

**(2010) 05 P&H CK 0266**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 5475 of 2009**

Smt. Harender Dhillon and Others

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

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**Date of Decision :** 12-05-2010

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Land Acquisition Act, 1894 — Section 34  
Punjab Municipal Act, 1911 — Section 192, 192(1)

**Citation :** (2011) 161 PLR 135 : (2010) 4 RCR(Civil) 725

**Hon'ble Judges :** M.M. Kumar, J;Jitendra Chauhan, J

**Bench :** Division Bench

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## Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution challenges order dated 10.10.2008 (P-16), sanctioning the rate of compensation at Rs. 1,000/- per Square Yard in respect of more than 25% area of the acquired land of the Petitioners under Town Planning Scheme 1 Part 3. A further prayer has been made for directing the Respondents to pay compensation to the Petitioners for the area acquired beyond 25% along with statutory benefits.

2. Brief facts of the case are that predecessor-in-interest of the Petitioners was owner in possession of 18 Bighas of land. The Petitioners by way of inheritance became owner of the said land, which is comprised in Khasra No. 1804/2 in Bathinda. The Municipal Committee, Bathinda-Respondent No. 2 formulated Town Planning Scheme 1 Part 3, vide Drawing No. DTP(B) 90-91, dated 11.9.1981 (for brevity, "Scheme"), which was sanctioned in the year 1983. The land of the Petitioners was acquired under the Scheme as per the provisions of Section 192 of the Punjab Municipal Act, 1911 (for brevity, "the Act"). Section 192(1)(c) of the Act imposes a restriction on the inclusion of more than 35% of the land of an owner for the Scheme and not more than 25% of such land without payment of the compensation. It is claimed that the total acquired area of the Petitioners is 17737 Square Yards and 25% of the same comes to 4434.30 Square Yards, which could be left for public parks, roads, open spaces etc. It has been alleged

that the Respondents have utilised an area measuring 5046.97 Square Yards for parks and streets. In this manner, an extra area measuring 612.67 Square Yards has been acquired out of Khasra No. 1804/2 under the Scheme and the Petitioners are entitled for payment of compensation in lieu thereof. They have placed on record the site plan and calculation sheet of the area (P-1 & P-2 respectively). The Petitioners requested the Respondents for payment of compensation in respect of excess acquired area. Pursuant thereto, the Municipal Corporation, Bathinda-Respondent No. 2 passed a resolution No. 272, dated 22.9.1997, for adjusting more than 25% area of the acquired land of the Petitioners under the Scheme (P-3). On 1.10.1997, the Deputy Director, Local Government, Ferozepur, stayed the aforementioned resolution (P-4). Subsequently, the Deputy Commissioner, Bathinda, set aside Resolution No. 272, dated 22.9.1997, vide his order dated 3.11.1997 (P-5). On 15.6.2001, the Director, Local Government, Punjab, also set aside the order of the Deputy Director, Ferozepur, setting aside resolution No. 272, dated 22.9.1997.

3. Feeling aggrieved, the Petitioners again represented to the concerned authorities and again Municipal Corporation, Bathinda-Respondent No. 2 passed a resolution No. 73, dated 25.5.1999, seeking report from the District Town Planner. On 25.9.1999, another resolution No. 219 was passed by the Municipal Council and it was decided that compensation be given to the Petitioners in respect of land exceeding 25% of the acquired land. On 31.12.2000 (31.12.1999?), a communication was sent by the Executive Officer of the Municipal Council to the District Collector, Bathinda, to assess value of the land in question (P-6).

4. On the basis of the report received from the Sub Divisional Magistrate, the District Collector, Bathinda, vide letter dated 27.1.2000, assessed the value of the land in question @ Rs. 2,500/- per Square Yard (P-7). It is claimed that thereafter the Municipal Corporation-Respondent No. 2 passed Resolution No. 274, dated 27.9.2000, fixing the value at the rate of Rs. 2,500/- per Square Yard in respect of the area exceeding 25% area of the acquired land of the Petitioners. On 28.8.2001, the Municipal Corporation-Respondent No. 2 again accorded sanction to adjust the Petitioners after giving them land out of the parks in order to adjust the excess acquired land over and above 25% of the area but the Deputy Commissioner, Bathinda, set aside the same, vide his order dated 6.11.2001. On 26.3.2002, the Municipal Corporation-Respondent No. 2 again made a request to the Deputy Commissioner, Bathinda, for sanctioning the grant of compensation in favour of the Petitioners (P-8).

5. Despite the above mentioned, compensation was not granted to the Petitioners. Faced with this apathy, the Petitioners again made representations dated 4.11.2003 and 14.2.2005 (P-9 & P-10). The Commissioner, Municipal Corporation, Bathinda, again sought information from the District Town Planner, Bathinda, in respect of the land of the Petitioners, which was sent vide letter dated 4.4.2005, certifying that 33.48% of the area of the Petitioners come under

the parks/roads etc. (P-11). On 10.10.2006, the Municipal Corporation-Respondent No. 2 also called the report from the Tehsildar, Bathinda, in respect of the land owned by the Petitioners and other details. Thereafter a Committee was formed for considering the matter of grant of compensation to the Petitioners.

6. On 20.12.2006, a meeting of the aforementioned Committee was held. The Petitioners were also heard and eventually a unanimous decision was taken that the Petitioners be granted compensation @ Rs. 2800/- per Square Yard. Accordingly, order No. 403, dated 28.12.2006, was passed in that regard. The Petitioners have placed on record the proceedings of the meeting of the Committee, held on 20.12.2006 (P-13), which reads thus:

The proceedings as per sub committee dated 20.12.2006 in respect of TP Scheme-1 Part-3 of khasra No. 1804 in respect of land of Smt. Harender Kaur, Maninder Kaur and Varinder Kaur daughters of S. Dhian Singh for the land which has come under roads and parks for fixing the rates for giving compensation of the area. The sub committee meeting today held at the office of Municipal Corporation at 4.00 PM on 20.12.2006 which was constituted for fixing the rates for giving the compensation for the land which has come under roads and parks in TP Scheme-1 Part-3 of Harinder Kaur, Maninder Kaur and Varinder Kaur daughters of Sh. Dhian Singh in which the aforesaid members took part as per presence above. For fixing the rate the members of sub committee and present owners have discussions in between them. Smt. Harinder Kaur and Sh. Hardev Singh present on behalf of owners stated that the present market rate of their land is minimum 5000/- per yard. Therefore, they have claimed compensation at this rate. The sub committee members perused the list of Collector Rates for the year 2006-07 by the Tehsildar, Bathinda. In this list at Sr. No. 105 the rate of khasra No. 1791 to 1811 is fixed at Rs. 2400/- per yard because the land for which compensation is to be given falls in the khasra No. 1804. Therefore, the sub committee members proposed to fix the rate as 2400/- per yard. On this Shri Hardev Singh cited the Sr. No. 106 of this list. According to which on these khasra numbers the rate fixed is 3500/- per yard on 45"-60" road. The scheme and plan of this area were perused again. As per scheme it is correct that the land of the owners adjoins 45" roads. The owners claimed Rs. 3500/- per yard as per Sr. No. 106 of this list. Because total land does not touch the 45" road, therefore, the rate of total land cannot be given as per Sr. No. 106. After lot of discussion the owners agreed to take the possession of the total land at an average rate of 2800/- per yard for total land. The sub committee finding the said rates to be fair agreed to give 2800/- per yard as, compensation to Smt. Harinder Kaur, Maninder Kaur and Varinder Kaur, daughters of S. Dhian Singh. The sub committee asked the present owners to give affidavit in respect of the same stating therein that they agreed to the rates sanctioned after negotiations and apart from this they will not claim any other compensation or enhancement from any Court or Tribunal.

7. On 6.6.2007, the aforementioned decision was sent to the Chief Administrator, Local Government Department, Punjab, for according sanction (P-14). On 17.7.2007, again report from the Revenue Department and District Town Planner was sought by Respondent No. 1 (P-15). In turn, the Municipal Corporation-Respondent No. 2 again called for the Collector's rates of the land falling in Khasra No. 1804, which were prevalent in the year 1981-82, from the Deputy Commissioner, Bhatinda. Finally, on 10.10.2008 (P-16) an order has been passed sanctioning the grant of compensation for the excess acquired land @ Rs. 1,000/- per Square Yard, which is subject matter of challenge in the instant petition.

8. In the respective written statements filed by Respondent Nos. 1 and 2 the above mentioned factual position has not been denied. The only assertion made by Respondent No. 1 is that before sanctioning of the Scheme, the draft scheme was published and objections were invited from the affected persons. However, the predecessor-in-interest of the Petitioners did not file any objection. Accordingly, the Petitioners have no right to claim compensation at this belated stage, inasmuch as, the Scheme has already attained finality. In para 4 of the reply on merits, it has been submitted by Respondent No. 1 that no part of the land owned by the predecessor-in-interest of the Petitioners has been acquired for the purpose of framing of the Town Planning Scheme. It has also been asserted that no part of the land could be released in favour of the Petitioners at this belated stage. Justifying the impugned order it has been submitted that the same has been passed by examining the matter in detail and as per the Collector's rates prevalent during the year 1981-82 in Khasra No. 1804.

9. On 3.10.2009, the Petitioners also filed an additional affidavit bringing on record the fact that after actual identification and demarcation of the land by the Revenue as well as the Town Planning Departments it reveals that out of their total acquired land of 18149 Square Yards, after making requisite cuts, the excess area comes to 1505 Square Yards.

10. After hearing learned Counsel for the parties, we are of the considered view that the order dated 10.10.2008 (Annexure P16) passed by the Department of Local Government is not sustainable in the eyes of law. The Department of Local Government has annulled the view taken by the Municipal Corporation in its resolution dated 20.12.2006 (Annexure P13) whereby negotiation with the land owners, the Sub Committee had agreed to give Rs. 2,800/- per square yard as compensation to the Petitioners Smt. Harender Kaur, Maninder Kaur and Varinder Kaur daughters of Sh. Dhian Singh. It is appropriate to mention that Smt. Varinder Kaur is not presented by Group Captain B.S. Chhoker, Aman Chhoker and Sharan Chhoker being Petitioners No. 2 to 4. The Sub Committee also obtained an affidavit showing agreement of the Petitioners with rates sanctioned after negotiation. It is further pertinent to mention that they had filed undertaking that they would not claim any compensation or enhancement from any Court or Tribunal. It is, therefore, evident that there was consensus amongst

the parties in fixing the rates of the land at Rs. 2,800/- per yard for the whole area and further enhancement appeal or revision were to be initiated. However, the Department of Local Government fell in error by securing rates of the land prevalent in the year 1981-82 on the ground that the land was taken in those years for the Town Planning Scheme. It may be true that the land was taken in the year 1981-82 but it is equally true that no compensation at all for this year has been paid. It is in this background that the Municipal Corporation and the land owners have reached a consensus for a lump-sum amount of Rs. 2,800/- per square yard. The aforesaid rate included interest, enhancement or any other factor, so once the aforesaid lump-sum amount was agreed, there was no room for the Local Government Department to ascertain the rate of the land prevalent in the year 1981-82 and cancel the consensus reached by the Corporation which led to the passing of resolution. If we examine the rates of Rs. 1,000/- per square yard to be paid from 1981 then Petitioners would become entitled to interest either u/s 34 of the Land Acquisition Act or under the General Law of the land at some reasonable rate. The interest for the period of 30 years would bring the rates of land almost equivalent to one for which consensus was reached. Therefore, we are of the view that resolution dated 20.12.2006 (Annexure P13) based on the consensus reached between the parties should have been accepted by the Government instead of annulling the same, on the basis of rates of land prevalent on the date when land of the Petitioners was included in Town Planning Scheme, so it follows that the impugned order is liable to be set aside.

11. As a sequel to the aforesaid discussion, the impugned order dated 10.10.2008 (Annexure P10) is quashed. Petitioners are entitled to grant of compensation at the rate of 2,800/- per square yard as per resolution dated 20.12.2006 (Annexure P13) in respect of more than 25% area of acquired land of the Petitioners under Town Planning Scheme, 1/3 part of the amount of compensation be calculated and same be paid to the Petitioners expeditiously, preferably within a period of two months from the date of receipt of a certified copy of this order.