IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) **RFA-1592-2005 (O&M)**

State of Punjab & others ....Appellants

Versus

Rajiv & others ...Respondents

(2) **RFA-1620-2005**

Rajiv & others ....Appellants

Versus

State of Punjab & others ...Respondents

Reserved on : 12.03.2019
Pronounced on: 01.04.2019

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

Present: Ms.S.G.Randhawa, AAG, Punjab.

Ms.Supriya Garg, Advocate, for the landowners.

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G.S. SANDHAWALIA, J.

The present judgment shall dispose of 2 appeals, filed under Section 54 of the Land Acquisition Act, 1894 (for short, the 'Act') out of which, RFA-1592-2005 has been filed by the State and RFA-1620-2005 has been filed by the landowners, against the common award dated 12.02.2005, passed by the Reference Court, Bathinda. A sum of Rs.500/- per sq.yard (Rs.24,20,000/- per acre) has been awarded for the land which was subject matter of acquisition for the notification under Section 4 dated 21.09.2000. Apart from the market value which has been assessed, which is subject matter of question by both the parties, the other ancillary issue which arises is whether the landowners are entitled for claiming interest from 15.03.1996 till the issuance of Section 4 notification, i.e., 21.09.2000.

The Land Acquisition Collector vide award dated 12.09.2003, had awarded Rs.247/- per sq.yard (Rs.11,95,480/- per acre) for the acquired land measuring 1 kanal 11 marlas (939 sq.yards), situated at Talwandi Sabo. The public purpose for acquisition was for augmenting the existing Bathinda-Talwandi Sabo Rori Road.

The basis of enhancement by the Reference Court was that if the average of Ex.A-1 to Ex.A-6 is seen, the market value would come to Rs.900/- per sq.yard and accordingly, Rs.500/- per sq.yard was granted. The interest from the date of possession, i.e., 15.03.1996 was given on account of the fact that a finding was recorded that possession had already been taken at the said point of time but the notification was issued on 21.09.2000 and therefore, keeping in view the judgments of this Court in **Bishamber Dass Vs. Punjab State Electricity Board 2004 (3) Civil & Rent Judicial Reports 22** and **Sheo Ram Aggarwal & others Vs. Haryana State 2003 (4) RCR 280**, the benefit was granted.

Counsel for the State, accordingly, submits that the market value has been assessed on the higher side as the plots in question were small in size and further away from the land and therefore, the benefit, as such, should not have been granted. Regarding the interest element, which has been granted from the date of possession, reliance has been placed upon **R.L.Jain (D) by LRs Vs. DDA & others (2004) 4 SCC 79**, to submit that matter should have been sent to the Collector for award of damages.

Counsel for the landowners, on the other hand, has submitted that once the average of Exs.A-1 to A-6 had further been taken, the market value would work out @ Rs.681/- per sq.yard and there was no basis, as such, not to grant the said amount and scaling down the market value @ Rs.500/- per sq.yard, was not justified. It was, accordingly, contended that the interest, as such, had not been specified as to how much was to be granted from 15.03.1996 till the Section 4 notification, i.e. 21.09.2000 which was @ 15% per annum, on the basis of the judgments of the Apex Court in **Madishetti Bala Ramul (D) by LRs Vs. The Land Acquisition Officer 2007 (9) SCC 650**, **Tahera Khatoon & others Vs. Revenue Divisional Officer/Land Acquisition Officer & others 2014 (13) SCC 613** and **Balwan Singh & others Vs. Land Acquisition Collector & another 2016 (13) SCC 412**.

It is, accordingly, argued that the judgment passed in **R.L.Jain** (supra) had also been considered in the above-said precedents. It is further submitted that at this stage, to relegate the landowners to the Land Acquisition Collector, for damages for the possession which had been taken by the State two decades back, would not be appropriate. It is further submitted that since the land was acquired for the purpose of construction of road, no development cut was to be imposed, in such cases. Reliance in this regard was placed upon the judgment of the Apex Court in **Nelson Fernandes & others Vs. Special Land Acquisition Officer, South Goa & others 2007 (9) SCC 447**.

A perusal of the reference application, filed under Section 18 of the Act would go on to show that it has been specifically pleaded that the land belonging to the claimants which was acquired, was commercial in nature and the notification had been issued only for 1 kanal 10 marlas of land whereas it was actually 1 kanal 11 marlas. The land was abutting the metalled Bathinda-Talwandi Sabo Rori Road, which was 90' in width. The frontage of the acquired land abutted on this road to 177', to the depth of 50'. It was a corner plot on two metalled roads. The potentiality of the land, as such, was highlighted by averring that there were big commercial establishments situated in the centre of the historical place Talwandi Sabo. On one side the acquired land was Sub-Divisional Civil Officers-cum-Judicial Courts on 15 acres of land, established in the year 1981 and beyond that was fully established grain market on 45 acres of land, acquired in the year 1969. On the same road, in the other direction, was the modern bus stand, with complete construction all around the acquired land. Talwandi Sabo town was internationally known on account of its religious importance being the Fifth Takhat of Sikhs and it was a centre of higher education and commercial activities with all the Government officers and National Banks being situated. It was further claimed that the utility value of the remaining land which was 6 kanals had gone down, on the basis of which, severance charges, as such, were also claimed. It was further averred that the possession had been taken in March, 1996 and reference is made to the civil proceedings whereby the decree had been upheld by the Apex Court against the State of Punjab.

The defence of the State was that the land was in close proximity to the cremation ground and the adjoining plots had not been inhabited by the owners. Plea taken was that the land was belonging to the PWD (B&R) and was under consideration and under possession of the Department for the last more than 40 years and the road had been built since 1960-64. It was submitted that compensation for land measuring 1 kanal 10 marlas had been paid and the land was barren and uninhabited and there was no residential house near the land. Similarly, the potentiality of the land was sought to be disputed and it had been submitted that the oil refinery was at Phullo-Khari which was 18 kms away from the land in question and had nothing to do with the land which had been acquired. Regarding the factum of earlier litigation, it was submitted that the State had acquired the land and the sum had been paid vide the award.

The landowners examined AW-1, Major Singh, Lambardar, who was witness to the sale deeds which were brought on record. AW-2, Harjit Singh, who was vendor of Ex.A-6, was also examined. Similarly, AW-3, Surinder Kumar was examined to prove the sale deed (Ex.A-4). AW-6, Rajinder Kumar Gupta, Draftsman, proved the site-plan (Ex. A-17), in which the acquired land was shown in red colour (Exs.A-1 to A-6) whereas the sale deeds had been shown in green colour. He deposed that he had also seen the shop mentioned in Ex.A-2 and that it was in a dilapidated condition. In cross-examination, it came forth that he could not tell the distance from the point mentioned in the site-plan as he had not noticed the distances and not mentioned the scale he had used for the preparation of the site-plan.

AW-7, Gopal Singh, attorney of the landowners, being the father, further deposed about the historical importance of the town and that the Judicial Courts had started functioning since March, 1994 and the town had been divided into 13 wards. Guru Kanshi College was at Talwandi Sabo and also there were 2 engineering colleges. There were 8-10 colleges for boys and girls and high schools, convent schools and public schools. The Polytechnic College was also on the road where the land was situated and there were hostel facilities in the educational institutions. More than 240 buses plied from Talwandi Sabo and there were big hospitals of 50 beds with all the health facilities and private nursing homes. The foundation of oil refinery had been laid by the late Prime Minister Shri Atal Bihari Vajpayee and the land abutted the Bathinda-Talwandi Rori Road, leading to the refinery. It was further deposed that acquisition was of 1 kanal 10 marlas of land (907 sq.yard) but permission had been granted for 939 sq.yards and possession had been taken in March, 1996. The land was a 4 lane metalled road and the PWD (B&R) Minister, Shri Partap Singh Bajpa had laid the foundation-stone for the construction and widening of the road. It was stated that the acquired land was better than the land mentioned in all sale deeds (Exs.A-1 to A-6) because of the size and further a corner plot. There was a crossing at the point where the land was situated and one road led to Bathinda-Talwandi to Rori and other from Maur to Laile Wala to road of Gurudawara Sahib and made a cross (chowk) at that point. Accordingly, the market value was stated to be Rs.1000/- per sq.yard. 10% extra was sought on the ground that it was a corner plot, as per the Government policy and apart from that, compensation from the year 1996 by way of interest was denied.

In cross-examination, he denied that there were no residential houses or any other construction near the acquired land. The cremation ground was not near the acquired land but was at a distance of more than 200 karams and there was no road in between the acquired land and the cremation ground. It was stated that the land was not under cultivation for the last 20 years when the property was purchased by them in part. It was further admitted that Government had made scheme for four-laning of the road and possession had been taken in March, 1997. He denied the suggestion that Courts and Government offices were at a distance of 1 km from the acquired land. The wireless office was at a distance of 12-14 kms from the acquired land.

Respondents had also examined as many as 6 witnesses and the Revenue Official, namely, Daroga Singh, Kanungo who deposed that on both sides of the road was thick population, traceable from the road as it was measured from the middle for the demarcation which was done on 08.10.2003.

Thus, from the above evidence which has come on record and from the perusal of the site-plan (Ex.A-17), one aspect would be clear that the land had immense potential as there was a nursing home and Tractor Showroom etc. on the said road. As noticed, the plot in question was situated on the crossing where the four roads were cutting across and therefore, the potentiality of the plot in question was immense. Respondents' witnesses themselves have admitted that there was thick population on both sides of the road on account of which the pucca points could also not be taken from the road, which goes on to show that it was a developed portion, as such. The site-plan (Ex.A-17) would also go on to show that there was petrol pump and other shops on the side road which comes from Bathinda to Talwandi Sabo. As noticed, there is a turning point for the oil refinery also for the road which goes to Village Laile Wala. Judicial Complex was also beyond the plot in question, portion of which had been acquired and thereafter, there was a grain market. Police Station and DSP's office were further away from the main centre from Civil Hospital. Therefore, there can be no denial, as such, to the potentiality of the plot in question, as has been deposed by the landowners also.

To assess the market value, the sale exemplars are the best evidence to be taken into account, to show what a willing purchaser would pay to a person who is wanting to sell his portion of the land. The sale deeds which were produced by the landowners are as under:

Sr. No.	**Exhibit**	**Sale deed no. and date**	**Land sold**	**Consideration**	**Average price per Sq.yard.**
1	Ex.A1	2380 of 17.12.99	2 Marlas	Rs.30,000/-	495.85 Av.
2	Ex.A2	1814 of 25.8.2000	3 ½ Marlas	Rs.2 lac.	1652/-
3	Ex.A3	2514 of 29.12.99	9 Marlas	Rs.1 lac	367.14P
4	Ex.A4	2464 of 22/24.12.99	1 ½ Marlas	40,000	881.50 P
5	Ex.A5	1494 of 18.7.2000	1 Kanal	2,10,000/-	347.00P.
6	Ex.A6	18 of 3.4.2000	1 Kanal	2,10,000/-	347/-

If Ex.A-1 dated 17.12.1999 is taken into consideration, which has been executed almost a year earlier, would go on to show that it was closer to the central part of the town from where the road leads to Bathinda and across the road turning to Civil Hospital and the bus stand and has been depicted at point 'D' on the site-plan. Similarly, Ex. A-2, which is dated 25.08.2000, which is depicted at point 'F' along with Ex.A-3 dated 29.12.1999, which at point 'E' and rather right opposite to the Bus Stand and closer to the Civil Hospital and the land would be far more valuable, as such and cannot be taken as a true exemplar to assess the market value. Even otherwise, the market value of Exs.A-2 & A-3 is also varying a great deal inspite of the fact that even they were executed only a year apart. Ex.A-4 dated 22/24.12.1999 is a sale deed which is measuring only 1 ½ marlas but closest to the land in question and also prior to the date of Section 4 notification and would have a bearing, as, such, to the market value, which works out @ Rs.880.50 per sq.yard and if a 30% cut is applied, on account of smallness of the plot, the same works out to Rs.264/- and the market value would come to around Rs.617/- per sq.yard.

Exs.A-5 & A-6, are of 1 kanal each, but are further away, down south from the land in question and not on the same road but situated at the road leading to Raman and Maur and therefore, though of 1 kanal each, the value would considerably differ as one would go away from the town and therefore, it would not be a safe exemplar to keep into consideration, as has been argued by the State Counsel. However, if an average of Ex.A-4, which is just north of the plot in question and Exs.A-5 & A-6, which are at south to the plot in question, is taken into consideration, the same would work out to Rs.614/- per sq.yard. In such circumstances, as noticed, if the value of Ex.A-4, after applying 30% cut, would also work out to Rs.617/- per sq.yard. Resultantly, this Court is of the opinion that it would be appropriate that the market value is rounded off to Rs.620/- per sq.yard, for the land which has been acquired, which would be just and equitable, in the facts and circumstances of the present case.

To be fair to the State, the sale deeds which have been produced by them pertain to the years 1964-65 and therefore, would have no bearing, as such, to the land which has been acquired in the year 2000, for the purpose of widening of the road.

Coming to the issue of quantum of land acquired, the Reference Court has discussed in detail the site-plan (Ex.A-17) and the issue of encroachment from the roads in question and the communication *inter se* written by the Executive Engineer (Rates & Purchase) that the land measuring 939 sq.yards, owned by the landowners, had to be acquired. Therefore, this Court is of the opinion that the findings which have been recorded by the Reference Court that possession of 1 kanal 11 marlas of land was taken but compensation has been paid for 1 marla less and the landowners would be entitled for the market value of 1 kanal 11 marlas of land and the said quantification has rightly been done. A perusal of the communication dated 06.08.1999 (Ex.A-8) would also go on to show that there was a reference of 939 sq.yards and similarly, communication dated 11.02.2000 by the said officer (Ex.A-9) would also go on to show that reference has been made to the earlier letter. Similar is the communication dated 02.02.2000 (Ex.A-10) and 01.02.2000 (Ex.A-11) wherein there is specific mention of 939 sq.yards of land.

Lastly, coming to the issue of compensation on account of possession having been taken on 15.03.1996 till the Section 4 notification dated 21.09.2000, the Reference Court has rightly 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 23 years. Reliance upon **Madishetti Bala Ramul** (supra) 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.
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> 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 **Rahera Khatoon** (supra), 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** (supra).

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 15.03.1996 till the date of Section 4 notification, i.e., 21.09.2000, 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 foundation-stone was laid for the construction of the road, on account of which, possession had been taken.

The appeal filed by the landowners bearing RFA-1620-2005 is, accordingly, allowed, by assessing the market value @ Rs.620/- per sq.yard, which they would be entitled along with all statutory benefits. However, the landowners would not be entitled for the benefit of solatium on the damages which have been awarded by way of interest which has been granted @ 6% from 15.03.1996 to 21.09.2000. The claim for severance, as such, also cannot be granted, as the balance of the plot is still available with the landowners and nothing, as such, has been shown as to how the said plot is unfit, as such, for usage by the landowners. Resultantly, in view of the above discussion, the appeal filed by the State bearing RFA-1592-2005 does not carry any merit and the same is dismissed.

01.04.2019 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*