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**(2009) 04 P&H CK 0148**

**In the Punjab And Haryana At Chandigarh**

**Case No : Regular First Appeal No. 3127 of 1993**

Lawan Kumar and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

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**Date of Decision : 16-04-2009**

**Acts Referred:**

**Citation : (2009) 3 RCR(Civil) 589**

**Hon'ble Judges : Rakesh Kumar Jain, J**

**Advocate :** Mr. Adarsh Jain, Advocate. Mr. Lokesh Sinhal, Addl. Advocate General, Haryana. Mr. C.B. Goel with Mr. Nitin Jain, Advocates., Advocates for appearing Parties

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## **Judgement**

Rakesh Kumar Jain, J.—In these seven Regular First Appeals bearing Nos. 3127, 3731, 2508, 2795, 2509, 2794 and 3643 of 1993, filed by the claimants against the impugned award of learned Addl. District Judge, Hisar, dated 20.5.1993, identical question of law and facts are involved. Therefore, these are being decided by a common order. However, for the sake of convenience, the facts are taken from RFA No. 3127 of 1993 (Lawan Kumar v. State of Haryana and others).

2. Land measuring 44 kanals 15 marlas falling in khasra No. 897/3 situated in the revenue estate of Hansi was notified on 31.3.1989 under Section 4 (1) read with Section 17 of the Land Acquisition Act, 1894 (for short, 'the Act'), followed by a notification of declaration issued under Section 6 of the same date, at public expense, for the public purpose, namely for the construction of Godowns by the Haryana State Cooperative Supply and Marketing Federation Ltd. at Hansi, District, Hisar.

3. The land Acquisition Collector (for short, the Collector) vide his award No. 1 for the year 1989/90 dated 30.6.1989 awarded compensation @ Rs. 1,00,000/ per acre.

4. The Land owners were not satisfied with the award of the Collector announced under Section 11 of the Act. They filed objections under Section 18 of the Act in

which it was, inter alia, alleged that market value of the acquired land was not less than Rs. 200/ to Rs. 400/ per square yard. It was also averred that due to acquisition of 44 kanals 15 marlas of land out of khasra No. 897/2, 3 kanals 3 marlas unacquired land part of that khasra number became useless due to severance.

5. The claim was contested by the respondents. In the written statement, it was alleged that adequate compensation has already been awarded by the Collector to the claimants. The acquired land is not situated on the main road but it is located at the back of the office of B.D.P.O. There are deep pits of 4/5 feet in the land which is connected by kacha path. The claim set up by the landowners in respect of severance was also denied.

6. Both the parties led their respective oral as well as documentary evidence. The landowners examined Sheetal Parshad as PW1, Rishabh Kumar as PW2, Ram Niwas, Nazir of S.D.M office Hansi as PW3 and Kanwar Singh as PW4. Besides oral evidence, they also produced sale deed Ex. P1, whereby father of Kanwar Singh (PW4) purchased land measuring 100 square yards in Hansi for Rs. 15,000/ on 30.12.1985. Ex. P3 is another sale deed dated 5.12.1983 whereby 333 square yards of land in Hansi was sold for Rs. 1,01,000/. Ex.P2 is the copy of schedule from the office of S.D.O (Civil) about average price of various lands in Hansi.

7. As against this, the respondents had examined only one witness R.P. Chug, Executive Engineer, HAFED, Hisar as RW1 and closed their evidence.

8. After appreciating the evidence, the learned Reference Court found only one sale deed Ex.P1 to be a relevant piece of evidence for the purposes of assessing the compensation of the acquired land which was sold @ Rs. 150/ per square yard. The Court, however, applied a cut of 50% to the value of Rs. 150/ on the basis of the sale instance pertaining to a small piece of land and then on the value derived from it of Rs. 75/ applied a further cut of 1/3rd on the ground of development charges and ultimate, assessed Rs. 50/ per square yard as market value as on 31.3.1989.

9. Insofar as the compensation in respect of 3 kanals marlas falling in khasra No. 897/2, is concerned, the learned Reference Court observed that no compensation can be given to the landowners because they have nowhere stated or proved that the land which has been left out from acquisition has become unapproachable or inaccessible due to severance. The learned Reference Court however, gave all the statutory benefits in terms of the provisions of the Amended Act.

10. Mr. Adarsh Jain, learned counsel for the landowners/claimants has vehemently contended that the learned Reference Court has committed an error while applying firstly a cut of 50% on the total amount of sale deed Ex.P1 amounting to Rs. 50/ per square yard, in the name of comparable sale instance being a small piece of land and then a further cut of 1/3rd on the value derived

from the first cut of 50% which comes to Rs. 75/ in the name of development charges. Learned counsel has further submitted that the land forming part of sale deed Ex.P1 is within the municipal limit of Hansi whereas the acquired land is also within the municipal limits of Hansi and have the same value.

11. Learned counsel for the appellants has also contended that it has come in evidence that the acquired land is just 1/2 to 3/4 killas away from the land which has been sold vide sale deed Ex.P1, which is also in close proximity with the developed colonies like Multan Nagar, Krishna Nagar, Jawahar Nagar and other colonies. Learned counsel further submitted that the acquired land had potentiality of being put to maximum use for the purpose of development of residential or commercial areas, therefore, application of 50% cut at the first instance is totally unwarranted. In case, the learned Reference Court wanted to apply a cut, then it should not have been more than 20% in view of the decision of the Supreme Court in the case of Kasturi and others v. State of Haryana (2003) 1 Supreme Court Cases 354.

12. The second argument of learned counsel for the appellants is that the learned Reference Court has committed an error while not granting any compensation in respect of severance. It is submitted that the landowner has categorically deposed that land measuring 3 kanals 3 marlas has become useless as it is left out in a corner, therefore, at least 50% of the market value determined by the learned Reference Court should have been granted as severance charges to the appellants. In this regard, learned counsel has referred to a decision of this Court in the case of State of Punjab v. Gurbachan Singh and others 1988 P.L.J. 490.

13. Last argument of learned counsel for the appellants is that since the landowners have relied upon sale deed Ex.P1 and there is no appeal filed by the State of Haryana, the appellants are entitled to an increase of 12% from the date of sale deed Ex.P1 of 1985 as the date of notification under Section 4 of the Act is of the year 1989. In this regard, reliance has been placed upon Smt. Gulabi v. State of H.P. 1997 (4) R.C.R.(Civil) 179, State of Haryana v. Jai Devi 1999 (3) R.C.R. (Civil) 411 and Puran v. State of Haryana 1986 P.L.J. 133.

14. On the other hand, Mr. Lokesh Sinhal, learned Addl. A.G. Haryana, has vehemently contended that the compensation that has been awarded by the learned Reference Court applying a cut of 50% and then 1/3rd does not call for any interference by this Court because of the reason that the land which has been acquired is admittedly Banjar Kadim having kikar trees. It is 6 feet lower than the level of the road and is not connected with the matelled road. No site plan has been produced by the claimants even to locate the plot sold vide sale deed Ex.P1. He also contended that although the State has not filed any appeal but even the sale deed Ex.P1 has been wrongly relied upon as the said sale is pertaining to a very small piece of land meant for residential purposes and cannot be compared with acquired land measuring 44 kanals 15 marlas. Learned counsel has also submitted that even 83% deduction by the Court below is less

in view of the decision of the Apex Court in K.S. Shivadevamma and others v. Assistant Commissioner and Land Acquisition Officer and another 1996 LAC 326.

15. It is next submitted by Mr. Sinhal, that severance charges have rightly not been granted by the learned Reference Court because the appellants have failed to prove any loss caused to them or that remaining land has become inaccessible. It is rather argued that the value of the left over land has become much more after acquisition of its adjoining land.

16. In respect of the last argument, Mr. Sinhal submitted that 12% increase cannot be given just for the sake of asking as no evidence has been brought on record by the appellants about any increase of any land in and around the acquired land from 1985 to 1989 by way of any sale deed. It is also submitted that the appellants have not stated in their statements that there was any sale or purchase during this period. In this regard, reliance has been placed upon a decision of the Supreme Court in the case of Ranvir Singh and another v. Union of India (2005) 12 Supreme Court Cases 59.

17. Insofar as the first argument of learned counsel for the appellant is concerned, in my view, the reference Court has committed an error while applying a cut of 50% on the total amount of sale deed Ex.P1 in the name of comparable sale instance being a small piece of land. No doubt, sale deed Ex.P1 is a small plot of 100 square yard as against the acquisition of a large chunk of 44 kanals 15 marlas of land. The plot measuring 100 square yard (Ex.P1) is not depicted or located by way of site plan and would be meant for residential purposes depending on its size, therefore, it cannot be equated as it is with the acquired land. But still, in my view, instead of 50%, a cut of 33% would be just and expedient in this regard. Insofar as the development cut is concerned, that requires no interference because it has come on record that the acquired land is Banjar Kadim, full of kikar trees and is 6 feet lower than the level of the road having no direct approach. It has come on record that no civic amenities like water, sewerage, electricity, road are available at the acquired land which shall have to be developed, therefore, a cut of 33% in this regard is not on the higher side. At this stage, it would be appropriate to observe that the judgments relied upon by the appellants in the case of Kasturi and others (Supra) and by the respondents in the case of Shivadevamma and others (Supra), are not applicable to the facts of this case. In the case of Kasturi and others (Supra), it has been held that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditures involved for development and the area required for roads and other civil amenities to develop the land so as to make the plots for residential or commercial purposes. However, on facts, a cut of 20% as against the normal 1/3rd was found justified which was adopted by the learned Single Judge and maintained by the Division Bench of the Court. In the case of

Shivadevamma and others (Supra), deduction of 33% was found to be sufficient for development charges but another 53% were also held to be justified as deduction under the building rules. In the present case, no such building rules have been cited by the learned counsel for the respondents, therefore, I am fortified in my view that a development cut of 33% is a normal cut and could have been applied in the facts and circumstances of the present case. Thus, the order of the learned Single Judge in this regard is upheld.

18. In respect of severance charges claimed by the appellants, nothing has been brought on record to show that by virtue of acquisition, rest of the un acquired land has become totally inaccessible and a total loss. The judgment relied upon by the learned counsel for the appellants in the case of Gurbachan Singh (Supra) does not help him, rather with the acquisition of other land, rest of the land has become valuable which was otherwise lying Banjar without any approach land. Therefore, no compensation in the name of severance could be granted.

19. In respect of the last submission of the learned counsel for the appellants that increase of 12% should be granted over and above the sale deed Ex.P1 of 1985. I do not find any merit in this contention because sale deed Ex.P1 does not form part and parcel of the acquired land and in view of the decision of the Supreme Court in the case of Ranvir Singh (Supra) could not be made basis for the purpose of further enhancement.

20. In view of the aforesaid discussion, the appeals filed by the claimants are allowed only to the extent that deduction of 50% applied by the reference Court is reduced to 33% and rest of the award is maintained. The claimants shall also be entitled to all the statutory benefits in terms of the provisions of the Amended Act on the compensation which is consequently enhanced alongwith costs of these appeals.