HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RFA No.3220 of 2006
Date of Decision: 24.07.2019

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The Defence Estate Officer, Jullunder Circle, Jullunder ... Appellant

VS.

M/s Abohar Cold Storage & Ors. ... Respondents

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

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Present: Mr. Anil Chawla, Advocate for UOI

Mr. Akashdeep Sethi, Advocate;
Mr. Raman Goklaney, Advocate; for the landowners

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Defence appeals	**RFA Nos.3220 to 3224 of 2006**
Landowners' appeals	**RFA Nos.4096 to 4099, 4358 of 2006**

G.S. SANDHAWALIA, J. (Oral)

The present set of appeals filed under Section 54 of the Land Acquisition Act, 1894 are directed against the award dated 20.01.2006 whereby the Reference Court, Ferozepur had enhanced market value of the land from Rs.1,30,000/- per acre as awarded by the Special Land Acquisition Collector, Jalandhar vide award dated 02.11.1994 to Rs.4,65,000/- per acre.

Both the landowners and the Union of India are aggrieved by the quantum of enhancement. The enhancement is on the basis of the award Ex.A7 dated 25.01.1995 whereby vide Section 4 notification dated 18.01.1993 land measuring 636 kanals 3 marlas situated in Abohar II Hadbast No.121, Tehsil Abohar had been acquired for public purpose for establishment of Central Institute of Post Harvest Engineering and Technology at Abohar, District Ferozepore. A sum of Rs.4,65,063/- per acre had been granted for nehri land keeping in view the stand of the landowners that the land in question which had been acquired was at a better location and thus the same amount of compensation was awarded.

The notification under Section 4 was issued on 21.04.1992 and Section 6 notification was issued on 29.05.1992 and the land measuring 113 kanals 14 marlas (14 acres 1 kanals 14 marlas) falling in village Abohar, District Ferozpur was acquired for public purpose for Defence of India (for Work Services Air Forces). The landowners in their petition under Section 18 claimed market value @ Rs.2000/- per sq.yard as the property was commercial in nature being situated on the Abohar Fazilka Main Road which is a National Highway No.10. It was stated to be surrounded by more than hundreds of shops, factors, new grain market, Land Mortgage Bank, Medical Nursing Home, Medical Institutions, Gurudawara Nanksar, Petrol Pump and so many other commercial buildings situated in between bus stand to Abohar Bye Pass Road. The land in question was situated in between the area of Abohar Bye Pass and the Municipal boundary. There was a continuity of building between Main Bus Stop to the land in question to Bye Pass as per the key plan attached. The Defence Department had already acquired the land for establishment of Army Cantonment about more than 15-16 years back and after the acquisition the land had been developed having all the facilities like Military Hospital, Military Canteen, Military residential colonies, Military School, Playgrounds etc.

The Government instructions issued by the Deputy Commissioner-cum-Chairman, Accruting Board, Ferozpur dated 22/23.11.1993 (Ex.PW6/A) addressed to all the Sub Registrars, Joint Sub Registrars and other concerned officers regarding minimum rate of land for the purposes of stamp duty and registration showed that the land in question which was situated in between the New Fazilka Road Octroi Road to Bye Pass and was mentioned at Sr.No.12 of the said letter and the minimum price of the land in question was assessed @ Rs.10000/- to Rs.20000/- per marla for sale for residential and commercial purposes which showed the potential value of the land in question. The sale deeds had been registered at a lesser amount in spite of the directions and the actual value and actual paid amount to save stamp duty and the directions were based upon the said registered sale deeds. Resultantly, compensation was sought at the enhanced amount.

The Reference Court after considering the oral and documentary evidence produced by the parties came to conclusion that 3 acres abutted the Abohar Fazilka road and was enclosed from two sides by the boundary walls as depicted in the site plan Ex.R54. It was also noticed that on the scaled map (Ex.P6), it was proved that there were numerous factories including Shanti Devi Cotton Factory, Nagpal Cotton Factory, Oil Mills, Plastic Mills and godowns. etc. and opposite to the acquired land was located Rajesh Cotton Industry, several shops and godowns which also abutted the National Highway. Even beyond the acquired land towards Fazilka there were various factories including Gram Udyog Simiti Unit, Ice Factory Agro Industry, Surya Laxmi Cotton Pvt. Ltd. and DD Cotton Factory and Jyoti Rice Mill etc. Therefore property fell towards the municipal limits from the Bye Pass Road and therefore admittedly the potentiality of the land as such also could not be disputed. Relevant portion reads as under:-

> *"18. It is not disputed that the acquired land is 14 acres 1 kanal 14 marlas as detailed in Appendix 'A' Exh.R51 relied upon by the respondents. The acquired land was depicted by the respondent in the site plan Exh.R52 which shows that considerable portion up to the length of three acres abuts*

Abohar Fazilka road. The land in question was enclosed from two sides by the boundary walls as depicted by the respondents in site plan Exh.R54 and there was one room in existence. PW1 Devi Lal Draftsman has proved the site Exh.A5. Bakhshish Singh, Chief Draftsman Northern Railway (retired) PW2 has proved site plan Exh.A6 which is a scaled map showing all the structures around Abohar Fazilka Road. The land in dispute is shown with green, red and yellow colour as per notes given in the site plan. Abohar Fazilka Road is undisputedly National Highway No.10 and the land in question abuts that National Highway. From the scaled map, it is proved by the applicants that through-out alongside National High way in that locality there are numerous factories including Shanti Devi Cotton factory, Nagpal Cotton Factory, Oil Mills, Plastic Mills and godowns. etc. Opposite to the acquired land is located Rajesh Cotton Industry, several shops and godowns also abut the National Highway and even beyond the acquired land towards Fazilka there are various factories including Gram Udyog Simti Unit, Ice Factory Agro Industry, Surya Laxmi Cotton Private Limited. and D.D. Cotton Factory and Jyoti Rice Mill etc. The site plan shows the property between-island circulating area of petrol pump up to Ganga Nagar Bye-pass towards Fazilka side up to the distance of 4 Kms. from Abohar bus stand. The property in question falls in that area. The author of this site plan is Bakhshish Singh Ex-Chief Draftsman Northern Railway and he has testified that the acquired land is

> *within the bye pass Abohar towards Municipal Limits and he has shown the industries from Abohar bye-pass towards Abohar city. From his testimony, it is proved that the land of the applicants was valuable land abutting National Highway No.10 and is surrounded by various shops and industrial complexes. The area falls within bye pass Abohar and City Abohar. Similar is deposition of PW4 Ganesh Sethi son of Sohan Lal Kamboj. He has also testified that the acquired area is located on Fazilka Abohar National Highway No.10 and the area is commercial in nature and is located with the bye-pass and municipal limits."*

However, the benefit of letter dated 22/23.11.1993 Ex.P6/A wherein market value was shown @ Rs.10000/- per marla for residential and Rs.20000/- for commercial which works out to Rs.16 lakhs and Rs.32 lakhs respectively was rejected on the ground that it came into force w.e.f. 01.12.1993. Necessarily the relevant date to assess the market value should be 21.04.1992 when Section 4 notification was issued under Section 23. No such fault can be thus be found on the approach of the Reference Court to that extent. The sale deeds produced by the landowners were also taken into consideration and rejected on the ground that though they were of the property in the area and their value came around Rs.6 lakhs approximately. But they being small plots and they cannot be adopted for evaluating the acquired land despite the fact that acquired land was a commercial property. Relevant portion reads as under:-

> *"20. I am further of the view that the sale instances Exh.A8 to Exh.A11 executed in the year 1991-92 of some property in that*

area are also not sound instances for assessing the value of the acquired land. Price of the said properties comes to Rs.6 lacs per acre approximately but these plots are small plots and the same criteria cannot be adopted for evaluating the acquired land despite of the fact that the acquired land is commercial property."

Relevant sale deeds prior to Section 4 notification are tabulated as under:-

Exh.	**Area**	**Date of registration**	**Value**	**Per acre value**
A8	6 marlas	29.10.1991	Rs.20,000/-	Rs.5,33,333/-
A9	13 marlas	29.10.1991	Rs.45,000/-	Rs.5,53,846/-
A11	9 marlas	25.10.1991	Rs.30,000/-	Rs.5,33,333/-

The Reference Court thus failed to take into account the fact that though the above sale deeds would show the pattern as such of the value of the land in the area and merely because there were of small instances it could not have been brushed aside. The principle of deduction could have been applied as such on account of smallness. Even otherwise the land which has been acquired is not a very large chunk of land and is only 113 kanals 14 marlas which works out to around 14 acres. The location of land which is of paramount consideration would show that it was situated barely between 2-3 kms from Bus Stand Abohar and just outside the Military establishment and sandwiched between the Municipal limits of Abohar town and Bye Pass. The Reference Court has also noticed the immense potentiality which the land had. Thus the principle laid down in **Maj.Gen. Kapil Mehra & Ors. vs. Union of India & Anr. (2015) 2 SCC 262** would come into play. They read as under:-

10. Market Value: First question that emerges is what would be the reasonable market value which the acquired lands are capable of fetching. While fixing the market value of the acquired land, the Land Acquisition Officer is required to keep in mind the following factors:- (i) existing geographical situation of the land; (ii) existing use of the land; (iii) already available advantages, like proximity to National or State Highway or road and/or developed area and (iv) market value of other land situated in the same locality/village/area or adjacent or very near to the acquired land.

11. The standard method of determination of the market value of any acquired land is by the valuer evaluating the land on the date of valuation publication of notification under Section 4(1) of the Act, acting as a hypothetical purchaser willing to purchase the land in open market at the prevailing price on that day, from a seller willing to sell such land at a reasonable price. Thus, the market value is determined with reference to the open market sale of comparable land in the neighbourhood, by a willing seller to a willing buyer, on or before the date of preliminary notification, as that would give a fair indication of the market value.

In fact if one examines the statement of the witnesses it would show the claim of landowner PW4 Ganesh Sethi was that the land was much superior belonging to them than that of the land acquired for the purpose of Central Institute an undertaking of Govt. of India and was barely one and half kilometer from Abohar Bus Stand and DD Cotton factory was the nearest building from the acquired land.

Rajiv Khanna PW5 stated that at the time of acquisition he had intended to raise construction for running cold storage in the acquired land and had constructed the boundary walls on two sides which was approximately 10 feet in height and 1000 feet in length. It was categorically averred that the land was at a distance of 2 kms from Bus Stand and Central Institute was at a distance of 4 kms from the bus stand. On that account the potentiality of the land was sought to be justified then that for other set of land acquired at Rs.4,65,000 per acre which has been granted in respect of Nehri Chahi land where the Govt. had started the Central Institute whereas Rs.1,30,000/- per acre had been granted to them in respect of the same nature of land by the LAC. As noticed it has already been accepted by the Reference Court by granting the benefit of the nehri land to the landowners as admittedly the land was not barani and was nehri in character and the same amount of compensation has been granted.

PW7 Vimal Kumar also had submitted that there was commercial potentiality of the acquired land and there already existed the factories, FCI godowns, brick kiln etc. around the acquired land. There were Military colony, Military Hospital, residential quarters of Military personnel prior to date of acquisition. The site plan Ex.P6 was proved by PW2 Bakhshish Singh retired Chief Draftsman from the Northern Railways. A perusal of the same would show that opposite the land there was PUNSUP godown and Rajnish Cotton Industries. Next to the land there was Cotton Ginning Pressing and Oil Mills and Dwarka Das Cotton & Ginning Industries. Thereafter also there is land of Gramudyog Samiti Unit. Thereafter there was a house and a Bar and Restaurant in the name of Sandhu Bar. Prior to the land there was a godown and on the opposite side there were other cotton and Ginning factories. Thus it is established both by the oral and documentary evidence which has been produced on record regarding the commercial potentiality of the land. Therefore the compensation which has been fixed to bring it at par with the Central Institute is not adequate market value and deserves to be enhanced.

It is pertinent to mention that no witness was examined from the Union of India to rebut the aspect of potentiality.

As per the table reproduced above also, it would show that the market value of the plot as such was around Rs.5½ lakhs since the benefit of the time period of 5 months had also to be given to the landowner. If the principle of deduction is also applied on account of smallness then the principle of enhancement of the land which is on national highway is to be granted to offset the same. Therefore no question of deduction as such on those plot market value of Rs.5,33,000 would be applicable. It is settled that land falling on National Highway commands higher market value. Reliance can be placed upon the judgments of **V. Hanumantha Reddy (D) by LRs v. Land Acquisition Officer & Mandal Revenue Officer (2003) 12 SCC 642**, **Revenue Divisional Officer vs. LAO Revenue Divisional Officer-cum-L.A.O. v. Shaik Azam Saheb etc. (2009) 4 SCC 395**, **Ashok Kumar vs. State of Haryana, (2016) 4 SCC 544**.

Mr. Anil Chawla, Advocate for UOI submitted that Ex.A7 relied upon was post notification and thus should not have been relied upon. The argument is liable to be rejected keeping in view the discussion of the sale deeds above which go on to show market value of land and the same can be substantiated from the Collector rate on which reliance can be placed in view of the judgment in ***Lal Chand vs. Union of India & Anr. (2009) 15 SCC 769.*** The relevant part reads as under:-

16. It should however be noted that as contrasted from the assessment of market value contained in non-statutory Basic Value Registers, the position may be different, where the guideline market values are determined by Expert Committees constituted under the State Stamp Law, by following the detailed procedure laid down under the relevant rules, and are published in the State Gazette. Such state stamp Acts and the Rules thereunder, provide for scientific and methodical assessment of market value in different areas by Expert Committees. These statutes provide that such committees will be constituted with officers from the Department of Revenue, Public Works, Survey & Settlement, Local Authority and an expert in the field of valuation of properties, with the sub-registrar of the sub-registration district as the member secretary. They also provide for different methods of valuation for lands, plots, houses and other buildings. They require determination of the market value of agricultural lands by classifying them with reference to soil, rate of revenue assessment, value of lands in the vicinity and locality, nature of crop yield for specified number of years, and situation (with reference to roads, markets etc.). The rates assessed by the committee are required to be published inviting objections/suggestions from the members of public. After considering such objections/suggestions, the final rates are published in the Gazette. Such published rates are revised and updated periodically. When the guideline market values, that is, minimum rates for registration of properties, are so evaluated and determined by expert committees as per statutory procedure, there is no reason why such rates should not be a relevant piece of evidence for determination of market value. One of the recognised methods for determination of market value is with reference to opinion of experts. The estimation of market value by such statutorily constituted expert committees, as expert evidence can therefore form the basis for determining the market value in land acquisition cases, as a relevant piece *of evidence. It will be however open to either party to place evidence to dislodge the presumption that may flow from such guideline market value. We however hasten to add that the guideline market value can be a relevant piece of evidence only if they are assessed by statutorily appointed Expert Committees, in accordance with the prescribed assessment procedure (either street-wise, or road-wise, or area-wise, or village-wise) and finalised after inviting objections and published in the Gazette. Be that as it may. We have referred to this aspect only to show that there are different categories of Basic Valuation Registers in different states and what is stated with reference to the stamp law in Andhra Pradesh or Uttar Pradesh, may not apply with reference to other states where state stamp laws have prescribed the procedure for determination of market value, referred to above.*

17. In this case, there is nothing to show the circle rates have been determined by any statutorily appointed committee by adopting scientific basis. Hence, the principle in Jawajee Naganatham will apply and they will not be of any assistance for determining the market value. Further, they do not purport to be the market value for lands in rural areas on the outskirts of Delhi, nor the market values relating to Rithala village. The circle rates relate to urban/city areas in Delhi and are wholly irrelevant.

Another aspect which is to be noticed that this land has a better potential value and it is pointed out by counsel that if one is to look at the Collector Rate which is dated 22/23.11.1993 Ex.PW6/A where market rate was fixed @ Rs.10,000/- and Rs.20,000/- per marla for residential and commercial area and correspondingly for the land which was acquired on which parity has been granted and which is shown at Sr.No.12 with pertains to land on the New Fazilka Road after Octroi Post till the Bye Pass. It is pointed out that at Sr.No.42 the land which was acquired vide notification dated 18.01.1993 falls on Sito Phatak Bye Pass Road, the Collector Rate of which was @ Rs.5000/- and Rs.10000/- per marla which is half of the market value vis-à-vis National Highway 10. In such circumstances this Court is of the opinion that granting the same amount of compensation, the Reference Court was not justified. Thus there is scope for further enhancement. Resultantly, by applying the principle of guesstimation as laid down in ***Trishala Jain & Anr. v. State of Uttaranchal & Anr., (2011) 6 SCC 47***, this Court that if a sum of Rs.6½ lakhs per acre along with all statutory benefit is granted to the landowners it would be adequate market value in the facts and circumstances of the case keeping in view the fact that it was falling on a National Highway just outside the military establishment. The relevant observations read as under:-

> *26. Acquisition of land is an act falling in the purview of eminent domain of the State. It essentially relates to the concept of compulsory acquisition as opposed to voluntary sale. It is trite that no person can be deprived of his property save by authority of law in terms of Article 300A of the Constitution of India. The provisions of the Act provide a complete mechanism for `deprivation of property in accordance with the law' as stated under the Act. Justifiability and fairness of such compensation is subject to judicial review within the confines of the four corners of the Act. Once the lands are acquired under the Act, the persons interested therein are entitled to compensation as per the provisions of the Act. Thus, in the present case the land in question has been acquired under the provisions of a law which specifically provide that acquisition can only be for a public purpose and upon payment of compensation to the claimants in accordance with law. The compensation payable to the claimants has to be computed in*

terms of Sections 23 and 24 of the Act. The market value of the land has to be determined at the date of the publication of the notification under Section 4(1) of the Act, after taking into consideration what is stated under Sections 23(1), 23(1A), 23(2) and excluding the considerations stated under Section 24 of the Act. More often than not, it is not possible to fix the compensation with exactitude or arithmetic accuracy. Depending on the facts and circumstances of the case, the Court may have to take recourse to some guesswork while determining the fair market value of the land and the consequential amount of compensation that is required to be paid to the persons interested in the acquired land.

27. `Guess' as understood in its common parlance is an estimate without any specific information while `calculations' are always made with reference to specific data. `Guesstimate' is an estimate based on a mixture of guesswork and calculations and it is a process in itself. At the same time `guess' cannot be treated synonymous to `conjecture'. `Guess' by itself may be a statement or result based on unknown factors while `conjecture' is made with a very slight amount of knowledge, which is just sufficient to incline the scale of probability. `Guesstimate' is with higher certainty than mere `guess' or a `conjecture' per se.

Accordingly, the appeals of the landowners are allowed and the appeals of DEO are dismissed granting a sum of Rs.6½ lakhs per acre along with all statutory benefits to the landowners as adequate market value by modifying the award of the Reference Court, Ferozepur in the facts and circumstances of the case.

24.07.2019 **(G.S. Sandhawalia)**
vvishal **Judge**

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*