

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.1694 of 1991 (O&M)

Date of Decision: 06.09.2019

Smt. Kashmir Devi (D) th. LRs & Ors.

... Appellants

VS.

Punjab State & Ors.

... Respondents

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

Present: Mr. Narinder Singh, Advocate and
Mr. KS Dadwal, Advocate for the appellants

Ms. Jasleen Kaur Sidhu, AAG Punjab

G.S. SANDHAWALIA, J. (Oral)

CM-8743-CI-2015

Counsel does not press this application under Order 41 Rule 27 read with Section 151 CPC for placing on record Circulars dated 27.10.1971 and 14.06.2000 (A1 & A2).

Dismissed as not pressed.

CM-8742-CI-2015

This is an application filed under Order 22 Rule 3 CPC read with Section 151 CPC for bringing on record the legal representatives of appellant No.1, namely, Kashmir Devi, who is stated to have expired on 08.01.2006 and appellant No.2 Parkash Chand, who is stated to have expired on 29.12.2006. The details of the legal representatives of the deceased appellants No.1&2 have been mentioned in para 2 & 3, respectively of the application and it has been averred that there are no other legal heirs apart from those mentioned in the application. The application is duly supported by affidavit of Subhash Kumar son of the deceased appellant No.2.

Accordingly, in view of the averments made in the application,

duly supported by the affidavit, the same is allowed and the legal

representatives of appellants No.1&2 as mentioned in para 2&3 of the application, are permitted to pursue the present litigation only. It is made clear that the present order will not be liable to be taken into consideration in any other set of proceedings. Amended memo of parties is taken on record.

CM stands disposed of.

Main case

The present appeal filed under Section 54 of the Land Acquisition Act, 1894 is against the award dated 11.04.1991 whereby the Reference Court has refused to enhance the compensation for the land measuring 11 kanals 13 marlas of the appellants which was mainly of Pahar and Barani category with 1 kanal 13 marlas being *banjar qadim* situated in village Kukanet. The acquisition was part of the 118 kanals 5 marlas which was acquired for construction of road from Dholbaha to Kukanet. The Land Acquisition Collector vide his award dated 28.05.1988 had granted the following amount of compensation keeping in view the categories of the amount:-

(i)	Abi	Rs.10000.00 per acre
(ii)	Barani	Rs.8000.00 per acre
(iii)	Banjar	Rs.5000.00 per acre
(iv)	Pahar	Rs.3000.00 per acre

Resultantly, the appellants asked for market value @ Rs.45,000/- per acre and claimed that the land was in possession of the Punjab State since January, 1984. Being dissatisfied with the amount of compensation, the petition under Section 18 was filed.

The Reference Court has noticed the two sale exemplars as such Ex.A2 & A3 which were produced by the landowners and rejected them on

two counts, namely, being of very small portion of land of 4 marlas regarding the sale deed of 22.02.1985 (Ex.A2) wherein the market value would come to Rs.80,000/- per acre and the land was of barani category. The Reference Court kept in mind that the possession was taken in January, 1984 as per the case of the appellants and the sale could have been created for the purpose of getting more compensation as the notification u/s 4 was dated 02.01.1986. For the other sale transactions dated 10.09.1985 which was of *Pahar* land which was measuring 8 kanals, the purchaser himself was one of the applicant Prakash Chand and therefore keeping in view the fact that no consideration was paid in the presence of the Sub Registrar which was Rs.40,000/- per acre, the transaction was also not relied upon.

The sale instances (Ex.R2 to R7) as such of the State as per the chart Ex.R1/1 showed that the maximum sale transaction which was around Rs.6200/- per acre and the minimum was around Rs.667/- was kept in mind to deny the enhancement. Similarly, as regards the claim for tree as such, it was noticed that an amount of Rs.20,833/- was awarded in respect of the trees while the price of land was Rs.31,532/- and the benefit was only given for *bagar* and grass etc. @ Rs.1593/- per hectare.

Counsel for the landowners has vehemently submitted that two sale instances would show the market value as such and cut as such could have been imposed upon Ex.A2 to modulate the price as admittedly even the acquisition as such was only of approximately 15 acres. Similarly, it was submitted that merely because the price had not been paid before the Sub Registrar for Ex.A3 and one of the appellants had purchased the land would not be a ground as such to reject the sale instances.

State has defended the said order saying that it was justified and that no expert had been produced qua the trees also to grant enhancement.

After hearing arguments raised, this Court is of the opinion that the Reference Court should have granted the benefit of Ex.A3 which was a reasonable chunk of land measuring 8 kanals (one acre) and of *Pahar* category. The same was executed on 10.09.1985 which is approximately 4 months prior to the date of notification dated 02.01.1986. It is to be noticed that the land as such is situated in village Hoshiapur and is of undulating character and was for the purpose of providing access to Dholbaha dam. The sale deeds as such in such an area would not come readily of this kind of land. Once the 8 kanals stretch was available, the said sale deed could have been relied upon safely and an appropriate cut could have been applied on it for the processing the market value of the larger tract of land of around 15 acres which was being acquired. Merely, because the sale consideration of Rs.40,000/- had not been paid before the Sub Registrar as such was not a valid ground as such on which account because the appellant himself had purchased the land the same had to be ignored. RW1 Kanungo as such was produced who had relied upon chart as such but nothing was stated regarding the veracity of Ex.A3 as such.

Resultantly, this Court is of the opinion that Ex.A3 would be a good sale exemplar to fall back upon keeping in view the fact that the same was of 8 kanals. A cut of 60% can be applied for assessing the market value @ Rs.16,000/- per acre for *Pahar* category of land on account of smallness of the sale exemplar. Correspondingly, for *barani* land as such the market value can also be enhanced to the extent of Rs.25,000/- per acre instead of

Rs.8000/- and similarly for *banjar kadim*, the market value can be enhanced to Rs.20,000/- keeping in view the same ratio.

The appeal is accordingly allowed to the limited extent by assessing the market value and enhancing the same for the categories of land accordingly along with all statutory benefits. The claim as such for enhancement of compensation for trees is not justified in as much as no expert was produced or any independent report was produced to show that the trees standing on the land which was acquired had a higher value.

06.09.2019

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(G.S. Sandhawalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No