

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

158

CR No.3039 of 2023 (O&M)

DATE OF DECISION : 5th FEBRUARY, 2024

State of Haryana through its LAO PWD B&R Hisar & another
.... Petitioners
Versus

Mai Ram
.... Respondent

158-A

CR No.3041 of 2023 (O&M)

State of Haryana through its LAO PWD B&R Hisar & another
.... Petitioners
Versus

Mai Ram
.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Shivendra Swaroop, DAG, Haryana
for the petitioner with
Mr. Dharamvir Singh, Tehsildar, LAO, Jind.

* * * *

RAJBIR SEHRAWAT, J. (Oral)

1. This shall dispose of the above-said two Civil Revision petitions because similar facts and legal propositions are involved in both of them.
2. The present petition, i.e., CR No.3039 of 2023 has been filed by the petitioners-State under Article 227 of the Constitution of India. The grievance of the petitioners in this petition is that although the compensation for grapes plants etc. was granted by the Collector and was not enhanced any further; either by the reference court or by any one of the appellate courts, yet in execution the claimants had raised a claim for

enhanced amount even on that count. The Executing Court has wrongly allowed the same by taking shelter under the orders of the appellate court qua enhancement of the compensation by 25% of the market value. In the second petition, i.e., CR No.3041 of 2023 the claim of the petitioners-State is that although the respondent-land owner, was granted enhanced amount of 25% of the compensation on account of severance and bifurcation of his holding, however, since only one khasra number was subjected to severance, therefore, the enhancement of 25% has to be restricted to the compensation payable for one khasra number only. However, the Executing Court has calculated and awarded the amount by enhancing it by 25% of the total compensation.

3. Arguing the case learned, the counsel for the petitioners-State has submitted that since the bifurcation was only of one khasra number, therefore, the compensation could not have been allowed by the Executing Court by enhancing the same by percentage of the entire amount of compensation payable to the respondent. Regarding the compensation for the grapes plant etc. as well, the counsel for the petitioners-State has submitted that since none of the courts below had granted any enhanced compensation on that count, therefore, the land owner cannot claim anything more on that aspect; other than what was awarded by the Collector. The counsel has further submitted that the original amount awarded by the Collector already stands paid. The counsel for the State, on instructions from the official present in the court, has further submitted that other compensation, as awarded by the reference court, also stands already paid. Still further the counsel has submitted that the amount of enhancement of 25%, as awarded by the

appellate Courts, has also been paid in the year 2019, though qua only one khasra number. Therefore, the respondent-land owner is not entitled to anything else. Hence, the Executing Court has gone wrong in granting the amounts claimed by the petitioner.

4. Before proceeding further, it is apposite to have reference of the appropriate provision as contained in Section 23 of the Land Acquisition Act, 1984, which is reproduced as follows:

23. Matters to be considered in 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)] [Substituted by Act 38 of 1923, Section 7, for " declaration relating thereto under section 6" .];secondly , the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collectors taking possession thereof; **thirdly** , the damage (if any) sustained by the person interested, at the time of the Collectors taking possession of the land, by reason of severing such land from his other land; **fourthly** , the damage (if any) sustained by the person interested, at the time of the Collectors 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 , if, 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 Collectors taking possession of the land.[(1-A) 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.] [Inserted by Act 68 of 1984, Section 15 (w.e.f. 24.9.1984).]

(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] [Substituted by Act 68 of 1984, Section 15, for " fifteen per centum" (w.e.f. 24.9.1984).] on such market value, in consideration of compulsory nature of the acquisition.

5. A perusal of the above said provision, in itself, makes it clear that its clause ‘*thirdly*’ has used the expression ‘such land’ and ‘his other land’ in the Section; signifying that the words ‘such land’ are related to the khasra numbers which are subject matter of the acquisition and has resulted in bifurcation of holding and ‘his other land’ is, obviously, used to denote the other land holding of such land owner at

the place where land of the land owner has been subjected to acquisition. Therefore, as per the Act itself the land owner is entitled to enhancement of the entire amount of compensation on account of bifurcation of his holdings. If still any doubt could be entertained the clause '*fourthly*' has cleared the air in its entirety. This clause makes a land owner entitled to compensation, and thus the enhancement, even if his other property is injuriously affected by acquisition of his some of the land or the property. Therefore, there is no rationale or justified reason to restrict the grant of compensation or enhancement of the same, on account of severance of holding, only to one khasra number which has suffered actual bifurcation. Such compensation has to have reference to the prejudice suffered by the entire holding of the land owner at the place where some of his land is acquired resulting into bifurcation of his entire holding at that place.

6. Another aspect, which justified the grant of compensation on account of bifurcation qua the entire holding at particular place, is that during the consolidations a land owner is provided; water course, the passage and other existing easementary rights etc. for one particular holding of such land owner at a particular place. Once there is a bifurcation, the entire holding of such a land owner is bound to suffer. There can be a case where the passage was through the khasra numbers which stand acquired and that is closed because of the acquisition, therefore, the land owner has to manage the passage throughout his entire holding to adjust with the newly arising loss of passage. Likewise, the canal irrigation water for agricultural land is provided in slots of time of particular duration for holding at one place. Because of such bifurcation, some of the land of the land owner may even loose access to canal water

and even turn into total barren land or its productivity may result in a significant drop on account of consequent deficiency in the irrigation water from the public canal. Even if such land owner is to create means of irrigation for such bifurcated land, he will have to incur exponentially substantial expenses for creating the water facility for irrigation. It is in this perspective that the Act stipulates and provides that it is not only the one khasra number which is subjected to the acquisition and which is actually bifurcated, rather, the entire holding of a person at that place would be affected and hence the compensation has to be suitably enhanced as a percentage of the total amount of compensation for the lands under acquisition, including the lands other than the khasra numbers which are actually bifurcated.

7. So far as the petition relating to the enhancement of compensation, on account of grapes plants and creepers, is concerned, even the counsel for the petitioners-State has not been able to point out that any separate enhanced amount has been granted to the land owners on account of the grapes plants or any other creepers or plants which were existing on the acquired land. Therefore, it is obvious that no such enhancement has been granted by the court, only for the grapes plants and creepers. The order passed qua the claim of the grapes plants and creepers is verbatim the same as is the order passed qua award of enhancement of compensation as percentage of total compensation on account of bifurcation of the holding of the land owner. Therefore, it is cumulative enhancement in compensation as percentage of already awarded compensation. Therefore, the petition filed by the petitioners-State is totally misconceived.

8. Accordingly, in view the provisions as contained in the Act and the rationale for grant of enhanced compensation as percentage of the entire compensation payable to the land owner on account of bifurcation of his holding, this court does not find any illegality, impropriety or perversity with the order passed by the executing court. Hence, both the present petitions are dismissed.

9. Keeping in view the fact that even the order passed by the Supreme Court, enhancing the compensation by 25% was passed way back in the year 2015, and the petitioners-State are still making land owner struggle for getting even that 25%, which has not been paid so far, the petitioners-State deserves to be put to exemplary costs for wasting time of various courts, including the High Court. Therefore, the petitioners are burdened with costs of ₹1,00,000/-, in each of the present petition, which shall be paid to the land-owner. The Executing Court shall recover the costs as well, and shall ensure payment of the same to the land owner.

10. All the pending application are also disposed of accordingly.

5th February, 2024
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

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