

FAO-964-1989(O&M)

Date of Decision: August 04, 2023

HARPAL KAUR AND ORS.Appellants

Versus

UOI AND ORS.Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Amit Jhanji, Sr. Advocate with
Ms. Sangita Dhanda, Advocate
and Ms. Eliza Gupta, Advocate for the appellants.
Mr. Anil Chawla, Senior Panel Counsel, UOI
for respondent No.1
Mr. Navneet Singh, Sr. DAG, Punjab.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to an award dated 02.11.1988 passed by Arbitrator-cum-Addl. District Judge, Gurdaspur, whereby market value in favour of appellants-landowners on account of acquisition of their land situated in Village Anandpur, Pathankot was determined at Rs. 225/- per marla along with solatium and other benefits.

2. Briefly stating, the land owned by the predecessor-in-interest of the appellants was acquired under the provisions of Requisitioning and Acquisition of Immovable Properties Act, 1952 (hereinafter referred to as 1952 Act) vide notification dated 07.05.1971 and the landowners were awarded compensation @ Rs.187.50/- per marla for Nehri and for gair mumkin land it was assessed at Rs.45.25/- per marla. Being dissatisfied, Reference under Section 8 of 1952 Act was invoked at the instance of landowners which came to be decided by the statutory arbitrator on 02.11.1988 and the compensation was determined at Rs.225/- per marla besides other benefits.

3. By way of present appeal, the abovementioned award/judgment dated 02.11.1988 passed by Arbitrator has been assailed with a prayer for further enhancement of compensation.

4. Learned Senior counsel for the appellants submits that land of one Rup Chand, falling in Khasra No.616 measuring 15 Kanals 11 marlas was also acquired along with the land owned by the predecessor-in-interest of the appellants vide same notification dated 07.05.1971 and in the case of said Rup Chand, the market value of the land was assessed @ Rs.1500/- per marla by the Arbitrator-cum-Additional District Judge, Gurdaspur vide judgment dated 18.08.1986 passed in arbitration No.70 of 1986 (Ex. A-2, Pg.11 of the records) and therefore the appellants were also entitled for same amount of compensation. In support, he refers to the statement made by AW1 Kirpal Singh Patwari, Halqa Anandpur (Pg 51 of the records) who deposed that the distance between the land acquired in the name of Rup Chand as compared to the acquired land owned by predecessor-in-interest of appellants was merely 920 Karams (approximately 1.5 kms) and thus the market value in the case of acquisition of land pertaining to the predecessor-in-interest of the appellants was required to be determined/assessed by keeping in view the award passed in favour of Rup Chand.

5. On the other hand, learned counsel representing respondent No.1 submits that market value in the case of land owned by the predecessor-in-interest of the appellants cannot be awarded by relying upon the award passed in case of Rup Chand as the acquired land owned by Rup Chand was situated within Pathankot City as compared to the land owned by predecessor-in-interest of the appellants which was far away.

While referring to the cross-examination of AW1 Mr.Kirpal Singh Patwari, Halqa Anandpur, learned counsel for respondent No.1 further submits that the land of Rup Chand was situated within heart of the city near Bazar and thus, both the lands could not be equated with each other for the purpose of assessment of market value. Learned counsel also places reliance upon judgment passed in Civil Appeal No. 9148 decided on 26.10.2010 titled as **“Dilawar Singh and Ors. Vs. Union of India and Ors.”** to submit that regarding the acquisition of land situated around Pathankot in the corresponding period, the market value was assessed at Rs.350/- per marla and at best, the appellants were entitled for award of same amount of compensation. He again submits that the impugned award dated 02.11.1988 also came to be challenged at the instance of respondent No.1 vide FAO-920-1989 which was dismissed on 24.01.2011, thereby upholding the same and thus no enhancement could be awarded in favour of landowners.

6. I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made by learned counsel for the appellant.

7. A perusal of notification dated 26.04.1971, was published in Punjab Government Gazette on 07.05.1971 one can trace out that the land owned by Rup Chand, falling in Khasra No.616 measuring 15 kanals 11 marlas also formed part of the same notification whereby the land of the predecessor-in-interest of the appellants was acquired. As per the statement of Kirpal Singh Patwari, Halqa Anandpur (AW-1) it was proved on record that the distance between the land owned by Rup Chand and the land owned by the predecessor-in-interest of appellants was

approximately 920 Karams (1.5 kms) though, he admitted that the land owned by Rup Chand, at the time of its acquisition was situated within the municipal limits.

8. While passing the impugned award, learned Arbitrator though noticed the award passed in case of Rup Chand, however, discarded the same on account of distance of 1.5 kms between the two parcels of the acquired land whereas, once the land owned by Rup Chand which was acquired under the same notification and was assessed at Rs.1500/- per marla, it could have been relied upon as a substantive piece of evidence for the purpose of making assessment of market value of the land in the present case by applying an appropriate cut considering the distance between the two parcels of lands.

Moreover, from the material available on record it is evident that both parcels of land owned by the predecessor-in-interest of appellants as well as that of Rup Chand were having similar advantages being part of Municipal limits of Pathankot, no doubt, the land owned by Rup Chand was having somewhat better commercial value being situated a bit nearer to the town as compared to the land owned by the predecessor-in-interest of the appellants which happened to be towards the outer end but yet both parcels were acquired and utilized for the same purpose.

Thus in view of the above discussion, the award passed in favour of Rup Chand being a substantive piece of evidence regarding the market value of the nearby area forming part of the same notification could have been relied upon while determining the market value in favour of

appellants by applying appropriate deduction of on account of locational distinction; appropriate deduction which in the present facts can be made @60% on the amount assessed in favour of Rup Chand and the appellants are thus held entitled for market value @ Rs.600/- per marla besides other benefits.

9. At this stage, it may be pointed out here that the judgment passed in **Dilawar's case (supra)** may not be applicable to the facts and circumstances of the present case as in the said case, the Hon'ble Apex Court was dealing with the lands falling in different revenue estates situated on the outskirts of Pathankot, whereas the land acquired in the present case admittedly falls within the municipal limits of Pathankot. Besides it, the argument raised at the instance of respondent No.1 as regards the upholding of the same award dated 02.11.1988 by this Court in FAO-920-1989, is wholly misplaced as is apparent from the order dated 29.01.2011 passed therein where the only issue raised by the respondents was regarding award of interest and solatium to the landowners and the assessment of market value of the land was never in question.

10. Therefore, in view of the discussions made hereinabove, the present appeal is partly allowed and the award dated 02.11.1988 passed by Arbitrator-cum-Addl. District Judge Gurdaspur is modified to the extent that the appellants shall be entitled for grant of compensation @ Rs.600/- per marla besides other statutory benefits granted under the award.

11. Pending applications, if any, shall also stand disposed of.

04.08.2023
tejwinder

(**HARKESH MANUJA**)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>

