

IN THE PUNJAB AND HARYANA HIGH COURT, AT CHANDIGARH.

RFA No. 355 of 1993
Decided on March 31, 2008

Smt. Lille Madanjit and others -- Appellants.

v.

Land Acquisition Collector, for Punjab State Electricity Board, Patiala
-- Respondent.

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RFA No. 2307 of 1993
Decided on March , 2008

State of Punjab and others -- Appellants.

v.

Smt. Lille Madanjit and others -- Respondents.

Present: Mr. Amit Jain, Advocate, for the appellants
Mr. S.S. Sahu, AAG, Punjab, for respondent No. 1.
Mr. J.P.S. Sandhu, Advocate, for respondent Nos. 2 and 3

Rakesh Kumar Jain, J:

This order shall dispose of two appeals bearing R.F.A. No. 355 of 1993 and R.F.A. No. 2307 of 1993, since both of them have been filed against the same award of Addl. District Judge, Jalandhar dated 05.1.1993.

The facts are being taken from R.F.A. No.355 of 1993.

Vide notification dated 03.6.1987 issued under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act') which was followed by notification issued under Section 6 dated 16.7.1987, land measuring 2 kanals situated in the area of village Boot was acquired by the Punjab Government for erection of 33 KV Sub Station.

At the time of acquisition of the land, it was having super structure, which too was acquired. The Collector vide his award dated 31.8.1988 assessed the market value of the land @ Rs.4000/- per marla and also awarded Rs.41,448/- on account of super structure along-with 30% solatium and 12% acquisition charges w.e.f. 19.6.1987 to 31. 8.1988.

The land owners dissatisfied with the award of the Collector filed objections under Section 18 of the Act, which were referred by the Collector to the District Judge, where on the basis of pleadings of the parties, following issues were framed:-

1. What was the market value of the acquired land at the time of its acquisition ? OPA
2. Relief:

On the basis of the evidence of the parties, Addl. District Judge, Jalandhar, vide his award dated 05.1.1993, reassessed the market value of the land @ Rs. 6000/-per marla and for super structure @ Rs.60,000/- excluding the amount already received by land owners.

The Addl. District Judge, in order to reassess the market value relied upon a judgment Ex. AX which pertains to the land adjoining to the

land in question which was a pond and was acquired by the Municipal Corporation in the year 1982 (sic). The Collector awarded Rs. 1000/- per marla which was enhanced by the Addl. District Judge, Jalandhar to Rs. 3000/- per marla. Keeping in view the difference between two acquisition 1982 (sic) and 1987 (present acquisition) and also to the effect that earlier acquired land in the year 1982 was a pond, the Addl. District Judge, granted Rs. 6000/- per marla by giving five years benefit to the land owners. In respect of the super structure, the appellants have though produced expert report, who had assessed the value @ Rs.83,888/- and was not even controverted by the respondents, the Court below assessed @ Rs. 60,000/-.

Mr.Amit Jain, counsel for the appellants has argued that the judgment Ex. AX which pertains to the acquisition of the land adjoining to the land of the appellants was challenged by those claimants by way of RFA Nos. 328 of and 1050 of 1990 titled Gurpreet Singh and another v. State of Punjab and others and the same has been allowed by Hon'ble Mrs. Justice Nirmal Yadav, vide her order dated 09.9.2005 assessing the market value of the land @ Rs. 9400/- per marla. The aforesaid case has been reported as Gurpreet Singh and others v. State of Punjab and others 2006 (1) P.L.R. 277. Counsel for the appellants has, however, clarified that earlier acquisition was of 19.4.1983 and not of 1982 as recorded by the Court below. It is argued that since the judgment Ex. AX on the basis of which compensation has been enhanced by the Court below from Rs. 3000/- to Rs. 6000/- per marla has already been

modified to the extent that the compensation has been reassessed by the Hon'ble High Court to the tune of Rs. 9400/- per marla, the appellants are entitled to the amount of Rs. 9400/- per marla along-with escalation of five years. Counsel has also further argued that there is evidence on record which has not been appreciated by the Court below in its right perspective. He has referred to the documents Exs. A-4, A-5 and A-6 dated 22.11.1983, which are small plots of 93 square yards having been auctioned near the land in question. According to the counsel, roughly Rs. 25000/- per marla is the value of the land as on 22.11.1983. In this regard, he relied upon the decision of this Court in the reported as Raj Kumar v. M/S. National Insurance Company Ltd. and others (2005-3) P.L.R. 44.

It is further argued that that even compensation with regard to super structure has not been properly assessed. He has pointed out that though the report of Building Expert is on record, who has assessed the value to the tune of Rs. 83,888/- of the super structure but the Court below has erred in awarding Rs.60,000/- although, there is no counter evidence or report by the respondents. It is further argued that no reason has been given by the Court below while assessing the amount @ Rs.60,000/-.

On the contrary, counsel for the respondents has submitted that compensation awarded by the Court below is on higher side as the claimants/ land owners have mostly produced oral evidence and also submitted that the price of booth cannot be considered as base for compensation for the land in question.

I have heard counsel for both the parties and have perused the record.

Admittedly, judgment Ex. AX pertains to the land adjoining to the land in question. It is also an admitted fact that the land involved in judgment Ex. AX which pertains to uneven land was acquired on 19.4.1983. It is also an established fact that the land owners who are claimants in the judgment Ex. AX came up to this Court in RFA Nos. 328 and 1050 of 1990, which has been allowed and the compensation has been reassessed @ Rs.9400/- per marla. In this situation, the present appellants whose land has been acquired on 03.6.1987 and have been awarded compensation from Rs. 3000/- to Rs. 6000/- on the basis of decision rendered in judgment Ex. AX are entitled to compensation by giving escalation of 4 years i.e. from 19.4.1983 to 3.6.1987.

Counsel for the appellants has further argued that the appellants are entitled to increase by 15% for the intervening period in the market value of the acquired land which has now been assessed to Rs.9400/- per marla in respect of the adjoining land as on 19.4.1983. He has cited a decision of the Hon'ble Court in the case of Krishi Utpadan Mandi Samiti Sahaswan District Badaun through its Secretary v. Bipin Kumar and anr.etc 2004 (1)RCR (Civil) 720 and a Division Bench judgment of this Court in the case of Mehtab Kaur and others v. The State of Punjab and others (2004-2) P.L.R. 649. Counsel has further supplied to the Court the calculation @ 15% as proportionate increase of Rs.9400/-per marla for 4 years from 1983 to 1987, which comes to Rs.5640/-per marla. There is no dispute that the land adjoining to the acquired land was a pond and

was acquired on 19.4.1983 for which market value has been assessed by this Court @ Rs.9400/-per marla and the land in question is a levelled land fit for both commercial and residential purposes, therefore, in my view, the judgments relied upon by counsel for the appellants are applicable. Thus, the appellants are entitled to an increase by 15% per year w.e.f. 19.4.1983 to 3.6.1987 on the amount of Rs. 9400/- per marla which comes to Rs. 5640/per marla and after adding the same with basic price of Rs. 9400/-, it comes to Rs. 15040 per marla.

So far as other argument is concerned, that booth sites were auctioned @ Rs.25,000/- approximately per marla on 22.11.1983, that would not be a guiding factor for the assessment of the compensation because booth sites were fully developed land having sewerage and water connection and other amenities, whereas the acquired is a raw land. However, the assessment of compensation by the Court below in respect of super structure @ Rs.60,000/- is without any reason specially when there is a report of expert Vinod Bhardwaj B.E.(Civil) that the value of the super structure was Rs. 83,888/- and there is no evidence to the contrary produced by the respondents, therefore, the Court below should have assessed Rs. 83,888/- as value of the super structure.

In view of the above, the appeal filed by the appellants/claimants is allowed with costs. The market value of the land is assessed @ Rs.15040/- per marla and that of the super structure @ Rs.83,888/- whereas the appeal filed by the State of Punjab in which no ground much-less substantial has been taken, is dismissed. The appellants, however, shall

also be entitled to all the statutory benefits as envisaged under the Act.

March 31,2008
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(Rakesh Kumar Jain)
Judge