

(1997) 05 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 865 of 1997 with Civil Miscellaneous No's. 1413-C-1 and 1414-C-1 of 1997

State of Punjab

APPELLANT

Vs

Mohan Lal and Others

RESPONDENT

Date of Decision : 02-05-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : (1997) 117 PLR 845 : (1997) 3 RCR(Civil) 396

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : G.S. Grewal, A.G. and A.G. Masih, AAG, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Bali, J.—This Ors. shall dispose of Regular First Appeals bearing Nos. 865 to 873 of 1997 as common questions of law and fact are involved therein. Even the learned Addl. District Judge disposed of all the references by a common order. Mr. Masih, learned AAG, Punjab, also suggests the same course:

2. There is delay of 142 days in filing these appeals. There is also delay of 40 days in refiling these appeals. The Court, before condoning the delay, must necessarily, issue notice to the other side but in view of the fact that after hearing learned counsel for the appellant, I am going to dismiss the main appeals, there is no need to issue notice in the misc. applications for condonation of delay. Taking a lenient view in the matter, delay both on filing and refiling the appeals is condoned.

3. The compensation was asked for by the claimants only on account of severance of their land. With regard to acquisition of the land as such, there has been separate award and we are not all concerned with the same in these appeals. As mentioned above, the compensation asked for by the claimants was on account of the fact that for the reason that the land for making a canal was

acquired their land was bifurcated into two pieces and in between two parts, there now runs a fifty feet wide canal. Learned Additional District Judge, Patiala has granted compensation for, severance of land @ 50% of the market value of the land for the severed land falling across the canal minor away from the village abadi and @ 20% of the market value of the land falling on the side of the village upto the area of five acres of land. It is not disputed that insofar as Land Acquisition Collector is concerned, he had awarded compensation @ 20% on this count with regard to the entire land i.e. either situated towards the village side or across the canal. What has been challenged in the present appeals is only enhancement of compensation for severance of land @ 50% of the market value of the land for the severed land across the canal, away from village abadi.

4. The parties led evidence with a view to show as to whether the land falling across the canal was accessible or not Shri Sham Lal Patwari of the area and working in the office of the Land Acquisition Collector appeared as PW.3 and proved site plan, Ex. A.2. He admitted that tube wells of the landowners had been left out on one side of the canal while their severed land falls on the other side and there is no bridge or culvert on the canal to have any access to the land of the claimants falling on the other side of the canal. The appellant-State also examined Kewal Krishan, Kanungo as RW.1. This witness also stated, in tune with the statements of the claimants that the land of claimants had been severed in two pieces on account of acquisition of land for canal minor. He, however, stated that some of the landowners had made temporary passage and that they had no difficulty in having access to their land on the other side of the canal which, according to him was dry at that time. He also stated that there was a proposal to construct a bridge on the canal. He further stated that with the help of wooden planks the landowners could cross the canal and work out the land falling across the canal. The statement of this witness was severely criticized by the learned Addl. District Judge. It was observed that this witness had temerity to state that some of the landowners had made temporary passage. What passage could be carried through a canal, perhaps, only Kewal Krishan Kanungo could know. On the face of it, therefore, statement of Kewal Krishan was not only highly exaggerated but false. Assuming, at one particular time, some part of the canal was dry, it could not be said that this canal would remain, for all times to come, dry. In fact, canal has been made with a view that water runs through the same and not that the same remains dry. Assuming, some of the landowners had made some wooden planks or even for that matter, they go by a boat across the canal, the question is as to whether they will be able to properly utilise this land. The answer to this question, in view of this Court, has to be in negative. It is proved on records of the case that the claimants are residing in the village and it is from there that they operate for their agricultural avocation. To carry all agricultural implements and, in particular, vehicles like tractor and others would be impossible. It is conceded position that as on the date when land was acquired or even till date, no bridge has been made on the canal. In view of this Court, land of the claimants located across the canal has been almost rendered

useless.

5. This Court in *Smt. Narinder Kaur v. State of Punjab and Ors.* (1980) 82 PLR 473 held that "where the acquired land had rendered the unacquired area completely inaccessible and a total loss, the measure of damages by severance would undoubtedly be the diminution in the value of the unacquired land and the owner is entitled to at least 50% of the market value of the unacquired land on account of damages for its severance from acquired land in addition to market value of the acquired land." The facts of the case aforesaid reveal that as a result of the first acquisition, an area measuring 12 kanals 17 marlas had been rendered completely inaccessible. Similarly, an area measuring 40 kanals 10 marlas had been left with no approach as a result of the second acquisition. Complete frontage of the land along the main road had been acquired. 12 kanals 17 marlas of land had been left in the form of a triangle bounded by the railway track, Ganda Nala and the acquired land. It was in evidence that this Ganda Nala (sullage water drain) was about six feet deep and beyond that there was the land of other proprietors. Similarly, other land of the claimants, in the said, case again was left in the form of a triangle and located across the Ganda Nala and on the third by the land of the other proprietors. The total area of the claimants living between the main road and Ganda Nala had been acquired through these two notifications. The only link between these two pieces, that is, un-acquired and acquired land was ridge constructed by the claimants over the Ganda Nala. With the second acquisition, approach to the bridge was gone. Inasmuch as there was no bridge or accessibility to land on account of second acquisition, the Court held that the land across Ganda Nala had been rendered useless. This Court is in complete agreement with the view expressed by learned Single Judge of this Court in *Narinder Hour*'s case (*supra*).

6. Mr. Masih, however, relies upon Another Single Bench judgment of this Court in *Dharam Chand v. State of Haryana and Ors.* (1988) 94 P.L.R. 361. Para 9 of the judgment alone deals with the question in issue. The same reads thus:-

"The question then arises whether Dharam Chand, appellant, is entitled to some compensation for the severance of his land holdings in view of the construction of the Dhandehri minor. In this regard it transpires that though there is a bridge at the junction of this sub-minor with the Panjokhra minor and the unacquired land of Dharam Chand falls on both sides of this bridge, but the service road along the bank of this minor being limited for the use of canal authorities only for the purposes of maintenance etc. of the canal, it transpires that he was to be awarded some compensation for severance of his land holdings. In a similar situation in RFA No. 2141 of 1984, referred to above, brother I.S, Tiwana, J. had awarded compensation of the unacquired land at the rate of 10% of its market value. Thus, no different yardstick can be adopted in the present cases and the claimants had to be allowed compensation for severance of land holdings at the rate of 10% of the market price for their unacquired area of land falling beyond the canal minor qua the habitation of his village."

7. A reading of the para, reproduced, above, would straight away make one realise that there is a marked difference between the facts of the case aforesaid and the one under discussion. In Dharam Chand's case (supra) the facts reveal that there was a bridge on the canal and it was not a case that the claimants did not have access to the land located across the canal. That, in view of this Court, makes all the difference in these two cases. In fact, Mr. Masih, while initially arguing the case, was given to understand that in Dharam Chand's case (supra), there was no bridge but when he read the judgment in the Court, he couldnot dispute that insofar as case aforesaid is concerned, there was a bridge.

8. Nothing at all has been pointed out either from the Land Acquisition Act or the Rules framed thereunder or any other precedent which might debar the court from giving proper compensation even to the extent of 50% on account of severance of the land of the claimants.

9. No other point at all has been urged.

10. This Court is of the view that the award rendered by the learned Addl. District Judge is absolutely correct and no interference at all is called for. That being so, these appeals are dismissed in limine.