

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

230

**RFA No.386 of 2018 (O&M)
Decided on : 27.11.2019**

State of Punjab and another

... Appellants

Versus

Simarjit Singh @ Simardeep Singh

... Respondent

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

Present: Ms. Ambika Bedi, AAG, Punjab
for the appellants.

Mr. Sandeep Jasuja, Advocate
for the respondent.

G.S. Sandhawalia, J. (Oral)

CM-964-CI-2018

Application for condoning the delay of 341 days in filing the appeal has been filed.

In view of the fact that costs imposed vide order dated 08.05.2019 have been paid by the appellants by way of Demand Draft and which was received by the respondent-counsel, the application is allowed. The delay of 341 days in filing the appeal is condoned.

CM stands disposed of.

Main appeal (O&M)

The present filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') is directed against the Award of the Reference Court, Fazilka dated 17.10.2016, wherein the market value has been

enhanced from ₹18 lakhs per acre to ₹20 lakhs per acre for the land acquired of the respondent. The land was acquired vide notification dated 24.02.2011 issued under Section 4 of the Act for the public purpose of construction of Khippanwali Sub Minor from R.D. 0 to 12500. Vide Award dated 21.03.2012, the market value had been assessed by the Land Acquisition Collector. The landowners feeling aggrieved claimed enhancement on the ground that the land was under Citrus plantation and therefore, keeping in view the annual yield as such the market value would come to ₹40 lakhs per acre.

The stand of the respondents was that compensation had been given for garden land adjoining to the road ₹20 lakhs per acre, ₹18 lakhs for the garden land situated from 2 killa from the road and the remaining land beyond 2 killas from the road was given ₹16 lakhs per acre.

It is noticeable that the landowner had stepped into the witness box as PW-1 and produced the site plan Aks Killabandi (Ex.P2 and Ex.P3) alongwith *Jamabandi* for the year 2010-2011 (Ex.P1). He had produced PW-2 Baljit Singh, Area Revenue Patwari. As per the record, Simarjit Singh was owner of the land and the land was under Orchard and Citrus plants which were standing there. He also deposed regarding the location of the land owned by the appellant and in between the land of the appellant and road, a minor canal was also running which was carved out from the acquired land. Keeping in view the fact that

land which was acquired measuring 8 kanals 4 marlas was falling in Rectangle No.150 and Rectangle No.161, which was adjoining the road, as per the Akshajra (Ex.P6) and revenue record, which showed that there was a Orchard, the Reference Court had enhanced the compensation to ₹20 lakhs per acre.

The State is not in a position to assail this fact, since the Award itself provided for staggered rates, keeping in view the location of the land. The Reference Court has examined the issue in detail and noticed that the land acquired was adjoining the road and the Canal was carved out. Therefore, as per the terms of the Award itself the landowners have been held entitled for ₹20 lakhs per acre instead of ₹18 lakhs per acre and there can be no fault as such in the enhancement which has been granted on this aspect.

In the present appeal an application for additional evidence has also been filed by placing on record revenue record on record and the stance taken for the first time in the grounds of appeal is regarding the ownership of the respondent by holding out that land in question was owned by Manjeet Kaur wife of Harpal Singh son of Jang Singh. It is to be noticed that the respondent is son of Gurcharan Singh son of Jang Singh and, therefore, they are closely related as such. The stand was taken qua the compensation which was paid to Manjit Kaur who is Aunt of the respondent and the *locus standi* of the respondent was questioned to the maintainability of the reference petition.

It is in such circumstances the State has submitted that there was a partition effected on 30.10.2012 and which was post acquisition and therefore, the landowners have no such right on the date of Section 4 notification i.e. 24.02.2011 and, therefore, it has been held out that there was no right as such to claim enhancement. However, it is to be noticed that in the petition filed under Section 18 of the Act, specific claim was made that the respondent was owner of the land which had been acquired. In response the State had not denied the said fact.

A perusal of the record would go on to show that no such specific stand was taken or any evidence produced before the Reference Court that the respondent was not the landowner.

Mr. Jasuja, has submitted that the partition was within the family as such and the owners of the land were joint and he has instructions that the amount already paid to Manjit Kaur will not be claimed again. Thus, the objection which has been raised by the State is baseless to that extent, as the respondent being a co-sharer would be interested person. Even otherwise the application for additional evidence is not liable to be allowed, as the State cannot build up a new case and neither the case falls within the ambit of Order 41 Rule 27 CPC.

It is a settled principle that an application for additional evidence cannot be allowed to fill up the lacuna of the case, as has been held in '**Satish Kumar Gupta and others Vs. State of Haryana and others**' AIR 2017 SC 1072.

In such circumstances, the application for additional

RFA No.386 of 2018 (O&M)

evidence is not liable to be allowed, as it has not been pointed out that whether the said revenue record was not in possession of the State at the time the matter was placed before the Reference Court on 18.04.2013. In the absence of no specific plea having been taken, the State cannot take a new plea as such before this Court for the first time. Even otherwise the evidence sought to be adduced is not necessary for this Court to pronounce judgment. Thus, the application for additional evidence is liable to be dismissed and it is ordered accordingly.

Keeping in view the above, the enhancement which was done in terms of the Award of the Land Acquisition Collector itself and, therefore, the Award does not suffer from any illegality, which would warrant interference by this Court.

Resultantly, the appeal alongwith application for additional evidence stand dismissed.

NOVEMBER 27, 2019
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No