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

717 **RFA No.3243 of 2003 and other connected appeals
Decided on : 05.02.2020**

Dharamjit Singh (Deceased) through his legal heirs and others
... Appellants

Versus

State of Punjab
... Respondents

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

Present: Mr. Rajinder Goyal, Advocate,
Mr. Sandeep Bansal, Advocate,
Mr. Anubhav Bansal, Advocate and
Mr. Vikas Cuccria, Advocate for the appellants.

Ms. Kanica Sachdeva, AAG, Punjab.

<u>G.S. Sandhawalia, J. (Oral)</u>

The present order shall dispose of 5 appeals i.e. **RFA Nos.3243, 2781, 2782, 2783 and 3810 of 2003** filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') by the landowners, which have been directed against the Awards dated 14.02.2003, 10.03.2003 and 08.05.2003 passed by the Reference Court, Hoshiarpur. The same are pertaining to the notification dated 24.06.1993 issued under Section 4 of the Act, whereby the land was acquired from village Purhiran measuring 39 kanals 4 marlas, which was acquired for the construction of the Ring Road, Hoshiarpur-Phase III.

2. The Reference Court had enhanced the market value to ₹1,60,000/- per acre uniformally against the amount awarded by the Land Acquisition Collector (LAC), wherein the market value had been fixed as under:-

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Kind of land	**Rate per acre**
Chahi	Rs.98,240/-
Barani	Rs.63,280/-
Gair Mumkin Rasta/Nalla	Rs.63,280/-
Gair Mumkin Abadi	Rs.2,41,440/-

3. Similarly, for the second notification dated 17.12.1993 whereby the land was acquired for the same purpose measuring 38 kanals 8 marlas, the Reference Court vide Award dated 14.02.2003 also granted the same amount of compensation.

4. Vide Award dated 08.05.2003, which dealt with first notification, the Reference Court was of the considered opinion that on an earlier occasion on 05.12.2002 in the case of **LAC No.5 of 20.02.1998 'Satnam Singh Vs. LAC'** decided on 05.12.2002, the same amount of compensation had been granted and there was no scope for determining different market value. Sketch A-1 was also considered to see that the land was at the road crossing of Jalandhar-Phagwara Road and reliance was also placed upon the earlier decision wherein two sale exemplars dated 29.05.1990 and 09.11.1992 had also figured. Resultantly, a cut of 80% was applied to grant the said amount of compensation, though it works out to 90% of sale deed dated 09.11.1992 (Ex.A3).

5. The sale deeds of the State dated 06.01.1993 (Ex.R5) whereby 14 kanals 10 ½ marlas was sold for ₹50,000/- and sale deed dated 01.03.1993 (Ex.R4) whereby 14 kanals 2 marlas of land was sold for ₹85,000/- and the third sale deed dated 21.12.1992 (Ex.R6) whereby 1 kanal 2 ¼ marlas of land was sold for ₹10,000/- were rightly discarded on

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the ground that they were under valued and the sale consideration was much lower than the amount awarded by the LAC.

6. Counsel for the landowners, thus, has argued that the cut applied was far higher than in normal circumstances and only a 20% cut should have been applied and the benefit of the sale deed giving the highest market value should have been taken into consideration. Therefore, if the sale deed dated 09.11.1992-- is taken into consideration, the market value per acre would work out to ₹16 lakhs and the amount awarded is paltry.

7. Counsel for the State on the other hand has defended the fixation and submitted that the Award of the Reference Court is well justified whereby all relevant parameters had been taken into consideration, which have to be kept in mind, specially the fact that the date of the sale exemplars and the fact that location of the land which was low lying as such and was away from the sale exemplars, which are closer to the abadi.

8. After perusing the record, this Court is of the opinion that it is a case where landowners are entitled for enhancement, keeping in view the facts and circumstances. Reference is made to the record of **LAC No.310 of 1997 'Mohinder Kaur and others Vs. State of Punjab and another'** decided on 14.02.2003, wherein it was specifically pleaded in the petition under Section 18 that the land was situated within the Municipal Council of Hoshiarpur. The acquired land abutted two roads and was almost on the main road and had potential value being used for

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residential and commercial purposes. The land fell within the area of Municipal Council, Hoshiarpur and it was an urban property.

9. The landowners produced AW-1 Tarlok Singh, retired Kanungo, who had prepared the site plan (Ex.A1) after visiting the spot and after consulting the revenue record. In cross-examination he stated that the abadi was situated at a distance of 50-60 karams from the acquired land and bridge was situated ½ Km from the acquired land.

10. The sale deed dated 14.06.1993 (Ex.A2) was produced, which was merely 1 marla 1 sarsahi and, therefore, keeping in view the quantum of land which was subject matter of acquisition, this Court is of the opinion that it would not be a relevant sale exemplar as such. It was also purchased for construction of a shop and, thus, would show the nature of the land, as per the statement of AW-2 Kailash Chander, who had purchased the said land.

11. Sale deed dated 09.11.1992 (Ex.A3) was for 12 marals of land, which this Court is proposes to rely upon, was proved on record by AW-3 Rachhpal Singh, whereby the land was bought by him @ ₹1,20,000/-, which comes to ₹10,000/- per marla and translates into ₹16 lakhs per acre. In his cross-examination it has come on record that the acquired land is situated near the land which was subject matter of Ex.A3.

12. The sale deed dated 19.07.1995 (Ex.A4) being post notification was not liable to be taken into consideration as per the settled principle that the market value is to be seen on the date of Section 4

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notification and has been rightly discarded by the Reference Court.

13. AW-5 Vijay Kumar, Clerk, M.C. Hoshiarpur, also proved the fact the land of Purhiran came within the municipal council limits way-back vide notification dated 27.01.1989 and the notification was produced on record as Ex.A5. He had been re-called for cross-examination on a subsequent dated i.e. 14.12.2000 and had brought the original notification dated 27.01.1989.

14. AW-6 Ashok Kumar proved the sale deed dated 29.05.1990 (Ex.A6) whereby land measuring 12 ½ marlas was purchased by him for ₹75,000/- and the market value of which would work out to ₹9,60,000/- per acre. In his cross-examination stated that the land was situated at a distance of ½ Km from the acquired land and he had purchased the land for abadi/residence.

15. AW-7 Dharamjit Singh submitted that the land was abutting the main Hoshiarpur-Phagwara road. Before acquisition municipal limits had been extended and the acquired land had come within the municipal limits. The acquired land adjoins the abadi of the village, the shops, petrol pump, Dhaba and other commercial establishments and the land could be put to commercial use.

16. The site plan (Ex.R1) was produced by RW-1 Paramjit Singh, Patwari, wherein also the chowk had been shown and there was a octroi post of Municipal Council, Hoshiarpur. Though he denied the fact that the disputed property was not in the limit of octroi post at the time of construction of ring road, but admitted that the property fell within the

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jurisdiction of Purhiran. He did not know if Purhiran fell in the jurisdiction of Municipal Council of Hoshiarpur in the year 1989. In cross-examination he further stated that there was a petrol pump near the octroi post which was on the Phagwara Road and there were shops near the petrol pump. The land of Mohinder Kaur, the land owner adjoined the Phagwara Road and newly constructed ring road. Towards the northern side of ring road after a distance of one killa, the land was falling within *Lal Lakir* of village Purhiran. The sale deeds of Exs.R2 and R3 were pertaining to the northern sides of the acquired land and were at a distance of 5-6 killas from the land of the claimant.

17. RW-2 Devinder Pal, JE, PWD (B&R), Hoshiarpur (Central Works Division) submitted that the ring road had been constructed in the land which was a low lying area and choe had been passing through this very land. It was not a commercial land nor there was any possibility of its use for commercial use. For constructing the road much had been spent on putting earth and making culverts while constructing the road. In cross-examination he admitted that he had seen the land of Mohinder Kaur-claimant and the choe on the ring road was at a distance of about 800 meters from the land of Mohinder Kaur towards Jalandhar side. He submitted that at the time of acquisition it was 2-3 feet lower than the Phagwara-Hoshiarpur road. He admitted that there were Mahavir Spinning Mills and Pressure Cooker Factory on the road but they were at a distance of about 2 Kms.

18. The cumulative evidence and examination of the site plan

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would go on to show that the land had immense potentiality as it was situated on the busy Hoshiarpur-Phagwara Road. However, sale deed dated 09.11.1992 (Ex.A3) is towards Hoshiarpur town and not very far away, as has also come in the evidence discussed above. The Reference Court also has acknowledged the fact that the land has come within the municipal limits and the said fact has been duly proved by producing evidence in the form of the notification (Ex.A5). Therefore, this Court is of the opinion that the 90% cut as such which was put on the sale deed dated 09.11.1992 (Ex.A3) is not justified in any manner. Even in **'Chandrashekar (D) by LRs. and others Vs. Land Acquisition Officer and another' 2012 (1) SCC 390,** the Supreme Court has held that cut on all account cannot exceed 75%. The Apex Court has held that the cut beyond 75% as such is not permissible on all accounts and, therefore, the Reference Court is not justified by putting a 80% cut on the sale deeds, which rather translated into 90% and awarded a paltry amount of compensation to the landowners. Therefore, the methodology adopted by the Reference Court by placing reliance upon the judgment of this Court in **'Fateh Singh and others Vs. The State of Punjab through Land Acquisition Collector, Jind' 1998 (2) PLR 336** is not justified.

19. It is settled principle that the sale deeds closer in point of time of larger chunks of land and highest in value can be taken into account to assess the market value. Reliance can be placed upon the judgment of the Apex Court passed in '**Mehrawal Khewaji Trust (Regd.), Faridkot and others Vs. State of Punjab and others' 2012**

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AIR (SC) 2721. Relevant portion of the said judgment reads as under:-

> "15) It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation."

20. The sale deeds produced by the State were rightly discarded on the ground that they seem to be under-valued and were far below what had been awarded by the LAC and, thus, keeping in view the provisions of Section 25 of the Act that the market value cannot be fixed below the amount awarded by the LAC. The said sale instances would not show the correct market value as such and have rightly been held to be under-valued.

21. The claim for additional amount on account of severance has been rightly declined by noting that neither there was any plea nor the landowners had suffered on account of severance, as per the statements of the landowners. The revenue authorities had also not been examined to show any loss of severance. Even otherwise once the ring road as such

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had been constructed, therefore, the market value of the adjoining land would have gone up correspondingly and landowners would have rather benefitted from the acquisition and, therefore, the claim for severance as such has been rightly declined.

22. Admittedly, the land is also falling within the municipal limits as noticed above and, therefore, the said sale exemplar dated 09.11.1992 would be a relevant sale exemplar. The argument raised by the counsel for the landowners since the land was acquired for construction of ring road and there should be no development cut on the same, is not liable to be accepted. The cut is applied on account of smallness of the sale exemplar which is of 12 marlas in comparison of the land which was acquired vide notifications measuring 39 kanals 4 marlas and 38 kanals 8 marlas, respectively. Therefore, necessarily the cut would be there to assess the market value. In the opinion of this Court, a 60% cut as such would be appropriate on the said sale exemplar and the Reference Court was not justified in applying the cut of 80%.

23. Resultantly, the market value works out ₹6,40,000/- per acre. Accordingly, the appeals are allowed and the market value is assessed @ ₹6,40,000/- per acre alongwith all statutory benefits, for the land acquired as per the two notifications in question.

(G.S. SANDHAWALIA)
JUDGE

FEBRUARY 05, 2020
Naveen

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No