

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

RFA No.54 of 2000 (O&M)

Parmod Kumar and others

... Appellants

Versus

SDO (Civil)-cum-Land Acquisition Collector, Ferozepur and another

... Respondents

(2)

RFA No.194 of 2000

Uttam Singh & another

... Appellants

Versus

SDO (Civil)-cum-Land Acquisition Collector, Ferozepur and others

... Respondents

Decided on : 28.03.2019

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

Present : Mr. Saurabh Bajaj, Advocate
for the appellants.

Ms. Simran Grewal, AAG, Punjab.

G.S. Sandhawalia, J. (Oral)

The present order shall dispose of two appeals i.e. RFA Nos.54 and 194 of 2000 filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') against the Award of the Reference Court, Ferozepur dated 04.09.1999, whereby the Reference Court has declined to grant enhancement regarding the award passed by the Land Acquisition Collector dated 24.03.1994.

The notification issued under Section 4 of the Act vide which

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the land was acquired is dated 29.08.1991. Section 6 notification was issued on 06.02.1992 which rescinded the earlier notification dated 03.02.1988 and resultantly the land measuring 173 kanals 6 marlas was sought to be acquired for the public purpose of setting up a Government Polytechnic College. The Land Acquisition Collector (for short 'the Collector') vide Award dated 24.03.1994 had awarded ₹1 lakh for Chahi land and ₹1,20,000/- for Gair Mumkin land.

The reasoning which prevailed with the Reference Court to dismiss the reference petitions was that firstly it could not be proved by the landowners that the land was situated within the municipal limits of Ferozepur, which was their claim. Secondly the sale deeds which had been produced Ex.A1 to A8 were all minuscule and pertained to the interior part of the Ferozepur city. Some of them were also post notification and evidence as such was missing as to the location of the property sold vide the said sale deeds and whether it was adjacent to the property acquired. Eventually a fall back was made upon the sale deed dated 30.03.1988 (Ex.R1), which had been produced by the respondents, whereby the land measuring 79 kanals 15 marlas was purchased by the Education Department and the land was situated right in front of the acquired land. The veracity of the sale deed and that the State would not avoid stamp duty and registration charges was, accordingly, kept in mind and it was held that once the land had been sold @ ₹90,000/-, the compensation which had been given by the Collector was well justified and, therefore, was not liable to be interfered with. Similarly, the

compensation of ₹7,000/- which was given on account of the Haveli was justified as to what was the price of the Haveli and how much was spent to install the tubewell had not been proved by leading cogent and necessary evidence.

Mr. Bajaj, has vehemently argued that there was sufficient material on record to show that the land was situated within the municipal limits and, therefore, the sale deeds should have been taken into consideration which were brought on record, as claimed in the petition under Section 18 as the area had great potential. Resultantly, it is argued that the Reference Court was not justified in dismissing the reference petitions, specially keeping in view the fact that the witness of the respondents RW-1 themselves had admitted that the land was situated within the municipal limits.

He also placed reliance upon the application for additional evidence filed under Order 41 Rule 27 CPC bearing CM-135-CI-2000 to produce on record copy of the order dated 21.09.1998 passed in the case of **LA Case No.162 of 29.08.1995 'Rachhpal Singh and others Vs. Punjab State and others'**. In the said case, the land was acquired for establishment of the Engineering College and compensation had been enhanced to ₹3,50,000/- per acre by the Reference Court for the notification dated 03.12.1993. Similarly, the judgment in **RFA No.189 of 1983 'State of Punjab Vs. Banarsi Dass Sethi'**, is sought to be brought on record, wherein vide notification dated 03.11.1978, the land had been acquired whereby price had been assessed @ ₹750/- per marla. Reliance

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has also been place upon the report of the Patwari countersigned by Tehsildar, whereby he had opined that the land was falling within the municipal limits of Municipal Council, Ferozepur as per the Jamabandi 1983-1984 and on the basis of the earlier Jamabandi 1946-1947.

It has also further been brought to the notice of this Court that the possession was taken on 15.04.1988 on account of the earlier proceedings for acquisition which had lapsed and, therefore, the benefit for the possession as such from 15.04.1988 to 29.08.1991 was not addressed by the Reference Court, though the factual matrix had been discussed in detail. Accordingly, reliance has been placed upon the judgment of the Apex Court in '**Special Land Acquisition Officer Vs. Karigowda and others**' 2010 (5) SCC 708.

State counsel on the other hand has justified the Award and submitted that the onus to prove the correct market value is always on the landowners to show that the sale deeds relied upon are comparable in nature. It is submitted that the same having not been done and reliance having been placed upon the small minuscule sale deeds by the Reference Court was justified in rejecting the same. It is further submitted that the landowners failed to bring positive evidence on record to show that the land was situated within the municipal limits and it was for them to have brought the material notification from the Municipal Council to show that the land which was acquired fell within the municipal limits.

On the issue of the Award of compensation and damages from 15.04.1988, counsel for the State has placed reliance upon the

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judgment of the Apex Court passed in the case of '**R.L. Jain (D) by L.Rs. Vs. DDA & others' (2004) 4 SCC 79** to submit that the matter should be sent back to the Collector for the assessment of the damages for the period the land remained with the State before the second Section 4 notification. Even reliance upon the observations made in the case of **Karigowda (supra)** was also made, wherein also the same issue was discussed.

A perusal of the record would go on to show that there is no dispute that on an earlier occasion Section 4 notification had been issued on 03.02.1988. The draft Award for the acquired land measuring 73 kanals 6 marlas showed that the possession was taken on 15.04.1988. Out of which 16 marlas is Gair Mumkin land. The draft Award also would go on to show that the land was free from all encumbrances from the date of Award and that possession was to be transferred to the acquiring department by the Tehsildar, Ferozepur. The notification under Section 6 was issued and accordingly the total amount payable to the landowners worked out @ ₹31,05,920/-. Eventually the notification dated 06.02.1992 was issued as noticed rescinding the earlier proceedings dated 03.02.1988, whereby it was recorded that ₹17,61,734.40 had already been paid and the balance amount of ₹14,02,979.04 was payable.

The factual matrix is, thus, clear that the relevant notification would be 29.08.1991 for assessing the market value and not 03.02.1988 which the Reference Court has wrongly relied upon for the purpose of assessing the market value which was also an issue raised by the counsel

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for the appellants. The proceedings had lapsed on an earlier occasion on account of the amount being not deposited and the award not being passed which fact had been noticed by the Reference Court and there is no dispute qua this aspect.

The table of the sale deeds which were relied upon is as under:-

Sr. No.	Ex.	dated	area	sale consideration	Village/ colony
1.	Ex.A1	28.08.1991	4 ½ marlas	Rs.40,000/-	Municipal Limits, Ferozepur
2.	Ex.A2	04.03.1992	7 marlas	Rs.40,000/-	Dhawan Colony Ferozepur City
3.	Ex.A3	21.04.1993	4 marlas	Rs.20,000/-	Gol Bagh, Dulchike Road Ferozepur City
4.	Ex.A4	05.02.1988	2 marlas	Rs.12,000/-	Ferozepur City
5.	Ex.A5	12.10.1987	2 marlas	Rs.10,000/-	Ferozepur City
6.	Ex.A6	12.10.1987	2 marlas	Rs.10,000/-	Ferozepur City
7.		27.05.1994	7 marlas	Rs.49,000/-	Ferozepur City
8.	Ex.A8	09.12.1993	0.64 marlas	Rs.9,000/-	Gol Bagh Road, Ferozepur City

The site plan was produced as Ex.A7. The sale deeds as such were never depicted on the site plan to show their location and it was for the Reference Court to compare as to whether the same were situated in the close vicinity and would fetch the same value. It is a settled principle that if reliance is placed upon the sale exemplars, the sale deeds have to be situated in the close vicinity and of the same type of land, then the same only can be taken into consideration. The Apex Court has further held that the where the land is situated in the urban area, a difference of even 50 meters would change the valuation, as the value of

the portion situated on the main road would be totally different than what would be the value of the same plot in the interior.

In such circumstances, reliance can also be placed upon the judgment of this Court passed in RFA No.686 of 1991 '**Lokeshwar Dutt Vs. The State of Haryana and another**' on 16.08.2010, wherein it has been held that it was for the claimants, as such, to produce the site-plan showing the co-relation of the sale exemplars. The evidence would only help the Reference Court to come to a valid conclusion as to whether the sale exemplars are having the same potentiality and are also of an equivalent type of land, whether it is agricultural, residential or commercial. The relevant portion of the said judgment reads as under:-

“However, finding that number of cases are coming before this court, where this type of situation is being repeated on account of which the court finds it difficult to determine the fair value of the acquired land, which may result in injustice to either of the party. Not only that, in number of cases, the applications are filed by the land owners for producing additional evidence, which, in fact, should be part of the evidence to be led by the land owners/State at the very first instance. In many cases, the court, in the interest of justice, had to ask the State or the party to produce on record the site plan showing the exact location of the acquired land, sale deeds etc. to avoid injustice to either of the party. This unnecessarily delays the disposal of cases. The basic things, which should be brought on record to enable the court to determine fair value of the acquired land is the notification under Section 4 of the Act, copy of the award, site plan to the scale, showing the acquired boundary vis-a-vis its location such as its closeness to the city, village, highway, internal road with all its

positive and negative factors. Another important fact is that such a plan should have the status as on the date of issuance of notification under Section 4 of the Act, the date being crucial for the purpose of determination of fair value of the acquired land. It would be appropriate if the sale instances sought to be produced by the land owners or the State are pointed out on the site plan to be produced on record by either of the party. In the absence of which it is difficult to locate the same and consider its true value. The site plan, which should be taken on record, should be on butter paper or cloth, as it is seen in a number of cases that when the appeals are heard after 15-20 years, the site plans, which are quite big and may be on thin tracing paper, are torn out making it difficult for the parties to refer to the same and also for the court to consider.”

The onus, as such, is always upon the landowners and reliance can be placed upon the judgment of the Apex Court in **Basant Kumar Vs. Union of India (1996) 11 SCC 542** and **Gafar Vs. Moradabad Development Authority SCC (2007) 7 SCC 614**. Thus, the initial burden was upon the landowners which they have failed to discharge.

Another aspect which is to be noticed is that the land which has been acquired is a huge chunk of land measuring 173 kanals 6 marlas and the sale exemplars are barely ranging between 30 sq.yards to 60 sq.yards and therefore, cannot show the true value, as such, of the land and, therefore, have rightly been discarded by the Reference Court. The argument as such that the land was falling within the Municipal limits and, therefore, all the sale deeds would have to be kept into consideration would be also of no help, keeping in view the above-stated judgments,

It is also pertinent to notice that though there was a specific averment that the land was falling within the Municipal limits, in the Section 18 application, but the same was denied in the reply. The onus , therefore, had shifted upon the landowners and it was for them to prove the fact that the land was within the Municipal limits. Mere oral evidence, as such, would not bring it within the ambit of the Municipal limits, as the notification could have been produced from the Municipal Council that the said Khasra numbers fell within the Municipal limits, at that stage.

Statement of PW-1, Ashok Kumar, Patwari was rightly rejected as he was never posted at the time when the land was acquired and he could not tell the position of the acquired land at that point of time.

Reliance upon the report of Patwari by way of additional evidence, would be of no help, at this point of time as it is settled principle that the landowners cannot be permitted to fill up the lacuna by filing an application for additional evidence. The Apex Court in **Satish Kumar Gupta & others Vs. State of Haryana & others 2017 AIR (SC) 1072** has held that the provisions of Order 41 Rule 27 CPC cannot be used to fill up the lacuna. Relevant portion of the judgment reads as under:

“20. It is clear that neither the Trial Court has refused to receive the evidence nor it could be said that the evidence sought to be adduced was not available despite the exercise of due diligence nor it could be held to necessary to pronounce the judgment. Additional evidence cannot be permitted to fill-in the lacunae or to

patch-up the weak points in the case. There was no ground for remand in these circumstances.”

Reliance upon the award for the land which was acquired for the purpose of Engineering College vide notification dated 03.12.1993 also, as such, cannot be of any help to the landowners as there is a difference of over a period of 2 years between the two notifications. Even otherwise, the land is situated in Villages Satiawala, Bazidpur and Butewala whereas the present land is situated at Firozpur City Hadbast No.108. Therefore, this Court is not in a position, as such, to see the potentiality of that land in comparison to what was acquired in the present case and to compare its value and therefore, it would not be safe, as such, to rely upon the said award passed in **Rachpal Singh (supra)**.

Similarly, the judgment passed in the case of **Banarsi Dass Sethi (supra)** would be of no help, which is again pertaining to the notification dated 03.11.1978 which was 10 years prior in time. It is settled principle that the value of award passed 4-5 years prior is not to be taken into consideration. Even otherwise, the location of the land, as such, cannot be located in the evidence which have been brought on record and, therefore, the claim, as such, on the basis of the value of Rs.750/- per marla given in the said case, would not be of any help.

In the above facts and circumstances, therefore, the application for additional evidence which has been filed bearing CM-135-CI-2000 in RFA-54-2000, is not liable to be accepted, more so since it was open to the appellants, as such, to prove, at the initial state, that the land fell within the Municipal limits. Therefore, they cannot be permitted

to rely upon the report, as such, of the Patwari/Revenue Officer, as to whether the land was situated within the limits of Municipal Committee or not. The evidence, as such, was available and it is not that the Trial Court had refused to accept the evidence and that it could not be produced despite the exercise of due diligence and neither it is necessary for this Court to pronounce judgment. The said application is accordingly dismissed.

However, the Reference Court has failed to notice the aspect of the difference in time while placing reliance upon Ex.R-1, which was the sale deed in favour of the Education Department dated 30.03.1988. Vide the same 79 kanals 15 marlas of land was sold @ Rs.90,000/- per acre and the benefit of principle of cumulative enhancement could have been granted, keeping in view the judgment in '**Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another**' **2008 (14) SCC 745**, as the State itself has produced evidence and the Reference Court has also relied upon the said sale exemplar, as noticed earlier but failed to take into consideration that the market value would have to be assessed as on 29.08.1991.

The vendor, Raman Kumar was examined as RW-2, who admitted that the land which was sold was in front of the Polytechnic Institute. Rather, he also deposed that the land was within the Municipal limits of Firozpur, which counsel for the landowners, has also submitted but, as noticed, the oral evidence cannot be accepted even if it was for the requisite notification. However, if we see the evidence of RW-2, it would

be clear that he did say that the land was sold by him and his family members, which was on the left side from Ferozepur to Village Dulchi Ke and the present land was on the right side of the road. He further deposed in cross-examination that the land was 1' below the level of the road and the acquired land was 2-3' above the level of the road. He also deposed that there were shellers and abadi on one side of the acquired land and the abadi was adjoining the acquired land. Basti Bagh Wali was at a distance of ½ km and the RSD college was at a distance of ½ km.

The potentiality of the land, however, cannot be disputed as the landowners have examined the Municipal Commissioner as PW-2, who was the Vice-President of the Municipal Committee. He stated that the acquired land fell within the Municipal limits, in the area of Ward No.6, which the landowners have not been able to substantiate as earlier noticed. However, he deposed that there was a private sheller opposite the acquired land, besides Basti Kamboonwali, Basti Baghwali, residential colony, RSD College were also near the acquired land. The site-plan would also go on to show that the college, as such, was situated at the back of the acquired land.

Resultantly, it can safely be said that the land had immense potential and in the evidence it has also come forth by way of statement of PW-8, Surinder Kumar, who was the son of the owner of the private rice sheller which had been shown at point-A of the site-plan, which is Ex.A-7. The same was proved by PW-9, the Draftsman. PW-11, Harbans Singh, in cross-examination, clarified that the Octroi post was

towards the city and after crossing the same, the Polytechnic College came. He could not state whether the acquired land was within the Municipal limits in the year 1988, which further shatters the claim of the landowners. However, PW-12, Pritam Singh deposed that the land was within the Municipal limits and there was one petrol pump about ½ km from the property in dispute and the college was in close vicinity. Therefore, it can safely be held that the land had great potential and the benefit of cumulative enhancement @ 10% could have been granted for the difference of 3 years between the sale deed Ex.R-1 and the present notification. Thus, the market value of the land works out @ ₹1,19,790/- (rounded off to ₹1,19,800/-) per acre plus all statutory benefits for agricultural land shown as Chahi land. Consequently, applying the same principle of Gair Mumkin land the value would increase to ₹1,59,720/- per acre.

Lastly, coming to the issue of compensation on account of possession having been taken on 15.04.1988 till the second Section 4 notification dated 29.08.1991, the Reference Court should have granted interest for the said period and the matter is not liable to be remanded to the Collector, at this point of time, after a period of more than 30 years. Reliance upon **Madishetti Bala Ramul (D) by LRs Vs. The Land Acquisition Officer 2007 (9) SCC 650** can rightly be made in this regard wherein the initial notification had been issued in 1979 and thereafter, the proceedings had lapsed and a fresh notification was issued in the year 1991. While considering the judgment in **R.L.Jain** (supra) it was held

that interest of justice could be met by granting additional interest @ 15% on the amount awarded in terms of the award, for the intervening period of 1979-1991, since possession had been taken in May, 1979.

Similar view was taken in **CA-10665-2010** titled **M.Buggappa (D) th. LR & others Vs. Land Acquisition Officer-cum-Mandal Revenue Officer & another**, decided on 13.12.2010, while considering the judgment in **Madishetti Bala Ramul** (supra). In the said case, possession had also been taken in the year 1977 whereas the preliminary notification was issued in the year 1990. In the said case, the judgment of **R.L.Jain** (supra) and **Special Land Acquisition Officer Vs. Karigowda & others 2010 (5) SCC 708** were also kept in mind while granting 6% interest on the market value. It was further held that the Court may award damages from 8% to 10%, depending upon the facts and circumstances of the case. Relevant portion of the judgment read as under:

“8. We are of the view that having regard to the fact that the possession of the land was taken as long back in 1977, that is 33 years ago, it would not be just and proper to remand the matter to the Collector at this stage for determination of compensation for wrongful use at this stage. Award of 6% per annum on the compensation amount, as damages for use and occupation from the date of dispossession (17.11.1977) to date of preliminary notification (3.7.1990) in addition to what has been awarded by the High Court would serve the interest of justice.

9. Learned counsel for the appellant submitted that in **Madishetti Bala Ramul** (supra) this Court had awarded damages at the rate of 15% per annum (on the market value

determined) and, therefore, we should award damages at that rate. We find that award of damages at 15% on the compensation on the peculiar facts and circumstances of the case, and not on account of any principle evolved. Further, the market value as on 17.11.1977 when possession was taken would have been much less than the market value as on 3.7.1990. Therefore, if damages is awarded at 6% per annum on the market value determined as on 3.7.1990, the actual rate of damages with reference to the market value as on 17.11.1977 will be much more. In the circumstances, we are of the view that the damages for dispossession without initiating acquisition proceedings, when expressed in terms of a percentage of the compensation determined with reference to the market value more a decade later should not be more than 6% per annum. Where of course the preliminary notification is issued within one or two years from the date of taking possession, the court may award damages even at 8% to 10% of the market value determined depending upon the facts and circumstances.

10. We accordingly allow the appeal in part, and award in addition to what has been awarded by the High Court, damages at 6% per annum from 17.11.1977 to 3.7.1990, on the market value determined as on 3.7.1990. The amount so due as damages shall carry interest at 6% per annum from the date of award (21.3.1991) to date of payment. The amount awarded as damages shall not carry any additional amount or solatium.”

Thereafter, in **Tahera Khatoon & others Vs. Revenue Divisional Officer/Land Acquisition Officer & others 2014 (13) SCC 613** same view was followed by adopting the principle to grant interest rather than remand the matter for assessing the damages, which view was also followed in **Balwan Singh & others Vs. Land Acquisition**

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Collector & another 2016 (13) SCC 412.

Resultantly, keeping in view the above judgments, this Court is of the opinion that the landowners will be entitled for the payment of interest @ 6% per annum from 15.04.1988 till the date of Section 4 notification, i.e., 29.08.1991, to offset the period of illegal possession by the State, as the said fact has not been denied by the respondents. Even it has come on record that the earlier notification was rescinded, on account of which, possession had already been taken.

Resultantly, the appeals filed by the landowners, is partly allowed, by assessing the market value @ Rs.1,19,800/- per acre along with all statutory benefits, for the land shown as Chahi land whereas for the Gair Mumkin land, the value is accordingly, enhanced to Rs.1,59,720/- per acre, along with all statutory benefits. Apart from that, the landowners will be entitled for the benefit of payment of interest @ 6% per annum from 15.04.1988 till 29.08.1991, for the amount of compensation of the market value of the land, as damages, for the period of possession prior to the issuance of Section 4 notification. However, the landowners would not be entitled for the benefit of solatium on the said land, which have been awarded for damages.

(G.S. SANDHAWALIA)
JUDGE

MARCH 28, 2019
Naveen/sailesh

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes