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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No.5150-CI of 2023 in/and
RFA No.4473 of 1998 (O&M)
Date of Decision: 21.11.2023

SHRI AVTAR SINGHAppellant
Vs
THE STATE OF PUNJAB AND ORS.Respondents

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. R.S. Manhas, Advocate
for the applicant-appellant.

Mr. Athar Ahmed, DAG, Punjab.

HARKESH MANUJA, J. (Oral)

CM No.5150-CI of 2023

Prayer made in this application under Section 151 CPC is for listing the main appeal for actual date. The main appeal has already been admitted vide order dated 15.01.1999.

Notice in the application.

On asking of the Court, Mr. Athar Ahmed, DAG, Punjab, accepts notice on behalf the respondents.

With the concurrence of learned counsel for the parties, the present application is allowed. Main appeal is taken up today.

RFA No.4473 of 1998 (O&M)

1. Present appeal has been filed by the appellant to modify the award dated 05.08.1998 passed by the Additional District Judge, Gurdaspur (hereinafter to be referred as "Reference Court") seeking further enhancement of compensation amount.

2. Briefly stating, the land owned by the appellant, situated in

Village Haroor, Tehsil Pathankot, District Gurdaspur (now Pathankot) was sought to be acquired vide notification dated 01.02.1993 issued under Section 4 of Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act') followed by notification dated 09.09.1993, issued under Section 6 thereof. At the time of acquisition of land, certain fruit bearing trees as well as non-fruit bearing trees existed over the same and a separate award No.10 dated 21.12.1995 was passed by the Land Acquisition Collector in exercise of its power under Section 11 of the 1894 Act, in this regard.

3. Being dissatisfied, the appellant-landowner filed reference seeking enhancement of compensation by invoking Section 18 of the 1894 Act. The aforementioned reference petition came to be dismissed vide judgment dated 05.08.1998 passed by the Reference Court-cum-Addl. District Judge, Gurdaspur.

4. By way of present appeal, impugning the aforementioned award dated 05.08.1998, learned counsel for the appellant submits that the assessment of market value for the fruit bearing as well as non-fruit bearing trees was made by the Land Acquisition Collector having relied upon formula dated 15.05.1985 prepared by Dr. G.S. Nijjer, Director of Horticulture Department, Government of Punjab, Chandigarh. Learned counsel further submits that the acquisition proceedings in the present case were initiated vide notification dated 01.02.1993 and thus the assessment of compensation should have been carried out by giving appropriate increase from May 1985 to February 1993, by relying upon the price index prevailing at the relevant point in time. In support, learned counsel for the

appellant places reliance upon decision dated 02.08.2012 passed in RFA No.3478 of 1992 in case of “*Kartar Singh and Karnail Singh sons of Shri Kesar Singh son of Shri Kesar Singh successor in interest of late Shri Kesar, both residents of Village Hardosaran, Tehsil Pathankot Vs. Punjab State through Collector Gurdaspur and Others*”.

5. On the other hand, learned State counsel submits that the assessment of market value as regards the trees was carried out by the Land Acquisition Collector having relied upon the formula dated 15.05.1985 and the time gap between the date of formula and the notification was not much, thus the appellant was not entitled for any appreciation.

6. I have heard learned counsel for the parties and gone through the paperbook. I find substance in the submissions made on behalf of the appellant.

7. Acquisition in the present case was carried out vide notification dated 01.02.1993 issued under Section 4 of the 1894 Act and the assessment of compensation was made on the basis of formula dated 15.05.1985 whereas, undisputedly between 1985-1994 there was sufficient appreciation in the price index which went from 127 points to 254 points thereby making increase of 127 per cent over the price assessed by Dr. G.S. Nijjer in its formula dated 15.05.1985. The aforementioned formula of increase based on the application of price index, given in favour of landowners was approved by this Court vide decision dated 02.08.2012 passed in RFA No.3478 of 1992 in case of *Kartar Singh* (Supra). Relevant para thereof is reproduced hereunder:-

“The appeal is for enhancement of compensation for value of the trees which were lost to the owner by the acquisition of land. The grievance expressed is that the Reference Court had accepted the valuation of the trees made as per the formula called 'Dr. Nijjar's formula' for assessing the trees for the year 1985. The learned counsel for the appellants would argue that in Punjab Small Industries and Export Corporation Limited Versus Zail Singh in RFA No.1907 of 2002, decided on 28.09.2010, this Court had factored the increase for assessment of value of trees for the subsequent years by taking note of the increase in price index. In this case, the learned counsel argues that as against the valuation made as per Dr. Nijjar's formula of the year 1985, the price index had gone from 127 points to 150 points in 1987. This, according to him, would mean an increase of 23% over the price assessed by the application of Dr. Nijjar's formula.

2. I adopt the valuation and would provide for 23% increase on the valuation made as per the application of Dr. Nijjar's formula.....”

8. This Court, even in case of **Union of India and another versus Pritam Singh, 2004(4) RCR (Civil) 5**, under similar facts and circumstances, upheld the increase based on difference of the wholesale price index.

9. Accordingly, in view of the discussion made hereinabove, the impugned award dated 05.08.1998, passed by the Reference Court is set aside and the present appeal is allowed to the extent that based on the appreciation of price index between 1985 to 1993, the appellant-landowner shall be entitled for increase of 127% over and above the amount assessed

by the Land Acquisition Collector vide its award dated 21.12.1995 towards compensation for the fruit bearing as well as non-fruit bearing trees besides all other statutory benefits and interests provided as admissible under the 1894 Act.

November 21, 2023

(HARKESH MANUJA)

JUDGE

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Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No