

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

**RFA No.1117 of 1997 and other connected
appeals**

Decided on : 28.02.2019

State of Punjab and another

... Appellants

Versus

Bhupinder Pal Singh and others

... Respondent

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

Present : Ms. Simran Grewal, AAG, Punjab, for the appellants.

Mr. Pankaj Katia, Advocate, for the landowners.

G.S. Sandhawal, J. (Oral)

The present judgment shall dispose of three appeals i.e. RFA No.1117 of 1997 and RFA Nos. 2365 and 2366 of 1991, filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') against the Award of the Reference Court, Ropar dated 01.04.1991 both by the State and the landowners, whereby the market value has been enhanced to Rs.80,000/- per acre from Rs.72,500/- per acre as awarded by the Land Acquisition Collector on 02.07.1986. Apart from that Rs.3 lakhs for fruit bearing trees had been granted by the Reference Court.

2. The basis for enhancement is Ex.P3, the sale deed dated 09.08.1985, for 1 kanal 16 marlas which was executed @ Rs.80,000/- per acre, which had been taken into consideration. The notification under Section 4 of the Act in question was dated 18.09.1985, whereby land measuring 109 kanals falling in village Sil Kapra had been acquired for the purpose of construction of SYL Canal. Apart from the market value there was also a claim on account of 820 fruit bearing trees, for which a sum of

Rs.3 lakhs had been granted against a claim of Rs.6,34,500/- as per the report of the expert PW-1 Jasbir Singh.

3. The Reference Court vide the said judgment had noticed that there was a scientific formula for assessment of fruit bearing trees, which was also subject matter of consideration in '**Ranjit Singh Vs. Union Territory of Chandigarh**' 1983 PLR 471. However, a thumb rule as such had been applied without giving any reason as to why the report of the expert is not be considered and a sum of Rs.3 lakhs had been granted, which is seriously objected to by the counsel for the landowners, keeping in view the principles which have been laid down by the Division Bench in the case of **Ranjit Singh (supra)**, wherein the matter had been also remanded for the said purpose. The relevant portion of the said judgment reads as under:-

“11. Another matter which is manifestly clear from this publication is that while evaluation the fruit trees, the price or the cost of land underneath has not been taken into consideration. This is obviously for the reason that the price of the land underneath an orchard or plantation of trees is bound to vary from place to place on account of various factors, including the location of the land. It is, therefore, not true that while working out the market value of the orchard or grove land either the price of the land as such (without the fruit trees) and timber value of the trees has to be taken into account or the same has to be determined on the basis of the formula known as 'Capitalisation'. It is further clear from this publication that value of fuel or timber is only one of the consideration in determining the market value of the orchard or fruit bearing trees. In all probability, it was in the light of

some such formula that the Land Acquisition Collector has tried to work out the evaluation of the acquired trees but he has neither made the details of that formula clear anywhere nor have the express referred to in his award disclosed in their report as to on what basis they had determined the market value of the trees.

12. The learned counsel for the claimants, however, pointed out that this formula was published in the year 1966 and was based on the market conditions prevalent then and, therefore the claimants are entitled to claim a substantial increase in the price of the fruit trees to be assessed on the basis of this formula. They point out that since the publication of this formula in the year 1966, the wholesale price index of that year (144.3) had risen to 309.1 in the year 1975 as per the bulletins published by the Economic Adviser, Ministry of Industry and Civil Supplies, Government of India, New Delhi. It deserves to be mentioned here that in this case the notification under Section 4 of the Act was published on December 28, 1974. Thus according to the learned counsel, the appellant is entitled if not to 114.2% of increase over the price of fruit trees worked out on the basis of this formula, then at least to 100% of the price of the fruit trees workable on the basis of the said formula. The learned counsel for the acquiring authorities are neither in a position to challenge the correctness of the wholesale price index as published by the Government of India nor do they dispute that since the year 1966 the price of land as also of the fruit trees has seen a tremendous increase. They, however, maintain that it is difficult to determine that increase with any precision. That is true, yet in these matters in the very nature of things the market value of the acquired property cannot be determined with any exactitude and has essentially to be fixed on the basis of some reasonable method. In the light of that we are of the considered opinion that the claimant at least is entitled to an increase of

100% instead of 114.2% over the price of fruit trees workable on the basis of the above noted formula published by S. Harbans Singh. We are unable to accept the argument of the learned counsel for the respondent that it was primarily for the claimant to prove the inadequacy of the compensation or the acquiring authorities had no duty in the matter and they could wait the proof of claim in complacency like a defendant, and without assisting the Court by all the materials at their command. The mere dismissal of the claim of the appellant as not imply that the Court has no duty to fix the quantum of compensation payable under the Act independently and upon materials available and by all means in its power.

13. In the light of the above we allow these appeals and while setting aside the judgments under appeal, send the cases back to the respective Land Acquisition Courts to redetermine the market price of the trees of the claimants in accordance with law and the observations made above. It is made clear that since we feel that there has been no proper or regular trial inasmuch as the parties to this litigation were not aware of the principles noticed above for the determination of the market value of the trees, they would be permitted to lead further evidence if they so choose. The appellants are also held entitled to the costs of these appeals throughout.”

4. Another factor which has weighed with this Court for remand is that the Reference Court has failed to address the issue of severance which was also pleaded in the claim petition filed under Section 18 of the Act. The pleading in the Section 18 petition read with the statement of PW-5 Bhupinderpal Singh would go on to show that the necessary averments as such were made. However, no specific instance has been given as to how much land had been left on the other side and

whether it was away from the Abadi area or towards the Abadi area which are relevant factors, which have to be kept in mind, as has been held in **'Tehal Singh and others Vs. The State of Punjab, through the Collector, Land Acquisition, Drainage Circle, Patiala' 1987 RRR 495.**

The relevant portion of the said judgment reads as under:-

“10. The compensation for severance thus awarded does not appear to be based on sound reasoning. The loss which has been caused by severance includes loss on account of uneconomic agricultural holding, which has been left after acquisition, bifurcation of a big economical holding into two small holdings which may not be any longer viable for profitable cultivation, loss of access to the land where the canal intervenes between the village and the land or availability of a bridge over the canal in the course of time which may be quite distant from the village as also the land on the other side of the canal, loss of irrigation facilities in case the well or the canal watercourse which is the source of irrigation is located on the other side of the S.Y.L. Canal. It is well known that agricultural based habitations i.e. the villages, are located and in the course of time get established at a place where access to the agricultural land is easy; the agriculturists barter or sell small uneconomical holdings which are purchased by the adjoining landowners though the price fetched is comparatively less than its market value. Where land is canal irrigated the authorities of the Irrigation Department re-frame schemes for the watercourse to command the area for irrigation purposes taking due account of the obstruction caused by the construction for which the land has been acquired. Land measuring more than two acres normally makes a viable agricultural holding in the tehsil of Rajpura where the mode of cultivation and harvesting is by and large conventional and is yet to be mechanized.

11. Taking all the above factors into account. I consider the following compensation to be appropriate for severance of land to the concerned land-owners:-

(1) Where the S.Y.L. Canal intervenes between the land severed and the village abadi and it is two acres or less in area, compensation for severance shall be 60% of the market value of the land so acquired.

(2) Where the severed land is not the abadi side of the village and S.Y.L. Canal is being constructed beyond it and it is two acres or less in area, compensation for severance shall be 40% of the market value of the land so acquired.

(3) Where the severed land is more than two acres in area but is less than 5 acres, and is located on either side of the S.Y.L. Canal, compensation at the rate of 10% of the market value for its severance shall be payable."

5. Counsel has placed on record photocopy of a supplementary Award dated 01.04.1987, wherein damages were granted on account of the severance to the extent of 25% of the value of land for the un-acquired portion of the land lying beyond the canal from the homesteads of the persons concerned. This aspect also has not been brought on record by the claimants or by the respondents in any manner and would also be relevant factors which have to be kept into consideration as the landowners have a right as such to claim severance and which has to be proved by bringing on record necessary evidence and as to whether there was any access provided to other part of the land. This piecemeal awarding of compensation has not been appreciated.

6. This Division Bench on an earlier occasion in **Ranjit Singh (supra)** 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 interest 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 interests collectively. That is clear from the scheme of the Land Acquisition Act.....In determining compensation payable in respect of land with buildings, compensation cannot be determined in ascertaining the value of the land and the 'break-up value' of the buildings separately. The land and the buildings constitute one unit and the value of the entire unit must be determined with all its advantages and its potentialities.

At the same time we are of the considered view that the practice or the course adopted by the Collector in determining the market value of the land as such, i. e., without trees and fruit trees, separately, cannot work or operate to the detriment of the claimant. Payment of compensation in matters of compulsory acquisition not being a matter of charity, cannot possibly be left to the sweet will of the Collector to split up the determination of the compensation in the manner he has

done and thereby to reduce the orchard or the fruit trees acquired to 'timber' only, as has been done in the judgments noted in the opening part of this judgment. As already indicated, even the Land Acquisition Collector has not, vide his impugned award, determined the value of the fruit trees as timber only. Rather he has depended on the valuation of the fruit trees as assessed by the experts, i. e., the Executive Engineer, Horticulture Division, Chandigarh and the Divisional Forest Officer, Chandigarh. He has noticed and accepted a clear distinction in the valuation of a fruit tree and timber.”

7. Resultantly, this Court is of the opinion that the matter should be remanded for fresh consideration on the above said issue. Even from the evidence it is apparently not brought on record as to how the landowners were adversely affected on account of severance and what portion of the land was lying across, though the authorities themselves have awarded a 25% amount. It is to be noticed that the said exercise has been done by way of a supplementary award and, therefore, even the claimants have not been diligent enough to bring these factors on record by way of filing application for additional evidence to address these factors.

8. In these circumstances, matter is remanded to the Court of District Judge, SAS Nagar (Mohali), as it is stated that village Sil Kapra now falls in Tehsil Kharar and, thus, is within the territorial jurisdiction of District Judge, SAS Nagar (Mohali). Needless to say that it will be open to the landowners to file an appropriate application to bring on record correct factors on record in order to substantiate their case, as has

been noticed above and will be permitted to lead additional aspect on the issue of severance.

9. Parties shall appear through their counsels before the District Judge, SAS Nagar (Mohali) on 25.03.2019.

FEBRUARY 28, 2019
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No