IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.3453 of 2018
Date of decision: 4.9.2019

Renu and another **...Appellants**

Versus

State of Haryana and another **...Respondents**

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

Present: Mr. Vivek Khatri, Advocate for the appellants

Mr. Shivendra Swarop, AAG, Haryana.

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G.S.SANDHAWALIA, J. (Oral)

The present appeal is directed against the award dated 11.1.2018 of the Reference Court, Hisar which has arisen out of the application filed under Section 28-A(3) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act").

The Reference Court has declined to grant any benefit of severance charges for the land which had been acquired vide notification under Section 4 of the Act dated 27.4.2005 which was for the construction of Hansi Multipurpose Channel. The reason for denial was that no evidence worth the name had been adduced by the appellants that the land had been bifurcated due to acquisition of the same and therefore, the appellants were not entitled to the relief claimed. Resultantly, order dated 18.7.2016 passed by the Land Acquisition Collector, Hisar has been upheld.

It is not disputed that compensation had been fixed at ₹ 5 lakhs vide award dated 9.3.2006 by the Land Acquisition Collector. The present appellants never preferred a petition under Section 18 of the Act. However, similarly situated land owners of village Kutubpur, Tehsil Hansi, District Hisar filed petition under Section 18 of the Act and were successful in getting the market value enhanced to ₹ 10 lakhs per acre as per award dated 4.9.2014 of the Reference Court. Nothing was granted on account of severance of land.

In appeal bearing **RFA No.1475 of 2012-Ajit Singh Vs. State of Haryana and others** decided on 11.3.2016 (Annexure A-1) the benefit on account severance charges was granted in addition to the landowners of village Kutubpur to the extent of 30% keeping in view the fact that it was natural consequence as such of water channel which would bifurcate the land. The relevant portion whereby reasons have been given for granting the said relief reads as under:-

> "A bare perusal of the site plan would show that after construction of the Hansi Multiple Channel, the land was bound to be bifurcated. Neither it would be feasible nor practicable for the State authorities to provide culverts or bridges on this multiple channel at short distances, so as to enable the land owners to approach their unacquired land for the purpose of its cultivation. Consequently, the land owners will have to cover long distances to approach their unacquired land. It will considerably increase the transportation charges and other expenses, which will substantially reduce the net profit from the unacquired agricultural land, for all times to come. The land owners would not be in a position to put their unacquired land to its optimum use. Keeping in view the abovesaid material and undisputed fact situation, this Court is of the considered view that granting 30% of the above said market value, on account of severance charges, would meet the ends of justice. Any lesser amount in this regard would be wholly inadequate."

The appellants on account of the enhancement granted on

4.9.2014 had filed a petition within the prescribed period under Section 28-A of the Act before the Land Acquisition Collector, Hisar. Initially the proceedings were kept pending on account of pendency of aforesaid RFA as per settled principle and law laid down by the Apex Court.

Eventually vide order dated 18.7.2016 after the decision of the **Ajit Singh's case (supra),** the application was allowed and compensation @ ₹ 10 lakhs per acre was granted with all statutory benefits on the basis of the award of the Reference Court. However, the benefit of 30% on account of severance charges was not granted by the Land Acquisition Collector, Hisar.

Keeping in view the same, a petition under Section 28-A(3) of the Act was preferred before the Reference Court seeking the said benefit. A perusal of the said petition would also go on to show that apart from relying upon the observations of this Court reproduced above, no specific averment as such was made that the appellants as such had been adversely affected on account of severance of the land which had been acquired and In the reply filed, specific plea was taken that the land has not been bifurcated due to acquisition and therefore, the same has not been granted by the District Revenue Officer. Even Akshajra showing the location and proving that no bifurcation of the land had taken place was appended as Annexure R/1. The appellant has also appeared as a witness in support of her case and filed affidavit claiming 30% of the market value. In the affidavit there is no specific averment as such regarding adverse affect of the acquisition vide which they could claim severance charges under third Clause of Section 23 of the Act.

In view of above, it is apparent that the appellants had been negligent as such in pursuing their case and therefore, the reasoning which had been adopted by the Reference Court does not as such suffers from any infirmity to that extent. However, the fact remains that this Court has specifically noticed that in case of water channel as such the land owners are likely to be affected as the land would fall on both sides.

In such circumstances, this Court is of the opinion that since the litigation as such under the Land Acquisition Act is not an adversial form of litigation and the landowners have only claimed their rightful dues. Keeping in mind the principle of eminent domain and lack of strict pleadings and casual way in which litigation had been handled has led to denial of compensation. The respondents have taken a specific plea wherein the Akshajra had been produced on record. In such circumstances, it was also the bounden duty as such of the Court to examine the case thoroughly as to the extent of area which had been acquired and how the water channel had cut the acquired land and whether severance which is a factual aspect as such in the present case had to be adjudicated upon. The fault more lies with the appellants once a specific plea had been taken by the respondents in this regard. Necessary care should have been taken to amend the pleadings or by filing an affidavit in support of their case which was not done.

Keeping in view the fact that similarly situated landowners have got benefit of 30% on account of severance charges, this Court is of the opinion that the present appeal is liable to be allowed as the appellants should be given another opportunity as such to claim the severance charges by taking recourse to amend the pleadings and making out a case in support of the said claim.

Resultantly, the present appeal is allowed and impugned order dated 11.1.2018 is set aside. The matter is remanded for fresh decision. The appellants shall pay a cost of ₹ 5000/- to be deposited with the Legal Service Authority, Hisar. In the case same are not deposited the impugned order shall remain in force. It is open to the parties as such to file application for amendment of the pleadings and lead evidence in support of their claim for severance charges.

September 04, 2019 **(G.S.SANDHAWALIA)**
Pka **Judge**

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No