IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.1272 of 1998 & other connected appeals
Decided on : 09.01.2019

Satwinder Singh

... Appellant

Versus

State of Punjab and another

... Respondents

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

Present : Mr. C.M. Munjal, Advocate
Mr. B.R. Rana, Advocate for
Mr. R.S. Sihota, Advocate and
Mr. Sandeep Punchhi, Advocate
for the appellants/landowners.

Ms. Simran Grewal, AAG, Punjab

G.S. Sandhawalia, J. (Oral)

The present order shall dispose of 25 appeals i.e. RFA Nos. 1272, 1273, 1274, 1276, 1298, 641 to 643, 3344 to 3351,3660, 3661, 3720 to 3724, 4230 of 1998 and RFA No.3561 of 2002 filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act'). The above said appeals arise of out of three Awards i.e. dated 24.09.1997 pertaining to village Dhab Khushal Joian, dated 27.03.1998 pertaining to village Chak Suhelewala and dated 15.04.1998 pertaining to village Ladhuwala Uttar, Tehsil & District Ferozepur, passed by Reference Court, Ferozepur.

2. The notification under Section 4 of the Act was issued on 28.03.1989 whereby land of as many as 13 villages was acquired. The land was acquired for Jandwala Drain which was constructed by the Drainage

Department for the public purpose for removing the water logging in the area.

3. The Land Acquisition Collector for the land pertaining to village Dhab Khushal Joian had awarded the following amount of compensation and the Reference Court vide Award dated 24.09.1997 pertaining to village Dhab Khushal Joian while deciding 24 reference petitions enhanced the compensation as under :-

Kind of land	**Rates per acre as per LAC**	**Rates per acre as per Reference Court**
Chahi/Nehari	Rs.24,000/-	Rs.30,000/-
Nehari	Rs.24,000/-	Rs.30,000/-
Barani	Rs.11,300/-	Rs.15,000/-
Banjar Jadid/Qadim	Rs.11,000/-	Rs.14,000/-
Gair Mumkin	Rs.16,000/-	Rs.20,000/-

4. Similarly for village Chak Suhelewala the Land Acquisition Collector had awarded the following amount of compensation and the Reference Court vide Award dated 27.03.1998 pertaining to village Chak Suhelewala while deciding 17 reference petitions enhanced the compensation as under:-

Kind of land	**Rates per acre as per LAC**	**Rates per acre as per Reference Court**
Chahi/Nehari	Rs.24,000/-	Rs.30,000/-
Nehari	Rs.24,000/-	Rs.30,000/-
Barani	Rs.11,500/-	Rs.15,000/-
Banjar Jadid/Qadim	Rs.11,500/-	Rs.14,000/-
Gair Mumkin	Rs.16,000/-	Rs.20,000/-

5. Apart from the above enhancement the landowners of village Chak Suhelewala were able to prove the fact that the land was severed

and were also given 50% severance charges.

6. For village Ladhuwala Uttar, the Land Acquisition Collector had granted following amount of compensation and the Reference Court vide Award dated 15.04.1998 pertaining to village Ladhuwala Uttar while deciding 25 reference petitions enhanced the compensation as under:-

Kind of land	**Rates per acre as per LAC**	**Rates per acre as per Reference Court**
Nehri Land	Rs.25,000/-	Rs.30,000/-
Barani	Rs.15,000/-	Rs.15,000/-
Banjar Jadid/Qadim	Rs.11,000/-	Rs.14,000/-
Gair Mumkin	Rs.16,000/-	Rs.20,000/-

7. Apart from that the landowners whose land falling in Killa comprised in Rectangle Nos.76, 77, 56, 55, 50 and 51 were held entitled 20% more than of the market value on account of closeness to the village Abadi and having higher potential.

8. The common argument had been raised by the landowners in all the reference petitions by placing reliance upon the higher amount of compensation awarded to the landowners of village Chak Kala Singh Wala to the tune of ₹70,000/- and for village Chak Jawharewala to the tune of ₹80,000/- per acre by the Land Acquisition Collector for the land acquired for the same purpose.

9. The defence of the State to the application under Section 18 of the Act was that the drain was constructed to remove the water logging as the area was heavily water logged and, therefore, Jandwala Drain was

constructed to remove the water logging. The Awards passed by the Land Acquisition Collector of other two villages i.e. Chak Kala Singh Wala and Chak Jawharewala on the basis of which parity was sought were rejected by holding that two villages in question were situated in District Muktsar and even otherwise the Awards passed were with malafide intention and the Land Acquisition Collector had also given the benefit of interest to the landowners w.e.f. 01.12.1979 to 17.12.1994. A case under various Sections of IPC and under Section 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act had also been registered against the said officer and, therefore, the Reference Court while perusing the index plan (Ex.R1) came to the conclusion that said villages which were subject matter of acquisition were of a different district. District Muktsar being a cotton belt and District Ferozepur was a border District and the Awards passed by the Land Acquisition Collector as such were against the facts, as the market value had been assessed according to the rates prevailing in the subsequent period for the year 1992-1993.

10. It is in such circumstances counsels for the appellants are not in a position to press for the enhancement on the basis of parity for the alleged adjoining villages and could not as such dispel the valid reasoning given by the Reference Court, whereby the said awards passed by the Land Acquisition Collector were rightly not taken into consideration. Another factor which weighed with the Reference Court was that it was an offer which was made and, therefore, it was for the

Reference Court as such to assess the market value and it is not to be treated as a judgment and had no binding force. Reliance was placed upon the Apex Court passed in **'Hargovinddas Vs. Special Land Acquisition Collector Poona and another, AIR 1988 SC 1652**. The position as such has been settled by the Apex Court and, thus, could not be disputed by the counsels to this effect.

11. The benefit of enhancement had been given by the Reference Court for village Dhab Khushal Joian on account of the sale deeds of adjoining village namely, Chak Panj Kosi and Ladhuwala Uttar. The average of two sale deeds Ex.R3 and Ex.R4 had been taken by the Reference Court to work out the market value @ ₹30,000/- per acre to grant nominal enhancement as such.

12. The argument raised by Mr. Munjal, however, is that Reference Court wrongly rejected the valid sale exemplar Ex.A12 which should have been taken into consideration which pertained to the village concerned and which was the best sale exemplar as it was executed on 24.05.1983 for 2 kanals of land in favour of Dhab Khushal Joian Cooperative Agricultural Service Society. It was, accordingly, argued that the rejection on the ground that it was a small chunk of land could not be a basis not to assess the market value of a larger parcel of land as land measuring 14 acres 16 kanals was acquired and was not a valid reasoning. It is submitted that necessary reduction could have been made on account of the smallness of the sale exemplar to bring down the value. It was further argued that the sale deed was of 1983 and, therefore,

cumulative enhancement should have been granted @ 12 % per annum.

13. Counsel for the State on the other hand has justified the Award by holding out that the Reference Court had correctly granted nominal enhancement, instead of granting nothing, by noticing that when the land was acquired in the year 1989 the State was under the threat of terrorism and people were leaving the border area as such and the price of the land as such were stagnant. It is, accordingly, submitted that even otherwise the area being rural and without there being any potential as such and neither the same having been pleaded, the enhancement could not have been more than 5%. Reliance has been placed upon the judgment of the Apex Court passed in the case of **'Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another' 2008 (14) SCC 745,** in this regard.

14. Mr. Punchhi, appearing for the landowners of village Chak Suhelewala has also pressed for further enhancement.

15. Mr. Rana, appearing for the landowners of village Ladhuwala Uttar also raised the argument that the possession of the land was taken in the year 1979 and the land was notified for acquisition 10 years later i.e. on 28.03.1989 and, therefore, the compensation should also be awarded for the period for which the land remained in possession of the State. It has also been argued benefit of sale deeds Ex.A16 to Ex.A19 should also have been given and apart from that it is also submitted that if the benefit of Ex.A12 is to be given to the landowners of village Dhab Khushal Joian, the same benefit should also be given to the

appellants, as these are of adjoining villages as has been noticed by the Reference Court itself. Reliance can be placed upon the judgment of the Apex Court passed in **Union of India vs. Harinderpal Singh (2005) 12 SCC 564** wherein the uniform value was given for the land falling in different villages by this Court while discarding the belting method which was duly upheld, In **Charan Dass (dead) by LR vs. Himachal Pradesh Housing And Urban Development Authority & Ors. (2010) 13 SCC 398**, it was held as under:-

> *"As already noted, the first step being the determination of the market value of the land on the date of publication of Notification under sub-Section (1) of Section 4 of the Act. One of the principles for determination of the market value of the acquired land would be the price that a willing purchaser would be willing to pay if it is sold in the open market at the time of issue of Notification under Section 4 of the Act. But finding direct evidence in this behalf is not an easy task and, therefore, the Court has to take recourse to other known methods for arriving at the market value of the land acquired. One of the preferred and well accepted methods adopted for ascertaining the market value of the land in acquisition cases is the sale transactions on or about the date of issue of Notification under Section 4 of the Act. But here again finding a transaction of sale on or a few days before the said Notification is not an easy exercise. In the absence of such evidence contemporaneous transactions in respect of the lands, which have similar advantages and disadvantages is considered as a good piece of evidence for determining the market value of the acquired land. It needs little emphasis that the contemporaneous transactions or the comparable sales have to be in respect of lands which are*

> *contiguous to the acquired land and are similar in nature and potentiality. Again, in the absence of sale deeds, the judgments and awards passed in respect of acquisition of lands, made in the same village and/or neighbouring villages can be accepted as valid piece of evidence and provide a sound basis to work out the market value of the land after suitable adjustments with regard to positive and negative factors enumerated in Sections 23 and 24 of the Act. Undoubtedly, an element of some guess work is involved in the entire exercise, yet the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard."*

16. It is also pointed out that once the Reference Court had granted the benefit of enhancement on the basis of the sale deeds of adjoining villages while deciding the reference petitions of village Dhab Khushal Joian, the same principle can also be adopted by this Court while taking into consideration Ex.A12, which is the sale exemplar.

17. After hearing arguments of the counsel for the parties, this Court is of the opinion that the Reference Court has not justified in rejecting Ex.A12 which was the sale deed of 2 kanals dated 24.05.1983, which was executed prior to the notification in question, which was issued on 28.03.1989.

18. From the statement of the AW-1, Rachhpal Singh, it is clear that the land was sold in favour of the society and a Cooperative Store was constructed in the same killa from where the drain passes and Rattan Lal had sold 2 kanals of land to Cooperative Society. Similarly, AW-2 Raghu Nath Rai in his statement had stated that Cooperative Store had

been constructed on the bank of the drain and was situated in the same killa through which drain passes.

19. The said sale deed was a good sale exemplar to assess the market value of the land in question of the village from which the land was acquired, in such circumstances, the Reference Court should have granted necessary reduction for the smallness area of the sale deed, which was only 2 kanals of land to assess the market value. It is to be kept in mind that sale exemplar of large chunks of land are not readily available in far flung border areas and of land which is agricultural in nature. Thus, relevant material had been brought on record by way of evidence by the landowners and the value of the per acre would work out to ₹48,000/- and further if a 40% cut is granted, it works out to ₹28,800/-. The sale deed in question was of 24.05.1983 and, therefore, there is a difference of over 6 years and in view of the judgment of the Apex Court passed in **Manoj Kumar & others Vs. State of Haryana & others 2018 (2) RCR (Civil) 815,** this Court is inclined to grant only the cumulative enhancement @ 5% for a period of 5 years on ₹28,800/- per acre, which works to ₹36,756.91 (r.o ₹36757/- per acre) for Chahi land. The benefit of 5% increase only is given, in view of the judgment of the Apex Court passed in **ONGC (supra)**, wherein it has been mentioned that in rural areas the appreciation would only be upto 5%. The relevant observations reads as under:-

> "*11. Primarily, the increase in land prices depends on four factors - situation of the land, nature of*

development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during the nineties. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same."

20. Correspondingly, for Barani land ₹17,000/- per acre is awarded and for Banjar Qadim ₹15,000/- per acre and for Gair Mumkin ₹23,000/- per acre for village Dhab Khushal Joian.

21. While coming to the land reference of village Chak Suhelewala, admittedly no sale deed as such had been brought on record, due to which the only benefit which was granted was on severance to the extent of 50% which is a settled principle, as laid down in various judgments by this Court in **State of Haryana Vs. Rajinder Kumar 2000 (1) All India Land Acquisition & Compensation Cases 360, Punjab State Vs. Gurbachan Singh and others, 1988 P.L.J. 490, Smt.Narinder Kaur Vs. The State of Punjab and others, 1980 P.L.R, 473, State of Punjab through Collector, Hoshiarpur and another Vs. Gopal Singh (2002-2) P.L.R. 843,** and **State of Punjab through Collector, Hoshiarpur Vs. Radha Krishan, 1989 All India Land Acquisition and Compensation Cases 667, Tehal Singh and others Vs. The State of Punjab and another, 1987 All India Land Acquisition & Compensation Cases 491** and **Bishan Dass Vs. State of Punjab 1997 (2) P.L.J. 416.** The same view has been followed in **'Chanan Singh Vs. State of Punjab' 2010 (5) RCR (Civil) 283.**

22. Therefore, the only benefit that can be granted to the landowners of village Chak Suhelewala following the principle of market value of adjoining land, since even otherwise the Reference Court has awarded the same amount of compensation to the landowners. Resultantly, landowners of village Chak Suhelewala will also be entitled for the same amount of compensation as for village Dhab Khushal Joian. 50% severance charges is maintained also granted on the basis of the

enhanced compensation alongwith all statutory benefits.

23. The site plan would go on to show the location of the villages along the drain. A perusal of the statement of RW-1 would go on to show that in his cross-examination he deposed that the land of Chak Jawahar Singh Wala was adjoining to Chak Kala Singh Wala and Chak Kala Singh Wala was adjoining to the Ladhuwala. Ladhuwala was adjoining to the Chak Suhelewala and then Jandwala, Pankossi, and Dhab Khushal Joian, which was acquired for the same purpose. Similarly, for the land of Ladhuwala Uttar, the same benefits would apply, due to the adjoining village.

24. The argument as such has though been raised by Mr. Rana as to the amount of compensation is payable from the year 1979 to 1989 is, however, is not accepted, in view of the judgment of the Apex Court passed in **'R.L. Jain (D) by L.Rs. Vs. DDA & others' (2004) 4 SCC 79** and **'Special Land Acquisition Officer Vs. Karigowda and others' 2010 (5) SCC 708**, as the remedy as such would not lie before the Reference Court. The sale deeds which have been relied upon by Mr. Rana, Ex.A16 to Ex.A19 have been rightly rejected, as they are of the year 1994-1995, which was executed 5 to 6 years after the issuance of Section 4 notification and therefore, being post acquisition would not depict the correct market value on the date of Section 4 notification. The landowners whose land falling in Killa comprised in Rectangle Nos.76, 77, 56, 55, 50 and 51 would also be granted 20% more for their land in view of the enhancement.

25. Thus, the market value of all three villages is as under:-

Kind of land	Rates per acre
Chahi/Nehri	Rs.36,757/-
Barani	Rs.17,000/-
Banjar Jadid/Qadim	Rs.15,000/-
Gair Mumkin	Rs.23,000/-

26. Resultantly, the appeals are allowed. The above amounts are payable by the State alongwith all statutory benefits.

(G.S. SANDHAWALIA)
JUDGE

JANUARY 09, 2019
Naveen

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