HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RFA No.1732 of 1991
Date of Decision: 09.07.2019

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Malkiat Singh & Ors. ... Appellants

VS.

The Land Acquisition Collector, Ludhiana & Ors. ... Respondents

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

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Present: Ms. Promila Nain, Advocate for the appellants

Ms. Ambika Luthra, Sr.DAG Punjab

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G.S. SANDHAWALIA, J. (Oral)

In the present appeal filed under Section 54 of the Land Acquisition Act, 1894 the landlosers challenge the award dated 28.02.1991 passed by the Reference Court, Ludhiana. The appellants seek further enhancement from what has been granted by the Reference Court @ Rs.40/- per sq.yard (Rs.1,93,600/- per acre) along with all statutory benefits, on account of the fact that the land was situated close to abadi of Mandi Ahmedgarh and therefore had great potentiality for usage of residential and commercial purposes.

Another argument raised is that the balance land of the appellants got adversely affected and therefore on account of the acquisition for usage for the public purpose as it was acquired for the Punjab Water Supply and Sewerage Board since the land was to be used for the purpose of disposal of sullage water of town. Accordingly, reference is being made to fourth clause of Section 23 which provides that the damage 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, is to be kept in mind while granting compensation.

The land was acquired vide notification issued under Section 4 dated 27.01.1986 measuring 33 kanals 1/3rd marla belonging to the appellants situated in the revenue estate of village Chhapar, District Ludhiana. The Collector vide award dated 03.12.1986 awarded a sum of Rs.17/- per sq.yard which comes to Rs.82280/- per acre. Resultantly, the reference under Section 18 was filed claiming higher compensation on account of the fact that land was adjoining Ahmedgarh Mandi which was a prosperous urban town having a very high market value and was flourishing city and the land could be used for residential and commercial purposes. The abadi of the town was surrounded by the land in dispute which was abutting the road which was leading from village Dalej to Ahmedgarh and so many shops and residential houses had already been constructed on the land towards village Dalej from the land in dispute. Accordingly the appellants claimed Rs.7,00,000/- per acre as compensation.

The respondents on the other hand claimed that the acquired land was purely agricultural and it did not adjoin Mandi Ahmedgarh nor it abutted any road. It was situated at 3 km from the town of Mandi Ahmedgarh. The plea specifically taken in para 6(d) that the balance land was affected on account of the usage of sullage treatment as such, was denied in the written statement as incorrect but no specific defence as such was taken by the respondents.

Resultantly, keeping in view the evidence as such which came on the record and as per the site plan produced Ex.P6 and Ex.R1, the finding was recorded that the acquired land was not situated much away from abadi of Ahmedgarh town.

The statement of RW2 Iqbal Singh, Revenue Patwari was taken into consideration who admitted that abadi of Mandi Ahmedgarh started at a distance of only about one furlong from the acquired land. In the cross-examination, it further emerged that the land intervening between the acquired land and Mandi Ahmedgarh was owned by Bhola Singh claimant and others. Resultantly, the potentiality of the land being not disputed, the following sale transactions executed were taken into consideration being proximate in point of time. The relevant ones are as under:-

	Date	**Area**	**Sale consideration**	**Per sq.ft. rate**
Ex.P1	02.05.1985	7 biswas	Rs.20,000/-	Rs.57/-
Ex.P2	14.05.1985	2 ½ biswas	Rs.11,000/-	Rs.89/-
Ex.P3	06.06.1985	3 biswas	Rs.10,000/-	Rs.66.50

The Reference Court thus applied a cut keeping in view the smallness of the sale deed for assessing the market value and fixed the market value @ Rs.40/- per sq.yard by coming to the conclusion that the rate of Rs.17/- was inadequate as awarded by the Collector. Resultantly, the enhancement was granted which has been done on basis of averaging resorted to by the Reference Court and applying a cut of 40%.

The reasoning as such which has been applied by the Reference Court can be faulted if one is to take into consideration the largest sale deed Ex.P1 which is of 7 biswas which would translate to approximately over 2 kanals of land. The land which has been acquired is 33 kanals and therefore 20% cut would suffice on account of smallness of sale exemplar as such which would work out to Rs.11.40 per sq.yard and therefore the market value would come to Rs.45.60 per sq.yard. In such circumstances the normal enhancement from Rs.40/- would be the correct market rate which the landowners would be entitled to.

In **Trishala Jain & Anr. v. State of Uttaranchal & Anr., AIR 2011 SC 2458**, it has been held that smaller chunks of land can be considered for determining the market value of larger chunk of land with some deduction and only if there is a difference in the potential, utilization and amenities then only it could be rejected. The deduction could vary from 10 to 86%. In such circumstances, 10% deduction had been applied in the said case. Similarly, in **Kehrawal Khewja Trust, Faridkot vs. State of Punjab, (2012) 5 SCC 432**, it has been held that the benefit of highest sale exemplar should be granted to the landowners. In case this Court has taken into consideration Ex.P1 which is a larger chunk of land in comparison to other two which are smaller in area to avoid the percentage of cut which would consequently go up if the small sale deeds have to be taken into consideration.

The other issue which is to be taken into consideration is that admittedly the land is being used for purposes of disposal of sullage water. It is clear from the evidence also that the balance land as such of the landowners is situated in between the acquired land and Mandi Ahmedgarh. Once the land was being used for sullage purpose and there is a specific pleading that the appellants would be adversely affected on account of usage as such and the land was in close vicinity of the abadi area, the potentiality of the balance land would also necessarily be affected. Thus fourth clause of Section 23 would come into play which has not been taken into consideration by the Reference Court.

Resultantly, this Court is of the opinion that 50% of the market value over and above as has been assessed @ Rs.45/- per sq.yard would also be the additional compensation which the landowners will be entitled to on account of above negative factors whereby the acquired land is being used for public purpose in the immediate vicinity.

It is pertinent to mentioned that the appeal filed by the State i.e. **RFA No.1160 of 1992** titled as **State of Punjab vs. Malkiat Singh & Ors**. already stands dismissed in default on 06.02.2013 and has never been got restored though the present appeal was restored.

Resultantly, the appeal is allowed partly to the extent that the market value is assessed @ Rs.45/- per sq.yard along with all statutory benefits and over and above that the landowners will also be entitled to a sum of Rs.22/- per sq.yard for the land which has been acquired on account of Section 23(4). However, it is made clear that the statutory benefits as per Section 23(1)(a) and Section 23(2) will not be granted on Rs.22/- in view of the law laid down by the Apex Court in **State of Punjab vs. Amarjit Singh (2011) 4 SCC 734** wherein it has been held that the same are payable only on the market value and not on other amount assessed under Section 23.

09.07.2019 **(G.S. Sandhawalia)**
vvishal **Judge**

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