

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

RFA No.2663 of 2017
Date of decision: 13.3.2020

Mohinder Kaur **...Appellant**

Versus

Special Land Acquisition Collector-cum-Sub Divisional Magistrate,
Amritsar II, Amritsar and another **...Respondents**

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

Present: Mr. Rajinder Sharma, Advocate,
Mr. Balsher Singh, Advocate for
Mr. J.S.Thind, Advocate,
Mr. Gagandeep Singh, Advocate and
Mr. Raman Kumar, Advocate for
Mr. Naveen Batra, Advocate
for the landowners.

Mr. Namit Kumar, Advocate
Mr. Sudhir Nar, Advocate
Mr. Shivoy Dhir, Advocate,
Mr. Vivek Chauhan, Advocate and
Mr. Anil Chawla, Advocate
for Union of India.

G.S.SANDHAWALIA, J. (Oral)

This order shall dispose of RFA Nos.2663, 3153 to 3160, 3472 to 3476, 4559 of 2017 and 741 of 2018 filed by the landowners as common question of law and facts are involved in these appeals.

The present set of appeals filed by the land owners arise out of three awards dated 12.7.2016, 4.10.2016 and 5.12.2016 of the Reference Court, Amritsar. The Reference Court, Amritsar has not enhanced the market value for the land which was acquired vide

Section 4 notification dated 6.10.2010 falling in village Balschander and village Rajasansi. The same had been acquired for the public purpose for construction of accommodation for married Air Force Personnel. The Collector, Amritsar had granted the compensation for the land of village Balschander in three categories by applying the belting system i.e. for the land abutting the road upto depth of 1 acre @ Rs.2 Crore per acre, for the land situated beyond 2 to 3 acres from the road @ Rs. 1 Crore per acre and for the land which was situated beyond 3 acres from the main road @ Rs. 36 lakhs per acre.

Similarly for the land of village Rajasansi compensation had been fixed for two separate patches of land i.e. for the land bearing Khasra No.133//21, 134//1,2 @ Rs.36 lakhs per acre since the said patch abutted the area of village Balschander situated 3 acres away from main road. For the other patch of land falling in village Rajasansi measuring 26 Kanals 15 Marlas comprised in Khasra No.146/25 and 147//17, 18, 21, 22 and 23 the compensation had been fixed @ Rs.19,20,000/- per acre.

The denial of enhancement is primarily on the ground that there was lack of evidence regarding the market value or sale exemplars in support of the case of the land owners. Similarly the claim for uniform compensation which has now been vehemently argued to contend that it was uniform block as such, therefore, the same amount of compensation should have been granted was also rejected by the Reference Court particularly in the award dated

5.12.2016 passed in LAC No.11 of 2014-Gulzar Singh Vs. Union of India and others. It was noticed that the land of village Rajasansi was also situated at two different places and the land falling in Khasra No.133//21, 134/1, 2 was close to village Balschander which was 3 acres away from the road and therefore, the value had been granted at the rate of Rs.36 lakhs per acre corresponding to the adjoining village. For the land comprised in Khasra No.146/25, 147//17,18, 21, 22,23 which was situated 8 acres away from the other acquired land of village Rajasansi and there was no access to the road, the market value had been fixed at the rate of Rs.19,20,000/- per acre.

It is settled principle that onus to prove the market value of the land to press their claim for enhancement is always upon the land owners. Reliance can be placed upon the judgments of the Apex Court in **Basant Kumar and others vs. UOI and others**, 1996 (11) SCC542; **Gafar vs. Moradabad Development Authority**, 2007 (7) SCC 614; **Special Land Acquisition Officer vs. Karigowda and others**, 2010 (5) SCC 708. The relevant portion of the judgment in **Karigowda's case** reads as under:-

“21. We may notice that Part III provides for procedure and rights of the claimants to receive compensation for acquisition of their land and also states various legal remedies which are available to them under the scheme of the Act. Under [Section 18](#) of the Act, the Reference Court determines the quantum of compensation payable to the claimants. [Section 23](#) provides guidelines, which would be taken into

consideration by the court of competent jurisdiction while determining the compensation to be awarded for the acquired land. [Section 24](#) of the Act is a negative provision and states what should not be considered by the court while determining the compensation. In other words, [Sections 23](#) and [24](#) of the Act provide a complete scheme which can safely be termed as statutory guidelines and factors which are to be considered or not to be considered by the Court while determining the market value of the acquired land. These provisions provide a limitation within which the court has to exercise its judicial discretion while ensuring that the claimants get a fair market value of the acquired land with statutory and permissible benefits. Keeping in view the scheme of the Act and the interpretation which these provisions have received in the past, it is difficult even to comprehend that there is possibility of providing any straitjacket formula which can be treated as panacea to resolve all controversies uniformly, in relation to determination of the value of the acquired land. This essentially must depend upon the facts and circumstances of each case. It is settled principle of law that, the onus to prove entitlement to receive higher compensation is upon the claimants. In the case of [Basant Kumar and Ors. v. Union of India and Ors.](#) [(1996) 11 SCC 542], this Court held that the claimants are expected to lead cogent and proper evidence in support of their claim. Onus primarily is on the claimant, which they can discharge while placing and proving on record sale instances and/or such other evidences as they deem proper, keeping in mind the method of computation for awarding of compensation which they rely upon. In this very case, this Court stated the principles of awarding compensation and

placed the matter beyond ambiguity, while also capsulating the factors regulating the discretion of the Court while awarding the compensation. This principle was reiterated by this Court even in the case of [Gafar v. Moradabad Development Authority](#) [(2007) 7 SCC 614] and the Court held as under:

"As held by this Court in various decisions, the burden is on the claimants to establish that the amounts awarded to them by the Land Acquisition Officer are inadequate and that they are entitled to more. That burden had to be discharged by the claimants and only if the initial burden in that behalf was discharged, the burden shifted to the State to justify the award."

Thus, the onus being primarily upon the claimants, they are expected to lead evidence to revert the same, if they so desire. In other words, it cannot be said that there is no onus whatsoever upon the State in such reference proceedings. The Court cannot lose sight of the facts and clear position of documents, that obligation to pay fair compensation is on the State in its absolute terms. Every case has to be examined on its own facts and the Courts are expected to scrutinize the evidence led by the parties in such proceedings."

It is in such circumstances the Reference Court in the award dated 12.7.2016 had noticed that the petitioners have failed to conclude their evidence despite many opportunities having been afforded and then closed their evidence. The land owners had only produced photocopy of the sale deed of another village namely Heir as Mark 'F' to show that land measuring 2 Kanals 4 Marlas had been sold for Rs.2,20,00,000/-. They had produced an agreement to sell of the

land belonging to village Schander whereby land measuring 9 Kanals 4 Marlas had been agreed to be sold for Rs.6 Crores. The sale deed mark 'F' was rejected on the ground that it was post notification as much as almost 4-1/2 years since it was dated 24.4.2015 whereas the land was acquired on 6.10.2010. Keeping in view that the market value has to be assessed on the date of Section 4 notification and also the same being photocopy of the sale deed which could not be taken into consideration, the ground for rejection is valid.

The agreement of sale was also rejected on the ground that it had never fructified into a sale deed and therefore it could not be relied upon. It was also noticed that the village Schander was at a distance of 3 Kilometers from the GT road and the said village Schander was having all modern facilities. It is in such circumstances the benefit of enhancement was declined vide award dated 12.7.2016. Thus, it cannot be faulted in any manner.

It was for the land owners as such to have proved the market value of the revenue estate of the village and also the site plan to show that the sale deeds were of land of adjoining village and to produce evidence to show the distance as such from the land in question before the Reference Court could arrive at a conclusion that the market value of the land of adjoining village could have been taken into consideration. No such exercise was done for granting uniform compensation as now being asked for.

The Reference Court in its award dated 5.12.2016 has kept

in mind the Aks Shajra (Ex. P1) and location of the land as such as noticed above. Even the land of village Rajasansi is in two separate parcels at a distance of 8 acres to each other. The Reference Court had noticed that one parcel abuts the boundary wall of the International Airport and has kept into consideration the relevant principle of law laid down by the Apex Court in **Haridwar Development Authority, Haridwar Vs. Raghubir Singh etc. 2010 (2) RCR (Civil) 301**. It was held in the said case that the belting system has to be adopted in certain circumstances when one parcel of the land is towards highway and other parcel of the land being in the interior and did not have road access. It is in such circumstances the Reference Court has come to the conclusion that the land of village Balaschander which was abutting the main road was given higher compensation. The sale deed dated 11.11.2014 (Ex. A2) for 7 Marlas and 8 Sarsai of land had rightly been rejected on the ground that it was post notification as far as later than four years. It was also noticed that the market value worked out as Rs.65 lakhs per acre and even if reverse cut at the rate of 45% is applied, the market value would come to Rs. 35,75,000/- per acre and if another deduction on account of smallness was granted then the market value would come to Rs.30 lakhs per acre and therefore, the Reference Court had rightly not increased the compensation awarded by the Collector.

In Regular First Appeal No.741 of 2018 which is against the award dated 4.10.2016, the Reference Court noticed that no sale

instance of the relevant time had been produced and there was only statement of the petitioner and one Draftsman. Therefore, keeping in view the law laid down regarding the onus aspect as discussed above no case for interference is made out.

The Civil Misc. Application No.1797-CI of 2018 for leading additional evidence has also been filed in the said appeal whereby the applicant sought to produce the sale deed and map as Annexures A-1 and A-2. The sale deed dated 27.7.2007(Annexure A-1) executed in favour of M/s Bharat Hotels Ltd. pertains to village Heir. Even otherwise the certified copy of the sale deed is not placed on record and in view of Section 51-A of the Indian Evidence Act, 1872, photocopy of the sale deed is not liable to be considered. The land involved in the said sale deed is not of the relevant village nor any witness was examined to prove the distance of the land from the acquired land. Only Google site plan (Annexure A-2) has now been produced which does not depict the exact position of the land apart from showing the two revenue estates. In the absence of any relevant evidence as such, the averments made in the application under Order 41 Rule 27 of the CPC do not bring the application within the purview of the said provisions. Nothing has been mentioned in the said application why the said documents were not produced before the Reference Court. In such circumstances, the Civil Misc. Application for leading additional evidence can not be allowed to fill up the lacuna. Reliance can be placed upon **Satish Kumar Gupta Vs. State**

of Haryana 2017 AIR (SC) 1072. Accordingly, the Civil Misc. for leading additional evidence stands dismissed.

Keeping in view the above cumulative discussion, there is no ground made out for interference with the reasoned awards dated 12.7.2016, 4.10.2016 and 5.12.2016 passed by the Reference Court, Amritsar for purposes of enhancement of the compensation.

Resultantly, all the present appeals are dismissed.

March 13, 2020
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(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No