

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

**RFA-2378-1991**

**Date of decision:25.07.2019**

Kashmir Devi (deceased) th LRs & others ....Appellants

Versus

State of Punjab ...Respondent

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

Present: Mr.K.S.Dadwal, Advocate  
and Mr.Naresh Kumar, Advocate, for the appellants.

Ms.J.K.Sidhu, 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 02.04.1991 of the Reference Court, Hoshiarpur whereby claim for the trees standing on the land acquired of Village Kukanet District Hoshiarpur, for the construction of the Dholba Dam, was allowed, to the extent that it was to be on the basis of the original estimate recommended by the Forest Department, vide letter dated 20.06.1986 (Ex.A4) without applying any cut, which worked out to Rs.4,58,976/-. Similarly compensation for the other quality of "Bans" was assessed at double the price of ordinary "Bans" and compensation for "Coppice Coup" was paid @ Rs.1593/- per hectare. Apart from that, statutory benefits were also to be granted. The additional compensation @ 12% under Section 23(1-A) was disallowed as counting of the trees was conducted by the respondent in the year 1986 after a long period since the acquisition was of 19.03.1981, the relevant date and therefore, the said benefit was denied.

As noticed above, the notification under Section 4 was dated 19.03.1981 which was published in the Gazette on 27.03.1981. The landowners had filed their claim in a petition under Section 18, detailing the land on which the trees were standing which was acquired and the award was passed on 29.12.1986 regarding the trees. It was their case that there were various categories of trees and the "Bans" were cut after every three years and an average shrub of "Bans" gives 100 pieces of "Bans" annually. As noticed, the benefit had been granted by the Reference Court for the "Bans", by doubling it. Regarding the other 28 well grown trees which included sheesham, cheel etc., details were given. Regarding the khair trees, it was mentioned that there was minimum of three cycles and katha was extracted from it which was highly priced commercial commodity. Resultantly, compensation of Rs.90 lakhs was also claimed on account of severance of the land, as such, in the amended petition filed.

The Reference Court noticed that counting of the trees was done in the year 1986 and there was no explanation for not counting the trees in the year 1981, the date of Section 4 notification. It was noticed that the cut applied for the total compensation found in Ex.A4 appeared to be unjustified and therefore, awarded the compensation as had been prepared on the basis of the original estimate sent by the Forest Department (Ex.A4). The benefit of Magar, quality of "Bans" was assessed at double the price of the "Bans" trees. The trees which were 12", was given the benefit as per the "Coppice Coup" @ Rs.1593/- per hectare. The claim for severance, as such, was declined on the ground

that the passage had been provided by the PWD Department and there was also pucca road to link the fields. Further direction was issued that passage be provided in the alternative.

Counsel for the appellants is not in a position to press the issue of severance on account of the fact that admittedly the compensation was being sought only for the market value of the trees. Therefore, under Section 23, since the award was passed separately for the trees aspect, the benefit, as such, could only be asked on account of Clause 2 regarding the damages sustained by any person by taking away of the standing crops/trees which may be on the land at the time of the Collector's taking possession. Claim for severance, as such, could only be taken under Clause 3 of Section 23, but that has to be on the percentage of the market value of Clause 1 which has to be assessed. This Court is not dealing with the assessment of the market value of the land and therefore, severance cannot be claimed for and should have been asked for in the petition filed under Section 18, for enhancement of the market value of the land acquired for the award given by the Land Acquisition Collector.

The only issue which merits consideration for this Court is whether the Reference Court, was, as such, in error in not noticing the fact that the khair trees, as such, would have a rotational value, as such, in a sense that there would be a cropping pattern of three times. Sufficient evidence, as such, has come on record even before the Reference Court, which has not been taken into consideration. Reliance can be placed upon the statement of AW-2, Balkar Singh, Clerk, Office of the

Divisional Forest Officer. It was noticed that while preparing the list of trees to be evaluated the price of khair and safeda trees was calculated on the basis of one crop.

AW1, Manohar Singh, Forest Range Officer has stated that khair trees produced katha which is commercial and when it is cut, it gives growth to many short branches but under Forest Rules, only two are maintained. This circle of re-growth goes on twice or thrice. AW-4, Hari Singh, Forest Guard also deposed regarding the fact that khair trees had got three cycles. AW-5, Shankar Dass, Assistant Revenue Clerk, office of the LAC, submitted that the value had been assessed @ Rs.4,57,784.87 and the Department only sanctioned Rs.4 ,09,380/-, which was cancelled and compensation amounting to Rs.2,68,458/- only was paid to the landowners. The evidence of RW-2, Malkiat Ram, Circle Head Draftsman would go on to show that the revised sanctioned estimate worked out Rs.2,69,672.84 for the price of the trees. The same has appropriately been redressed, as such, by the Reference Court by granting the original amount of compensation, as per Ex.A4. The landowner, Shri Madan Lal, appearing as AW-6, also stated in affirmative regarding the averments made under Section 18 that khair trees produced 3 crops.

A perusal of Ex.A-4 dated 20.06.1986 addressed from Forest Division Officer, Hoshiarpur to Sub-Divisional Officer (Dholbaha Dam Construction Division No.3), Hoshiarpur, would go on to show that a sum of Rs.1,50,088/- was awarded for the khair trees, which would be clear from Ex.A-4, the relevant part reads as under:

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|               |                           |                      |
|---------------|---------------------------|----------------------|
| Sheesham      | 657 Paise per cubic meter | 220.10 = 1,44,803.79 |
| Khair         | 4112.00                   | 36.50 = 1,50,088.00  |
| Cheel         | 351.43                    | 179.15 = 62,957.6    |
| Miscellaneous | 263.16                    | 334.95 = 88,145.44   |
| Eucalyptus    | 416.56                    | 1.30 = 541.52        |
| Bans          | 2926 4.25 Paise per piece | 4.25 = 12,435.5      |

Accordingly, keeping in view the above discussion, this Court is of the opinion that the landowners would have got a second cropping from the said species of trees, which was not taken into account. The landowners are, accordingly, held entitled for an additional amount of Rs.1,50,000/- on account of the said issue.

Accordingly, the appeal is partly allowed.

25.07.2019  
*Sailesh*

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

*Whether speaking/reasoned:*

*Yes/No*

*Whether Reportable:*

*Yes/No*