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**(1986) 08 P&H CK 0063**

**In the Punjab And Haryana At Chandigarh**

**Case No :** First Appeal from Order No. 575 of 1983 and Civil Miscellaneous No. 1989-CII of 1986

Kishan Singh and another

APPELLANT

Vs

Union of India (UOI) and others

RESPONDENT

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**Date of Decision :** 04-08-1986

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

**Citation :** (1986) 08 P&H CK 0063

**Hon'ble Judges :** J.V. Gupta, J

**Bench :** Single Bench

**Advocate :** M.L. Sarin, for the Appellant; H.S. Brar and Mr. P.S. Teji, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

J.V. Gupta, J.—This judgment will also dispose of F. A. O, No. 576 of 1983. Both these appeals have been filed against the same award of the arbitrator dated March 18, 1983.

2. The land situated in village Baghar Tahsil Pathankot District Gurdaspur was earlier requisitioned in the year 1947-48. It has now been acquired vide notification dated August 23, 1972 under- the Punjab Requisitioning and Acquisition of Immovable Property Act. On an application u/s 8 of the above-said Act, for determination of compensation of the acquired land the arbitrator Shri D. S. Dhaliwal, Additional District Judge, Gurdaspur, gave the award dated March 18. 1983, whereby he fixed the market price thereof at the rate of Rs. 700/-psr kanal harani; Rs. 350/- per kanal banjar and Rs. 175/- per kanal ghair mumkin. In addition, the claimants were also found to be entitled to the solatium at the rate of 15 per cent and the interest at the rate of 6 per cent per annum. Dissatisfied with the same, they have filed these two appeals.

3. During the pendency of appeals, the claimants also moved Civil Miscellaneous

Application No. 1989-CII of 1986 in F. A. O No. 575 of 1983 under Order XLI Rule 27, Code of Civil Procedure, (hereinafter called the Code), seeking permission to produce the additional evidence by way of the award, Annexure A-1, dated April 5, 1983. Notice of that application was given to the Union of India to which reply has been filed.

4. The learned Counsel for the Appellants contended that the copy of the award, Annexure A-1 may be allowed to be produced by way of the additional, evidence because, the said award was given during the pendency of the appeal and, therefore, could not be produced earlier before the arbitrator who gave the award under appeal on March 18, 1983. According to the learned Counsel, in the said award, the land situated in village Harial was acquired for the same purpose for which uniform market value was fixed at the rate of Rs. 1,000/-per kanal. The land, in dispute, is similarly situated ; the said award was given with respect to the notification dated 28th March, 1970 whereas the land, in the present case, was acquired on August 23, 1972. Therefore, the said award was very relevant to determine the market price of the land, in dispute.

5. After hearing the learned Counsel for the parties on this civil miscellaneous application, I find that a case has been made out under Order XLI Rule 27 of the Code, for allowing the production of the said additional evidence. Since the said award was given around the time the appeal was filed in this Court, the question of producing the same earlier before the arbitrator did not arise. Besides, the said award is with respect to the land comprised in the notification issued in March. 1970 whereas the land, in dispute, was acquired in August, 1972 Therefore, it is relevant to determine the market price of the land, if question. Of course, the said award, relates to the land situated in village Harial whereas the land, in question, is situated in village Baghar, but there is evidence on the record to the affect that both the villages are adjacent to each other and the land acquired in both the villages is similarly situated.

6. According to the learned Counsel for the Appellants, even on, the basis of the evidence on the record vide sale deed, copy, Exhibit A-1, the land was sold at the rate of Rs. 2,000/- per kanal. The said land is stated to be about 250 karams away from the land acquired. Even if one third cut thereof is allowed, even then the market price comes to Rs. 1300/- per kanal whereas the arbitrator has made two third cut thereof which, according to the learned Counsel, was wrong and illegal. Thus, argued the learned Counsel, on the basis of the evidence already on the record as well as taking into consideration the copy of the award, Ahnexure A. 1, the uniform market price of the land, in dispute, could not be then than Rs. 1,300/- per kanal. However, the learned Counsel for the Union of India submitted that there was nothing on the record to show that the land covered under the award, Annexure A. 1, was comparable with the land acquired in the present pases. Admittedly, argued the learned Counsel, the land acquired in the present cases is situated in village Baghar whereas the award, copy Annexure A.1, relates to the land situated in village Harial. As regards the sale instance. Exhibit

A.1, it was submitted by the learned Counsel that there was wide distance between the land acquired in the present cases and the land covered by the said sale deed and, therefore, the arbitrators has rightly fixed the market price taking into consideration the said sale instance.

7. I have heard the learned Counsel for the parties and have also gone through the relevant evidence on the record.

8. From the copy of the plan, Exhibit R. 1, it is evident that village Bagher and village Harial are adjacent to each other and the land acquired in both the villages about the Amritsar-Pathankot-Kullu Road. Even vide copy of the sale deed, Exhibit A. 1, the land was sold at the rate of Rs. 2,000/- per kanal and even if one-third cut thereof is allowed, it comes to Rs. 1,300/- per kanal. In any case, taking into consideration the copy of the award now filed by way of additional evidence whereby the market price was fixed at Rs. 1,000/-per kanal for the land acquired in the year 1970, the uniform market price of the land, in dispute, which was acquired in August, 1972, should be Rs. 1,100/- per kanal. According to the learned arbitrator vide sale transaction, copy, Exhibit A. 1, the land sold was too small and the same was close to the Amritsar-Pathankot-Kullu Road whereas the land acquired was at a distance of 250 karmas from the said land. Therefore, he made two-third cut in the sale price thereof while assessing the market price of the land acquired in the present cases. This approach of the arbitrator, to my mind, is wholly erroneous, Even if the land acquired is at a distance of 250 karmas from the aforesaid land, situation is the same as the land acquired about Amritsar-Pathankot-Kullu Road, That being so, the distance of 250 karmas between both the lands does not make much difference. Under the circumstances, it is reasonable to make one-third cut in the sale price evidenced by the sale transaction, copy, Exhibit A. 1, to determine the market price of the land acquired. Thus, taking into consideration the totality of the circumstances and the additional evidence along with a copy of the sale deed, Exhibit A, 1, uniform rate of Rs, 1,100/-per kanal is fixed as the market price of the land acquired.

9. Consequently, both the appeals succeed and are allowed with costs.

10. It is not disputed that in view of the amendments made to the Land Acquisition Act by the Land Acquisition (Amendment) Act, 1984, the claimants will be entitled to the solatium at the rate of 30 per cent and interest at the rate of 9 per cent, and 15 per cent per annum as provided under the said Act, besides the additional amount of 12% u/s 23(A).