**(2019) 12 P&H CK 0125**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Regular First Appeal No. 6744 Of 2014 (O & M)

Gurajaib Singh And Others APPELLANT

Vs

State Of Punjab And Others RESPONDENT

**Date of Decision :** 13-12-2019

**Acts Referred:**

Land Acquisition Act, 1894 — Section 4, 6, 18, 23, 54

**Citation :** (2019) 12 P&H CK 0125

**Hon'ble Judges :** G.S.Sandhawalia, J

**Bench :** Single Bench

**Advocate :** I.S. Brar, Surinder Garg, Sanjeev Kumar Arora, N.S. Chahal

**Final Decision :** Dismissed

## Judgement

G.S.Sandhawalia, J

This judgment shall dispose of 49 appeals i.e. RFA Nos. 6739 to 6751 of 2014, 10487, 10489, 10490, 10492 to 10498 of 2014, 10510 to 10513 of 2014, 5485 of 2014, 7020 to 7024 of 2014, 7305, 7306, 7651, 7652, 8120 to 8126 of 2014, 8999 of 2014, 9539, 9540 of 2014 and 643 and 644 of 2015, filed both by the land owners and the State as common questions of facts and law are involved in all the appeals. Reference is being made to the facts of RFA No. 6744 of 2014, Gurajaib Singh and others vs. State of Punjab and others.

The present appeal has been filed under Section 54 of the Land Acquisition Act, 1894 against the award of the Reference Court, Faridkot dated 15.01.2014 wherein, the Reference Court has enhanced the market value to Rs.6,67,000/- per acre on a uniform basis on the ground that the rates of the Government are fixed from Rs.5,00,000/- to 15,00,000/- per acre as per Mark A-1 and Mark A-3. The average having come to Rs.10,00,000/-, a 1/3rd cut has been put as per the settled principle to fix the market value as the land acquired measured 41.57 acres and enhance it from Rs.5,25,000/- for the 11 villages whereas for village Golewala, Rs.5,75,000/- per acre has been awarded by the Land Acquisition

Collector vide award dated 09.10.2009.

On an earlier occasion, a Co-ordinate Bench of this Court on 27.02.2016, in RFA No. 6744 of 2014, Gurajaib Singh and others vs. State of Punjab and others, had enhanced the market value to Rs.18,65,470/- per acre on the basis of Ex.A-2, a sale deed dated 25.11.2008, which was executed one day earlier to the Section 4 notification dated 26.11.2008. Apart from that, 30% on account of severance was also granted on the said market value on account of the fact that the land has been acquired for the purpose of construction of a Golewala Link Drain of the 12 villages. The State had gone in appeal i.e. Civil Appeal Nos. 23937-23985 of 2017, State of Punjab and others vs. Gurajaib Singh and others wherein, the said judgment was set aside on 15.12.2017 on the ground that neither any development cut had been imposed and severance also at 30% to every incumbent had been awarded without any rhyme or reason. It had not been noticed whether any inconvenience due to severance had taken place. The relevant part reads thus:-

"The land in question had been acquired under the Land Acquisition Act, 1894 and notification under Section 4 was issued on 26th November, 2008. The Land Acquisition Collector determined the compensation at the rate of Rs.5,25,000/- and Rs.5,75,000/- based upon the categories of the land. The Reference Court granted compensation at the rate of Rs.6,67,000/- whereas the High Court has granted compensation relying upon the sale deed (Exhibit A-2) at the rate of Rs.18,65,470/- and 30% severance charges.

After hearing learned counsel for the parties, we are of the opinion that the High Court has erred in law in not making the deduction for development etc. and other relevant aspects have not been considered. The grant of compensation for severance at 30% also to every incumbent whether he has claimed it or not what is effect of severance appears to be without any rhyme or reasons. Appropriate reasoning have not been assigned it has not been gone into whether land owners have prayed for severance, in which cases severance has taken place, and whether any inconvenience due to severance has been caused and damage proved, all these aspects have not been discussed at all. The over all discussion appears to be without any sound reasoning process. The manner of determining compensation by the High Court is wholly unsatisfactory and issue needs to be examined afresh.

Accordingly, we set aside the impugned judgment and order passed by the High Court and remit the matters back to the High Court to decide the appeals afresh as expeditiously as possible.

The civil appeals are accordingly disposed of."

A perusal of the record would go on to show that the land owners, being aggrieved against the grant of compensation, had filed petitions under Section 18 of the Land Acquisition Act, 1894 (in short 'the Act'). The pleadings in the case of Jagroop Singh i.e. Land Reference No. 1 of 2010 would go on to show that there were no specific averments as to the issue of severance and the loss caused as such. The only averment was made that while digging the water course, the earth had been thrown in the field of the applicant and he had suffered a loss of Rs.1,00,000/- for removing the earth. The relevant portion of the averments read as under:-

"(IV) That while digging the water course for its construction the earth was thrown in the fields of applicants and as such the applicants sustained loss of Rs.1 lac for removing the earth."

The stand of the State was that the canal had been constructed for the welfare of the public at large which had been acquired for the construction of 3-R Minor of Golewala and used for irrigating the fields of the village and the land abutting the nearby villages. The same was on the demand of the people of the area for the last 37 years and persons had readily given possession of the land for construction of the canal even before Sections 4 or 6 notifications had been issued. They had no objection at the time of publishing of the notification and proper compliance of the Act had been made. The price has been awarded as corroborated by the sale deeds. The fact that the earth had been thrown in the fields of the applicant was also denied. In certain other reference petitions, the averments in paras regarding severance are as under in different petitions:-

"i) That no proper compensation for severance and forcibly taking possession of the land has been given.

ii) That no compensation has been given for bifurcation of the land (in four fragment) and the difficulty to be met to the Petitioners after construction of the drain has been considered and no compensation for the said purpose has been given.

(iii) That land of the applicant has been bifurcated & it has become difficult to cultivate the same.

(iv) That the land of the applicants have been divided into two portions as the Distributory will be passing in between the two portion of the acquired land.

(v) No provision of any passage leads to the fields of the application. A pacca khal has been demolished and the applicants are suffering huge loss in growing and irrigation their fields for want of proper irrigation source.

(vi) That since the land of the applicants have been severed into two separate portion on both sides of the Distributory as such it has become great difficult to approach from one field to another other of the applicants. Further more, such a difficult is also faced by the applicants for irrigation purposes.

(vii) That land of the applicant has been bifurcated & it has become difficult to cultivate the same."

In support of the said averments, affidavits were filed that the land had been bifurcated into two pieces but no specific averment had been made by either of the land owners specifically as to which khasra number has been bifurcated and how much of land had been left on the other side.

In some other cases, in the affidavit filed by Baljeet Singh, it had specifically been mentioned that khasra nos. 368 and 369 had been bifurcated into two pieces and the motor installed in khasra no. 371 could not irrigate the land in khasra no. 367.

Similarly, perusal of the affidavit of Surjeet Singh-AW-4, as such, would also go on to show that there were averments regarding the bifurcation of the land and, therefore, there was difficulty to irrigate small pieces of land. Jagmohan Singh, who appeared as AW-6, in his affidavit, also averred regarding the khasra numbers which had been acquired and that the land had been bifurcated into two pieces.

It is not in dispute that the land owners as such have also placed on record exhibit 38/A1, the site plan. The photographs Exs. AW36/A2 to AW36/A4 have also been placed on record. A perusal of the said photographs would go on to show that it is a minor water channel and there would be no difficulty as such in crossing the same or taking the agricultural implements across the water channel. Severance can only be granted where access as such to the land on the other side gets hindered and the land becomes useless. The averments, thus, also would go on to show that the land owners, in a half-hearted attempt, have claimed severance which, in the facts and circumstances, is not made out. Rather, the land owners have been benefitted for the purpose of irrigation. In such circumstances, the Reference Court has also noticed that the land was acquired for carving out the minor for economic development of the area for giving water for irrigation and did not grant any compensation by holding that the site plans brought on the file do not show any bifurcation of the land. The photographs expose the claim as such for severance on that account and, therefore, the clamor for the severance under the third factor under Section 23 of the Act is uncalled for.

The issue of enhancement of compensation on the strength of the sale deeds also are not liable to be accepted in the absence of a valid claim. The Reference Court had three sale deeds before it, on the basis of which, there is a claim for enhancement. The same, in a tabulated form, are as under:-

Sr. No.

Ex.

Date

Land Measuring

Total consideration

Rate per acre

 

1

A1

12.05.2010

18 K

28,12,500/-

12,50,000/-

2

A2

25.11.2008

11 K 3 M

26,00,000/-

18,65,470/-

3

A8

28.01.2008

4-1/2 M

36,000/-

12,80,000/

Ex.A-1 was rightly discarded being executed on 12.05.2010, which is 1-1/2 years after the date of the Section 4 notification and being post notification, cannot be taken into consideration. Similarly, perusal of Ex.A-2 would go on to show that the land was sold by Nirmal Singh s/o Major Singh s/o Bhag Singh to one Jasbir Kaur w/o Jagroop Singh s/o Major Singh, both residents of village Pehluwala. The said sale deed was executed a day earlier on 25.11.2008 from the date of Section 4 notification. The recitals of the said sale deed would go on to show that a huge sum of Rs.26,00,000/- was allegedly paid earlier before the sale deed was executed and no money was paid before the Sub Registrar. The sale deed seems to have been executed in favour of the daughter-in-law by Major Singh and the sale consideration obviously has not changed hands. It is in such circumstances, the Reference Court had rightly held that it was created for the purpose of getting huge compensation. The said findings are substantiated by the above recitals of the sale deed and, thus, no fault can be found in discarding the said sale deed.

The third sale deed, if taken into consideration, measures only 4-1/2 marlas of land. The land, in the present case, acquired is 41.57 acres falling in 12 villages.

 

Thus, even if the said sale is taken into consideration, the market value would work out at Rs.12,80,000/- per acre. If a 50% cut is applied on the same, keeping in view the smallness of the sale exemplar, the market value comes to Rs.6,40,000/-, which is in the range of what has been approximately granted by the Reference Court i.e. @ Rs.6,67,000/- per acre.

It is settled principle that on account of smallness of sale exemplar, the cut has to be applied. In such circumstances, if seen from a different angle, the discarding of the said sale deed does not suffer from any infirmity.

The argument of the State that the cut should be more or that the Collector rates could not have been taken into consideration is without any basis. In Lal Chand vs. UOI and another, 2009 (15) SCC 769, the Apex Court has held that where compensation is assessed on the basis of the market rates fixed by the statutory authorities, it would be appropriate methodology to fix the market value. The relevant portion reads thus:-

16. It should however be noted that as contrasted from the assessment of market value contained in non-statutory Basic Value Registers, the position may be different, where the guideline market values are determined by Expert Committees constituted under the State Stamp Law, by following the detailed procedure laid down under the relevant rules, and are published in the State Gazette. Such state stamp Acts and the Rules thereunder, provide for scientific and methodical assessment of market value in different areas by Expert Committees. These statutes provide that such committees will be constituted with officers from the Department of Revenue, Public Works, Survey & Settlement, Local Authority and an expert in the field of valuation of properties, with the sub-registrar of the sub-registration district as the member secretary. They also provide for different methods of valuation for lands, plots, houses and other buildings. They require determination of the market value of agricultural lands by classifying them with reference to soil, rate of revenue assessment, value of lands in the vicinity and locality, nature of crop yield for specified number of years, and situation (with reference to roads, markets etc.). The rates assessed by the committee are required to be published inviting objections/ suggestions from the members of public. After considering such objections/ suggestions, the final rates are published in the Gazette. Such published rates are revised and updated periodically. When the guideline market values, that is, minimum rates for registration of properties, are so evaluated and determined by expert committees as per statutory procedure, there is no reason why such rates should not be a relevant piece of evidence for determination of market value. One of the recognised methods for determination of market value is with reference to opinion of experts. The estimation of market value by such statutorily constituted expert committees, as expert evidence can therefore form the basis for determining the market value in land acquisition cases, as a relevant piece of evidence. It will be however open to either party to place evidence to dislodge the presumption that may flow from such guideline market

 

value. We however hasten to add that the guideline market value can be a relevant piece of evidence only if they are assessed by statutorily appointed Expert Committees, in accordance with the prescribed assessment procedure (either street-wise, or road-wise, or area-wise, or village-wise) and finalised after inviting objections and published in the Gazette. Be that as it may. We have referred to this aspect only to show that there are different categories of Basic Valuation Registers in different states and what is stated with reference to the stamp law in Andhra Pradesh or Uttar Pradesh, may not apply with reference to other states where state stamp laws have prescribed the procedure for determination of market value, referred to above."

It is in such circumstances, this Court is of the opinion that there is no merit in the State appeals to the extent where they are seeking reduction as the market value has rightly been fixed at Rs.6,67,000/- per acre nor the case is made out for enhancement. Accordingly, this Court is the opinion that the Reference Court was just and fair in fixing the market value of the land and there is no case made out for enhancement or for decreasing the amount. Resultantly, the appeals filed by both the land owners and the State are dismissed.

 