

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

264

CR-6904-2019 (O&M)

Date of Decision: 06.11.2023

Executive Engineer, National Highways, (PWD/B & R), Nabha Road,
Patiala.

...Petitioner

Versus

Mukhtiar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. K.S. Kang, Advocate for the petitioner.

Mr. Shailendra Jain, Senior Advocate with
Ms. Saachi Mahajan, Advocate for respondent Nos.1 to 8.

Mr. Navneet Singh Kaliraman, Sr. DAG, Punjab.
(for respondent No.9).

HARKESH MANUJA, J. (oral)

1. By way of the present revision, challenge has been made to an order dated 14.10.2019 (Annexure P-11) passed by the Executing Court-cum-Additional District Judge, Patiala, in Execution Application No.838 of 2017 titled as 'Mukhtiar Singh Vs. State of Punjab and another', whereby the petitioner-judgment debtor has been directed to release the benefit of severance charges in favour of the respondent-landowners, in terms of award dated 30.03.2012, passed by the Reference Court as well as the decision dated 10.02.2016 passed by this

Court in Regular First Appeal No.2741 of 2012 and other connected cases, titled as 'Gurpreet Singh Vs. State of Punjab and others'.

2. Briefly stating, 4 *Bigha* and 8 *Biswa* land jointly owned by the respondent-landowners, situated in village Chaura, District Patiala, came to be acquired vide Notifications dated 09.04.2001 and 06.04.2002 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), followed by an award dated 11.11.2002 whereby the market value of the land was assessed as Rs.5 lakh per acre. Being aggrieved thereof, the respondent-landowners invoked reference under Section 18 of 1894 Act which came to be decided vide judgment dated 30.03.2012 and the market value of the land was enhanced from Rs.5 lakh to Rs.24,20,000/- per acre besides award of severance charges/benefits, to the extent of 5 per cent for the left over land.

3. Being dissatisfied with the award passed by the Reference Court, both the sides filed their Regular First Appeals which came to be decided by this Court on 10.02.2016 whereby the market value of the land was enhanced to Rs.1400/- per square yard i.e. Rs.67,76,000/- per acre besides enhancement of severance charges to the extent of 30 per cent from 5 per cent of the market value. The land owners challenged the judgment dated 10.02.2016 before the Hon'ble Apex Court, however, those appeals came to be dismissed vide order dated 23.01.2017. Based upon the aforesaid judgment dated 10.02.2016, the respondent-landowners filed Execution Applications wherein a

dispute has been raised at the instance of petitioner, as regards the payment/ disbursement of benefits towards severance charges in favour of respondent-landowners. The Executing Court vide its order dated 14.10.2019 directed the petitioner to release the benefits towards severance charges to the respondent-landowners.

4. Impugning the order dated 14.10.2019 passed by the Executing Court, learned counsel for the petitioner submits that the Executing Court did not permit the petitioner to furnish fresh calculations of severance benefits of the acquired land and relied upon the previous calculations furnished by it, those were made by considering the land owned by the respondent-landowners which was left out of acquisition, rather than, the acquired. In this regard, he submits that the amount of severance charges/benefits has to be calculated towards the actual loss suffered by the landowners on account of division of their land and it cannot be said by any stretch of imagination for the remaining land. He further submits that the Executing Court failed to answer the said issue and went beyond the decree/award passed in favour of respondent-landowners.

5. On the other hand, learned Senior Counsel representing the respondent-landowners relies upon third and fourth Clauses of Section 23(1) of 1894 Act to submit that the damages against the severance charges have to be calculated in relation to the remaining land which was left out from acquisition. He also relies upon the findings recorded by the Reference Court in its award dated 30.03.2012

wherein a detailed discussion has been made in Para Nos.7, 11 and 12 in support of his submission that the benefit of severance charges has been specifically awarded in favour of respondent-landowners against their remaining land and not towards their acquired portion of land. He also submits that if at all, the petitioner-department or its predecessor was aggrieved of any such finding recorded by the Reference Court, the same was required to be impugned by way of statutory appeals which though were filed but no such plea was ever raised therein.

6. Before examining the issue in hand, it may be relevant to reproduce Section 23 of 1894 Act hereunder:-

“23. Matters to be considered on determining compensation. –

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-

***first**, the market-value of the land at the date of the publication of the [notification under section 4, sub-section (1)];*

***secondly**, the damage sustained by the person interested, by reason of the taking of any standing crops trees which may be on the land at the time of the Collector's taking possession thereof;*

***thirdly**, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of serving such land from his other land;*

***fourthly**, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition*

injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

***fifthly**, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change, and*

***sixthly**, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.*

***[(1A)** In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.*

***Explanation.** - In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.]*

***(2)** In addition to the market value of the land as above provided, the Court shall in every case award a sum of [thirty per centum] on such market value, in consideration of the compulsory nature of the acquisition.”*

7. A bare perusal of third and fourth Clauses makes it apparent that the benefit of severance charges as contemplated under third Clause draws strength from the fourth Clause which pertains to grant of compensation for the portion of land owned by the landowners

which stands injuriously affected from acquisition. Otherwise also, the purpose of Legislature by specifying the matters to be considered for determining compensation is intended towards providing benefit to the landowners and thus all the Clauses made under Section 23(1) of 1894 Act are to be read conjunctively and not distinctively. A conjoint reading of the third and the fourth Clauses clearly show that the intention of Legislature was to provide benefit to the landowners against injury or loss to his 'other land' which got injuriously affected on account of acquisition and therefore, the compensation has to be calculated by taking into consideration the land left out of acquisition and not against the acquired portion of land.

8. Considering the facts and circumstances of the present case and the evidence available on record, the Reference Court recorded a positive finding that the landowners whose left out land on either side of the bypass-highway was less than two acres, shall face difficulty in cultivating the same on both sides and thus would be put to a disadvantageous position and therefore shall be entitled for benefit of severance @ 5 per cent of market value of the acquired land. Further, a positive finding was also recorded by the Reference Court in favour of respondent-landowners that they were entitled for 5 per cent of the market value of the acquired land as compensation for severance of their lands, which was left out on either side of the bypass being less than 2 acres. It is more than clear that the award of 5 per cent of market value of the acquired land was adopted as a method of calculating the

benefit of severance and it always related to the land left out of acquisition being situated on either side of the bypass-highway but less than 2 acres. Certain relevant observations made by the Reference Court in Paragraph No.14 of its award are reproduced hereunder:-

14. xxxx

The petitioners namely Nohar Chand, Lekh Ram, Mukhtiar Singh, Naurang Singh & Others, Gurpreet Singh, Balbir Singh, Nohar chand, Gural Singh s/o Mela Singh, Gurnam Singh s/o Surain Singh, Kulwinder Singh and Salwinder Singh, Baldev Singh are held entitled to five percent of the market value of the land so acquired as compensation for severance as the land of these petitioners which has been left on either side of the bypass is less than two acres.”

These findings of facts were neither disturbed by this Court nor even by the Hon’ble Apex Court, and thus became final *inter se* between the parties.

9. Moreover, it is discernible that a specific mention was made even by this Court while passing its judgment dated 10.02.2016, referring to the unacquired land while enhancing the benefit against severance charges to the extent of 30 per cent from 5 per cent as awarded by the Reference Court. Relevant portion from the decision dated 10.02.2016 passed by this Court is reproduced hereunder:-

“xxxx

Coming to the severance charges, the learned reference Court has granted only 5% in this regard, which can be said to be on very lower side. Owing to the peculiar fact situation including the location and potentiality of the acquired land, this Court is of the view that it would be just and reasonable to

*grant 30% of the market value to the land owners in these cases on account of severance charges. **In this regard, it has gone undisputed on record that the unacquired land has been left totally useless, because it got bifurcated due to acquisition.** Granting anything less than 30% on account of severance charges would be totally inadequate and would not meet the ends of justice. Ordered accordingly.*

xxxx ”

10. Even further, there is no substance in the submissions made on behalf of the petitioner that the award of severance charges towards unacquired land would result in undue enrichment of the landowners. Rather, the Reference Court as well as this Court while awarding the benefit of severance charges were deeply conscious of the fact that the landowners cannot be granted any undue advantage and therefore, restricted and regulated the said benefit for the landowners having left with less than two acres of land on either side of the bypass. In any case, the Executing Court as per settled cannons of law has no jurisdiction at all to interfere with the benefits awarded by the Reference Court or this Court having even been upheld by the Hon'ble Apex Court without there being any interference as regards the restriction-regulation of benefit against severance of land, except the percentage.

11. Equally important, upon a perusal of award passed by the Reference Court as well as judgment passed by this Court, it is more than clear that the Executing Court was fully conscious in its mind and rightly so the benefit of severance compensation was awarded in favour of landowners qua the unacquired land. As such there was no reason for

the Executing Court to call upon the petitioner to submit fresh B-statement and thus, in any manner the same did not violate any of the principle of natural justice besides there being no prejudice caused to the petitioner, as the first calculation was rightly done by the petitioner, on correct understanding of the award passed by the Reference Court.

12. In view of the detailed discussion made herein above, the present revision petition is **dismissed**.

13. Pending application(s), if any, shall also stand(s) disposed of.

06.11.2023 (HARKESH MANUJA)
Mangal Singh JUDGE

Whether Speaking / Reasoned :	Yes	No
Whether Reportable :	Yes	No