

(19) As a result of the above discussion, I allow these writ petitions with costs, quash the selection for admission to diploma in education course 1987—89 in Government J.B.T. School, Ferozepur Namak (Gurgaon). I direct respondents No. 1 to 4 to prepare the merit list afresh without giving any weightage for Mewat area and also by excluding the marks allocated for interview to each one of the candidates. The merit list for admission should be prepared in pursuance of the above directions and admission to the course should be made on its basis within one month from today. The costs are assessed at Rs. 500 in each of these writ petitions.

S.C.K.

Before I. S. Tiwana, J.

PUNJAB STATE THROUGH LAND ACQUISITION
COLLECTOR,—*Appellant.*

versus

GURBACHAN SINGH AND OTHERS,—*Respondents.*

Regular First Appeal No. 1628 of 1979.

and Cross—Objections No. 15-C-I of 1980.

July 27, 1988.

Land Acquisition Act (I of 1894)—Ss. 23(1A), 23(2) and 28—Compulsory acquisition—Compensation—Market value—Damages—Benefit of section 23(1A) and 23(2)—Whether payable only on market value.

Held, that the amount of damages cannot possibly be treated as part of the market value. Therefore, the additional amount and solatium as envisaged by section 23(1-A) and sub-section (2) respectively are payable only on the market value as determined under clause (i) of section 23 and not on the amount as determined under clause thirdly of this sub-clause. The interest as envisaged by section 28 of the Land Acquisition Act, 1894, is of course payable on the entire amount of compensation i.e. the market value and the damages under clause thirdly of clause (2) of section 23 of the Act.

(Paras 7 and 8)

Punjab State through Land Acquisition Collector v. Gurbachan Singh and others (I. S. Tiwana, J.)

Regular First Appeal from the order of the Court of Shri R. P. Gaiind, Additional District Judge, Kapurthala dated 6th April, 1979 partly allowing the objections to the extent that the compensation at the rate of Rs. 270 per marla as measured in Kapurthala estate should be awarded to the petitioners and ordering that in view of the better location of the land the discrimination for the rates for urban and sub-urban areas should not be applied and further ordering that the whole of the plot shall get compensation at the same rate. Besides that the petitioners would also be entitled to the compensation awarded to Mohinder Singh etc. for the 1/6th share in Khasra No. 2352 and 2353 and also ordering that it is conceded that the remaining part of Khasra No. 2352 measuring 19 kanals 9 marlas is without any access thereto. Referring to the site plan Ex. P-1 there is passage 13 karams away on the Western side of the remaining land and a compensation of Rs. 1000 is awarded on that ground to enable the petitioners to purchase a passage through the adjoining land and further ordering that no justification for any interference with the direction for the removal of the kothas and tube-wells by the petitioners and the assessment by PWD Department for the underground water channel and also entitling the petitioners to solatium at the rate of 15 per cent and interest at the rate of 6 per cent and leaving the parties to bear their own costs.

CROSS OBJECTIONS NO. 15-CI/80.

Cross Objections Under Order 41 Rule 22 of the Code of Civil Procedure praying that these cross-objections may kindly be accepted with costs and a decree for an extra amount of Rs. 16,26,800 over and above the amount of compensation already awarded by the learned Additional District Judge, Kapurthala together with solatium and interest may be passed against the appellants.

K. P. Bhandari, A.G. Punjab, with K. B. Bhandari, Advocate, for the Appellant.

P. N. Aggarwal, Advocate, with H. S. Kathuria, for Respondent No. 1.

JUDGMENT

I. S. Tiwana, J. (Oral)

(1) State appeal No. 1628 of 1979 and Cross Objections to the same No. 15/C. I/80 are disposed of together, as concededly, in both identical questions of law and fact arise for consideration. As a result of the notification published under Section 4 of the Land

Acquisition Act, on 20th of January, 1971, 31 acres 1 kanal 14 marlas of land including that of the objectors was acquired by the State Government for setting up a grain market at Kapurthala, a district headquarter. For evaluating this land, the Collector categorised it as urban and sub-urban and determined its market value at Rs. 30,000 and Rs. 16,000 per acre respectively. Since the objector-landowners did not feel satisfied with the adequacy of this compensation, they sought a reference under section 18 of the Act and as a result of that the District Court, Kapurthala, directed the payment of compensation at a flat rate of Rs. 270 per marla. The State authorities made a grouse of this enhancement. On the other hand, the objectors still not feeling satisfied with the extent of the amount allowed to them have chosen to file their cross-objections.

(2) Having heard the learned counsel for the parties at some length in the light of the evidence on the record, I find no merit in the State appeal. On the contrary, the objectors deserve relief for the following reasons:

(3) For evaluating the acquired land at Rs. 270 per marla, the lower Court has entirely depended upon an earlier award of the Collector Exhibit P. 20. *Vide* this award, the market value of certain land acquired in pursuance of a notification published under Section 4 of the Act on 28th November, 1968 was determined at the same very rate i.e., Rs. 270 per marla. This acquisition was effected for the construction of godowns by the Food Corporation of India. It is seriously contended by Mr. Aggarwal, the learned counsel for the objector-landowners that the two acquisitions could not possibly be treated at par on account of the time lag that intervened the same. This according to the learned counsel is more so, in view of the following findings recorded by the court itself. In paragraph 18 of its judgment the Court has observed:

“I have considered the arguments and the locations of the two lands. It is to be noted that the Abadi of Kapurthala city extend up to the railway station and the land covered by award is across the railway station and the railway lines. It is not connected by the road excepting the road leading to the railway station. As against this land in question is located on the main Kapurthala Sultanpur Road and is surrounded by Industrial Complex like Tanneries, Rice Shellers and Palson Industry. The area is fast developing and the constructions of the grain market had added to its charm and value. It is also close to the railway station.

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Even by a zigzag road, the railway godowns are about two furlongs from the land in question. In this way, this can be said to be on a better footing than the land covered by the award Exhibit P-20. If compensation at the rate of Rs. 270 per marla was found by the Collector Acquisition to be reasonable in 1968 relating to the land covered by award Ex. P. 20 compensation for the land presently in question should be at a higher level. The petitioners have not been able to produce any reliable evidence to show how far the price of land in question should be higher than the compensation awarded by the award Ex. P. 20 and therefore, the petitioners can be granted minimum possible compensation at the same rate. In this manner they would be given the rates prevailing in 1968 in another locality which was much inferior to the locality in question."

(4) The contention of Mr. Aggarwal, as noticed above, obviously has merit. It is well indicated by the site plan Ex. P. 1 that the area covered by Ex. P. 20 lay at a considerable distance from the suit land or the main Kapurthala-Sultanpur Lodhi road. Further the suit land had acquired a very great potential for being utilised as residential and commercial area by the time it was notified for acquisition. It therefore appears wholly unjust and unfair to treat this land at par with the land covered by Ex. P-20. Keeping in view the totality of facts and circumstances, it appears fair to me to allow a raise of about 25 per cent on the rate at which the land covered by Ex. P. 20 was evaluated. I, therefore, determine the market value of the presently acquired land at Rs. 340 per marla. It hardly need be highlighted at this stage that in these matters some sort of guess work has essentially to be resorted to in the light of the objective data available on record in order to compensate the owners of land which has been acquired.

(5) The other claim of the landowners is under clause 3 of subsection (1) of section 23 of the Act i.e., they have not been justly compensated for the severance of their land which has been totally rendered inaccessible on account of the present acquisition. In order to sustain this plea, it is pointed out by their learned counsel that out of khasra No. 2352, an area measuring 19 kanals 9 marlas has been left out of acquisition and the said area is not accessible from any side. This factual position is not in dispute in the light of the evidence

of Bachan Singh Patwari (P.W. 1) and Gurbachan Singh objector himself. There is no rebuttal to this evidence whatsoever. It is, therefore, patent that the landowner-objectors cannot utilize the land left with them out of khasra No. 2352. The observation made in the last paragraph of the impugned judgment to the effect that "there is passage 13 karams away on the western side of the remaining land" i.e., the severed land appears to be wholly ill-founded. The site plan Exhibit P-1 does not indicate any such passage nor has any other witness spoken about it. In somewhat similar situation, in an earlier judgment in *Smt. Narinder Kaur v. State of Punjab and others* (1), I had opined 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 per cent of the market value of the unacquired land by way of damages for its severance from the acquired land in addition to the market value of the acquired land.

(6) For the detailed reasons recorded in that judgment, I direct that for their unacquired land of khasra No. 2352 i.e., 19 kanals 9 marlas, the objectors would be paid compensation at the rate of Rs. 1,070 per marla i.e., one half of the market value determined for the acquired land.

(7) Lastly, it is maintained by Mr. Aggarwal that the payments to be made to the claimants in terms of sections 23(1-A), 23(2) and 28 of the Act are to be worked out on the basis of the entire amount of compensation payable to them, i.e., the market value of their acquired land and the damages assessed under clause 'thirdly' of section 23 of the Act. This, however, appears untenable. So far as the claims under section 23(1-A) and sub-section (2) of the section are concerned, the learned counsel appears to ignore the distinction between the market value as permissible under clause (i) of sub-section (1) and the amount of damages payable under clause thirdly of this sub-section. The amount of damages cannot possibly be treated as part of the market value. This distinction in the two phrases has clearly been noticed by the two Division Benches in *The State of Madras represented by Collector of Madras v. Mohamed Mustafa* (2) and *State of Bihar v. Rameshwar Singh* (3).

(1) 1980 P.L.R. 473.

(2) A.I.R. 1971 Mad. 213.

(3) A.I.R. 1973 Pat. 123.

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(8) I, therefore, hold that the additional amount and solatium as envisaged by sub-section 23(1-A) and sub-section (2) respectively are payable only on the market value, as determined under clause 1 of section 23 and not on the amount as determined under clause thirdly of this sub-section. The interest as envisaged by section 28 of the Act is, of course, payable on the entire amount of compensation, i.e., the market value and the damages assessed under clause thirdly of sub-section (1) of section 23, as compensation essentially includes market value and the damages payable to a landowner on account of the acquisition of his land.

(9) For the reasons recorded above, the State Appeal is dismissed but with no order as to costs and the Cross-Objections filed by the landowner-claimants are allowed, as already indicated, with proportionate costs.

R.N.R.

Before Ujagar Singh, J.

DEV RATTAN,—Petitioner.

versus

STATE OF HARYANA,—Respondent.

Criminal Revision No. 243 of 1988

July 29, 1988.

Haryana Development and Regulation of Urban Areas Act (VII of 1975)—Ss. 3, 7, 10 and 11—Code of Criminal Procedure (II of 1974)—Ss. 248 and 468—Offence under section 7 punishable with three years imprisonment—Limitation for taking cognizance—Commission of offence under Section 7—Prosecution thereof—Trial Court framing charge under section 10—Accused whether can be discharged thereafter—State filing Criminal revision against order of discharge—Revision—Whether competent.

Held, that according to the provisions of section 248 of the Code of Criminal Procedure, 1973 after framing of the charge if the Magistrate finds the accused not guilty he has to record an order of acquittal and if he finds the accused guilty, the accused has to be sentenced after hearing him on the question of sentence. There is no alternative for the Magistrate to pass any other order than the order of acquittal if he finds the accused not guilty. Hence it has to be held that an order of discharge could not be passed once the charge has been framed. (Para 7).