HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RFA No.2531 of 1990 (O&M)
Date of Decision: 08.01.2019

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Harpartap Rai Puri & Ors. ... Appellants

VS.

State of Punjab & Ors. ... Respondents

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

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Present: Mr. ML Sarin, Sr. Advocate with
Mr. Ritesh Aggarwal, Advocate for the appellants

Ms. Simran Grewal Randhawa, AAG Punjab

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G.S. SANDHAWALIA, J. (Oral)

(1) The present appeal arises out of the award passed by the Reference Court, Kapurthala dated 03.09.1990 filed by the landowners under Section 54 of the Land Acquisition Act, 1894 for the enhancement of compensation for the construction over the land acquired for New Mandi Township, Dhilwan Miani Bakarpur. The Reference Court has not granted enhancement to the landowner and held that the compensation of ₹ 1,63,480/- already given to the claimants is correct and does not require any enhancement.

(2) The reasoning given for denying the relief is that report of PW1 Satara Singh Ex.A1 was not relied upon on the ground that he was a Diploma in Civil Engineering whereas the Harbhajan Singh Walia (RW1) who was the SDO of B&R department had stated that roofs were having cracks and mud mortar was used and masonary work was done with mud mortar and the floor were conglomerate. Resultantly, the evidence of the witnesses of the landowners, namely, Gurbacahan Singh (PW2), a Government contractor who stated that there were shopping complex which was made of cement and RCC beams was also rejected on the ground that he

was an interested witness since the claimant was also doing the job of contractor. Even the photographs (Ex.A3 to A6) were also referred to come to the conclusion that construction seemed to be of B-Class. The evidence of Harpartap Rai (PW5) being interested as claimant and contrary to the report of the SDO (Ex.R1 & R2) and was getting ₹ 1800/- as rent was also not taken into consideration. Heavy reliance was placed on the report of RW1 Harbhajan Singh Walia who stated that he inspected the premises on 01.02.1986 and found that the roof was not RCC slab and there were cracks in the roof. He further deposed that when he went, shutters were down and nothing was in the shops and they were not locked which means that there were no tenants in the shops and had there been any tenant then the goods must be lying in the shops and the tenants must be there. He further stated that there were no foundations at the back of the constructed portion.

(3) Senior counsel for the appellants has contended that the report of the private valuator was not liable to be rejected *per se* and if the average of two reports is taken into consideration, the appellants would be entitled for enhancement. It is thus submitted that even if the value of rental of ₹ 1800/- of all shops is also taken into consideration then also enhancement was liable to be granted which has not been accepted by the Reference Court. State on the other hand has justified the award passed by the Reference Court and submitted that the Reference Court is correct in dismissing the reference petition.

(4) The land was acquired vide notification dated 19/20.12.1983 whereby 36 acres 5 kanals 1 marla land of village Dhilwan and 4 kanals 9 marlas land of village Miani Bakerpur total 37 acres 1 kanal 10 marlas land was acquired for the public purpose of setting up of a New Mandi Township.

The landowners had claimed a sum of ₹ 4,50,000/- for the cost of construction and ₹ 2 lakhs for cost of leveling and earth filling. The issue of compensation for the land already stands decided in favour of the landowners in RFA No.1142 of 1989 Harpartap Rai Puri vs. State of Punjab.

(5) In the present petition under Section 18 of the Land Acquisition Act, 1894, it was averred that building was constructed on the land in Khasra No.162/2 consisting of 10 shops in line, 4 rooms and kitchen over these shops which was a residential set used by the appellants and foundations for another building parallel to the shops and foundations laid up to the plinth level and 1 feet above ground level along the Dhilwan road. All these shops were made of 1st class pacca bricks laid with cement mortar with lintil on the roofs of all shops and chobaras, kitchen and the floors were made of RCC flooring and only one chobara is having RCC battons and girder, besides foundations on the back of these shops were also filled for further construction. The constructed building was fitted with electricity and six shops had GI sheet shutters, 10'x9' large and all shops were fitted with steel safety nuts on its back. It is claimed that all shops were rented out on monthly rent to the tune of ₹ 1800/-. The back portion and on the north foundations were filed up to the plinth level to build a factory but due to uncertain conditions on account of terrorist activities there was no progress in the project. The total monthly income was around ₹ 2250/- and above every month and the said income from the shops had also vanished due to the acquisition and the Collector has not kept in view the principle of calculations of price enunciated by this Court as well as by the Supreme Court while fixing the market price/value of the construction.

(6) The plea of the State was that the construction of the shop was of B-Class and was made of mud mortar and there were cracks. The claim was that the officials of the PWD department assessed the value of the shops and the compensation has been given according to it.

(7) Satara Singh PW1 stated that he retired from the PWD Department as Junior Engineer and had 30 years experience. He passed Diploma in Civil Engineering in 1953 and had sufficient experience about the construction and maintenance of the building and had inspected the premises and gave his report Ex.A1. The report show that there are two portions of building, new portion comprising 6 shops and old portion comprising of 4 shops. The demised building consisted of 10 shops, 4 rooms 1 kitchen on the first floor. It specified that walls were laid in cement mortar internally cement plastered and roofs, RB lintel and girders etc. of the building of the shops. The cost of construction of ground floor and first floor etc. were detailed separately. Accordingly, a sum of ₹ 5,57,003/- was assessed as cost of construction. The photographs show that the walls were of ordinary brick type and not of mud mortar and the construction seems to be of B-Class. The report dated 03.09.1987 (Ex.R1) of RW1, on the other hand, merely mentions cost of construction of the shops as ₹ 1,63,480/-, and gives the name of the claimants.

(8) In order to substantiate his claim further, PW2 Gurbachan Singh stated that the claimant made the construction of the shops in the year 1974 with consultation with him. PW4 Harjit Singh Bhasin submitted that photographs (Ex.A3 to A5) were taken by him.

(9) The landowner Harpartap Rai himself also admitted that the construction of the shops was raised in the year 1972 and the shops were

given to different tenants on rent of ₹ 1800/-. Ex.A8 to A11 were the certified copies of the rent notes. The rent of the shops were increased which are part of the record as Ex.A12 to A17. He also deposed that he has spent ₹ 45000 or ₹ 46000 on the construction of the shops in the year 1972. He denied that the construction of the shops was of B-Class and the rent notes were manipulated afterwards.

(10) In contrast, Harbhajan Singh Walia RW1 SDO B&R deposed that the building in dispute was in between B&C quality and did not remember if a notice was given to the owner of the building concerned and if construction was made of cement mortar, cement plaster and cement flooring and RCC lintel which comes under the A-class construction. No person was present on behalf of the claimant at the time of inspection and the construction was with standard size bricks. It was stated that roof was not of RCC slabs and was made of RB slabs which are made of bricks and there was crack in the roof. It is stated that when he went the shutter was down and nothing was in the shop. The shutter was not having lock and there were temporary light fitting of the electricity in those shops. He could not say if the age of the building was 10/ 15 years. There was no foundation at the back of the constructed portion. He denied that from seeing the photographs, he could not say if it was of cement mortar. Perusal of Ex.A23 site plan would go on to show that in Block A on the first floor, there is further construction of residential portion of bedrooms and halls which is also visible in the photographs Ex.A3 to Ex.A5.

(11) Statement of AW11 Dalip Singh had been recorded in other proceedings which is on record as Ex.A24 to fortify the fact that he was

tenant in the shop. Similarly, statement of AW13 Chaman Lal another tenant has been placed on record as Ex.A25.

(12) A perusal of the evidence would show that the Reference Court was not as such justified in rejecting the claim of the landowners for enhancement of compensation on account of cost while brushing aside the report Ex.A1 in totality. The report reads as under:-

"Valuation certificate

On the request of Shri Harpartap Rai Puri, I Satara Singh Padda, Junior Engineer (Retd.) having about thirty five years of experience in line (chart attached) inspected the site on 15th day of the April 1987 about 11.00 AM on ward with a view to determining its present condition.

2. Shri Harpartap Rai Puri was present at the time of my inspection.

3. The demised building consist of Double Storey comprising of 10 Shops 4 Rooms 1 Kitchen Shops/Godowns (G.F.) Rooms First Floor – Kitchen First Floor and is being used by the Respondent/Applicant as a shop/residential purposes etc.

NOTE:- This valuation of the building (property) is based on the information supplied by the owner and site inspection.

1.	*Name of the Owners:*	*Harpartap Rai Puri, Amrit Kaur & Ors*
2.	*Tenure or tenancy:*	*Ownership Free hold/rented out.*
3.	*Boundries:*	*East = Dhilwan Road, West-Land of owner South = 3 feet wide lane, North-Land of Shri_____, as per plan.*
4.	*Age of the building:*	*New portion-six shops-1 to 6 as plan.* *35'x74.6 = 2607.5 sft.-12 years.* *Old Portion-Four shops – 7 to 10 as plan* *35'x40' = 1400 sft. – 15 years*
	First Floor:	*Old Portion – Four rooms, & Kitchen* *35'x40' covered area 822.12 sq.ft.*
5.	*Situation of the building:*	*TOTA – DHILWAN (linked with G.T. Road)*
6.	*Normal life of building:*	*100 years*

According to the plan the building as existing at site at present has been prepared and is enclosed. Its surroundings are given to the plan itself. This may be treated as part of the valuation report.

7. According to the plan of the building, as existing at site at present, as per shown by the owners of the property. This is a part of the report.

(Er. Satara Singh Padda)

Valuation Certificate

Details of construction specification etc.

1. Walls laid in cement mortor internally cement plastered.

2. Roofs. R.B. Lintle and Girders etc.

3. Floors –shops/Godowns provided with cement concrete and other with brick flooring in all rooms.

4. First Floor – Lintle and R.C.C. Bantons, Girders, Cement flooring in all rooms.

5. Water supply – Hand Pump.

6. Sanitary – Ordinary.

7. Electricity – provided.

8. Joinary – Shops 1 to 6 provided with shutters, second additional doors, 7 to 10 with wooden doors. All shops with Safety Steel nets.

9. Finishing – Cement Plastered with white washed.

10. Area – Total 114'.3" x 35'.8" = 4091.94 sft., New shops 35'.8' x 67'.6"
(new 1 to 6) (Old 7 to 10) Old shops 35'.8'x46'.9"

11. Market value of the land:

The land being situated on the main road, i.e. touching the main Dhilwan road and on a very high ground, height raised after filling low areas, making it suitable for Industrial use, it is higher than all the other land being acquired for Mandi, the lowest being 5 feet next to this plot of land, on North, 2'to 2'.5" (2 feet to two and half feet) across the road and general area of 37 acres. It is nearer to the G.T. Road, bigger front, facing road, the land can be valued at 20,000/- per marla, its situation, its commercial value are important.

12. Total value of the land: Under dispute (with the acquisition Deptt.)

<u>COVERED AREA</u>

13. Ground floor: New portion 114'.3" x 35'.8" = 4091'.94" new shops 35'.8"x67'.6"
Old portion: =2420'.08" Old shops 35'.8"x46'x9"
= 1679'.02"

<u>COST OF CONSTRUCTION GROUND FLOOR</u>

Total ground floor 4091'.94"sft.at Rs125/- =	*Rs.5,11,492-50*
<u>New portion</u> 35'.8" x 67'.6" = 2420 sft at 125/- =	*Rs.3,02,510.00*
<u>Old portion</u> 35'.8"x46'.9" = 1679.02 at 125/- =	*Rs.2,09,877.00*
(A) Ground Floor	*<u>Rs.5,12,387.00</u>*

<u>COST OF CONSTRUCTION. FIRST FLOOR</u>

New portion	*67'.66x1.3" x 1.9"x2=295.4" cft) =* *35'.8"x1.3" x 1.9"x2 = 156.cft)*	*451'.4" cft*
Old portion	*35'.8" x 46'.9" = 855 sft =*	*855'.0" sft*

New Portion.
Total cost of FIRST FLOOR at Rs.100/-, 451.4 cft *Rs.45140-00*

Old Portion.
Total cost of FIRST FLOOR at Rs.100/-, 855. sft *Rs.85500-00*
(B) *<u>Rs.1,30,640.00</u>*

Total of Construction, <u>Ground Floor & First Floor</u>

(C)= A+B = Total cost *<u>Rs.6,43,027.00</u>*

Depreciation of 1% per year Old Portion 15 years.
On value of Rs.2,95,377-15% Total *Rs.44,306.00*

Depreciation of 1% per year New Portion 12 years
On value of Rs.3,47,650 12% Total Rs.41,718-00

Total Depreciation Rs.86,024-00

Total Nett value after deduction of Depreciation
On Rs.6,43,027.00 – Rs.86,024.00 + (E) *Rs.5,57,003.00*
(C) (D) E

Foundations
__ (page torn) x 1.6" x 1.3" = 367.5"
43'x1.6"x1.3" = 5079'.00 = 5446'.5' cft
cft at Rs.180/- per 100 cft *Rs.5,446.00*

Functional Wooden Doors in Shop No.1 to 6
5.9" x 7.6" Six doors *Rs.3,600.00*

Safety Nets of Steel in all shops 1 to 10
10' x 8.3" Ten shops *Rs.8,300.00*

Total Cost *Rs.5,57,003.00*
A+B+C+D+E+F+G+H
(Rounded to nearest rupees,
Decimal not included *E&OE*

2 site plans/ *(SATARA SINGH PADDA)"*

(13) The Reference Court thus committed error and averaging could have been resorted to adequate compensation for cost of construction of shops. Reliance was wrongly placed on the State witness solely who inspected the premises much after the possession had been taken but his statement is not liable to be accepted as Gospel truth. Reliance can be placed on the average of two valuation reports of ₹ 1,63,480/- and ₹ 5,57,003/- to work out the market value of the cost of construction on the basis of judgment of ***Union of India vs. Pal Singh & Anr. 1994 (3) PLR 569*** which was followed in ***Hazura Singh & Ors. vs. Union of India 2004(2) PLR 642***. If the said principle is followed the average total amount of the two would work out to ₹ 3,60,241/- and the appellants would be entitled to the balance of ₹ 1,96,761 which would be due to them.

Accordingly, the appeal is allowed and it is held that the appellants are entitled to enhancement to ₹ 1,96,761/- along with statutory benefits.

08.01.2019 **(G.S. Sandhawalia)**
vvishal **Judge**

1. Whether speaking/reasoned? ***Yes***
2. Whether reportable? *No*