

2024:PHHC:083144



211 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RFA-1985-1998

Decided on:-03.07.2024

Union of India and others

....Appellants..

vs.

Bir Singh and others

....Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. D.C. Mittal, Advocate
for the appellants.

HARKESH MANUJA J. (Oral)

1. By way of present appeal, challenge has been laid to an award dated 04.02.1998 passed by the Reference Court-cum-Additional District Judge, Gurdaspur, whereby the reference petition filed under Section 18 of the Land Acquisition Act, 1894 (for brevity, "1894 Act") at the instance of respondents-landowners was partly allowed to the following effect:-

"As a re-suit of above discussion, I accept the application and award compensation to the applicants at the rate of Rs. 900/- per marla in respect of Nahri/chahi and at the rate of Rs. 700/- per marla in respect of other kinds of land. The applicants shall also entitled to 12% per annum interest on the increase of the said market value for the period commencing from date of award of the collector or the date of taking possession which ever is earlier u/s 23(1-4) of LA Act. The applicants shall also be entitled to solatium at the rate of 30% and interest at the rate of 9% per annum on the enhanced amount for first one year from the date of

possession and at the rate of 15% per annum for the subsequent period till realisation. The amount so awarded and received by the applicants shall be reduced to the extent the collector has awarded the compensation. The respondents are directed to make the payment within four months from to-day. Counsel fee is assessed at Rs. 300/-. Memo of costs be prepared. Pile be completed and consigned.”

2. In the present case, land belonging to respondents-landowners situated in the revenue estate of Naushera Nal Bandal, Tehsil Pathankot, came to be acquired vide notification dated 15.07.1987 under Section 4 of the 1894 Act. A composite award relating to 08 different villages including that relating to the acquired land belonging to the respondents was passed by the Land Acquisition Collector on 31.07.1989, whereby compensation was assessed in the following manner”-

<i>“Sr. No</i>	<i>Kind of land</i>	<i>Amount awarded per acre</i>
<i>1</i>	<i>Chahi</i>	<i>Rs.35,000/-</i>
<i>2</i>	<i>Barani I & II</i>	<i>Rs.25,000/-</i>
<i>3</i>	<i>Banjar Jadid</i>	<i>Rs.12,500/-</i>
<i>4</i>	<i>Banjar Qadim</i>	<i>Rs.12,500/-</i>
<i>5</i>	<i>Gair Mumkin</i>	<i>Rs.1,000/-</i>
<i>6</i>	<i>Gair Mumkin Abadi</i>	<i>Rs.25,000/-”</i>

3. Aggrieved thereof, the respondents-landowners invoked reference under Section 18 of the 1894 Act, which came to be adjudicated upon by the Additional District Judge-cum-Reference Court, Gurdaspur, vide its award dated 04.02.1988, while granting partial enhancement in favour of landowners as detailed in the preceding paragraphs. Hence, the present appeal.

4. I have heard learned counsel for the appellants-UOI and gone

through the paper-book.

5. In the present case, record shows that few other appeals relating to same acquisition proceedings and the same notification dated 15.07.1987, issued under Section 4 of the 1894 Act, came up for final adjudication before this Court and were decided vide judgment dated 04.04.2016, whereby the market value at the uniform rate of Rs.2453/- per marla was assessed in favour of landowners as on the date of notification issued under Section 4 of the 1894 Act. The relevant extract from the decision dated 04.04.2016 passed in RFA-2037-2000, titled as ***“Union of India and another vs. Pardan Singh and others”*** is reproduced hereunder:-

“Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the appeals filed by the Union of India are wholly misconceived, bereft of merit and without any substance, thus, these must fail and the same are hereby dismissed.

However, the appeals as well as cross objections filed by the land owners deserve to be partly accepted and the same are allowed to the extent indicated above. The land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.2453/- per marla from the date of notification under Section 4 of the Act. Besides this, the land owners shall also be entitled to all the statutory benefits available to them under the relevant provisions of the Act.

Resultantly, with the above-said observations made, all the above-said appeals and cross-objections stand disposed of, however, with no order as to costs.”

6. In view of the enhancement/assessment determined by this Court in favour of land owners pertaining to the same acquisition

proceedings, the present appeal being devoid of merits is, thus, dismissed.

7. At this stage, it may be relevant to mention here that though the respondents-landowners in the present case have not approached this Court by way of filing any appeal or cross-objections for seeking further enhancement of compensation, however, in the wake of enhancement been awarded by this Court in favour of similarly situated landowners, in relation to the same acquisition proceedings, it would be a travesty of justice, in case, the powers under Order 41 Rule 33 CPC are not invoked and similar enhancement is not awarded in favour of the respondents-landowners being exactly similarly placed. Reliance in this regard can be placed upon the judgment rendered by the Hon'ble Apex Court in ***"Pralhad and others vs. State of Maharashtra and another"***, reported as ***2010(3) Apex Court Judgments (SC) 653*** and relevant paragraphs thereof are reproduced hereunder:-

"20. In Vanarsi v. Ramphal, AIR 2004 Supreme Court 1989, this Court construing the provisions of Order 41 Rule 33 of Civil Procedure Code held that this provision confers powers of the widest amplitude on the appellate court so as to do complete justice between the parties. This Court further held that such power is unfettered by considerations as to what is the subject matter of appeal or who has filed the appeal or whether the appeal is being dismissed, allowed or disposed of while modifying the judgments appealed against. The learned Judges held that one of the objects in conferring such power is to avoid inconsistency, inequity and inequality in granting reliefs and the overriding consideration is achieving the ends of justice. The learned Judges also held that the power can be exercised subject to three limitations: firstly, this power cannot be exercised to the prejudice of a person who is not a party before the Court; secondly, this power cannot be exercised in favour of a claim which has been

given up or lost; and thirdly, the power cannot be exercised when such part of the decree which has been permitted to become final by a party is reversed to the advantage of that party. (See para 15 at pg. 1997). It has also been held by this Court in Samundra Devi and others v. Narendra Kaur and others, 2008(4) RCR (Civil) 395 : 2008(5) R.A.J. 441 : 2009(1) AICJ 433 : (2008) 9 SCC 100 (para 21) that this power under Order 41, Rule 33 of Civil Procedure Code cannot be exercised ignoring a legal interdict.

21. *In the instant case, the right of the landowner to receive the benefit under section 23(1A) of the Principal Act is legally permissible in view of the majority decision in Paripoornan (supra). Therefore, the law declared by this Court in Paripoornan (supra) is binding on the High Court under Article 141 of the Constitution and High Court is bound to follow the same, especially when an application has been made by the landowner under Order 41 Rule 33 of Civil Procedure Code.*

22. *In view of the aforesaid interpretation given to Order 41 Rule 33 of Civil Procedure Code by this Court, we are of the opinion that the High Court denied the relief to the appellants to which they are entitled in view of the Constitution Bench decision in Paripoornan (supra), by taking a rather restricted and narrow view of the scope of Order 41 Rule 33 of Civil Procedure Code and also on a misconstruction of the ratio in Paripoornan (supra). ”*

Furthermore, the aforementioned decision was followed by Hon’ble Division Bench of Madras High Court in case of **“P.R. Srinivasan vs. The Special Tahsildar, Adi-Dravidar Welfare Department, Tirupattur”** reported as **2013(20) RCR (Civil) 624**. Relevant paragraph thereof is reproduced hereunder:-

“14. The ratio laid down in the above decision squarely applies to the case on hand. Once the Court has taken the view that claimant is entitled to enhanced compensation, he should not

be denied the same on the mere technical grounds of non-filing of the appeal by the claimant. Notwithstanding that the claimant has not preferred any appeal, to award fair and adequate compensation to the claimant, this review application has to be allowed.”

8. In such circumstances, the present appeal is disposed of while awarding similar compensation i.e. @ Rs.2453/- per marla in favour of respondents-landowners while relying upon decision dated 04.04.2016 passed in RFA-2037-2000.

03.07.2024
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No