AW4/1 by producing AW-7 Pishori Lal Bijan. He had stated that a plan of the property was prepared, which they were to purchase, on account of the fact that the land of the petitioners was very potential. But on account of the land of the petitioners being notified, they could not purchase the property. The said agreement has already been discussed in detail by the

Reference Court that it was never subject matter of pleading on an earlier occasion and it was only on remand the same was put forth as such to raise the claim.

15. It is a settled principle that the onus always lies upon the landowners and in spite of the remand they did not bring any material on record to show that the market value of the land was more than what had been assessed by this Court in an earlier round of litigation. Resultantly, the argument raised by the counsel for the appellant does have any merit for acceptance.

16. Accordingly, in view of the above discussion, the only modification in the impugned award is that the total amount of compensation would work out @ ₹5,35,130/- instead of ₹4,82,943/- and the Award dated 05.02.1900 as such is modified to that extent.

17. The present appeal is, accordingly, disposed of in the above said terms.

(G.S. SANDHAWALIA)
JUDGE

JANUARY 30, 2019
Naveen

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*