

**(2003) 09 P&H CK 0049**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular First Appeal No. 920 of 1985

Pritam Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision:** Sept. 10, 2003

**Acts Referred:**

- Land Acquisition Act, 1894 - Section 23

**Citation:** (2003) 135 PLR 769 : (2004) 1 RCR(Civil) 425

**Hon'ble Judges:** Satish Kumar Mittal, J

**Bench:** Single Bench

**Advocate:** Pritam Saini, for the Appellant; K.K. Gupta, for the Respondent

**Final Decision:** Allowed

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**Judgement**

Satish Kumar Mittal, J.

This order shall dispose of R.F.A. Nos. 920 of 1985, 1653 and 1654 of 1988, which are arising from the same notification and in which common questions of facts and law are involved.

2. Vide three different notifications issued u/s 4 of the Land Acquisition Act. 1894 (hereinafter referred to as the "Act") on the same date, i.e.. 20.2.1969, Union of India acquired land of three villages, namely, Dadu Majra (11.88 acres), Maloya (185.74) acres) and Badheri (54.13 acres), for the development of Sector 39, Chandigarh. The aforesaid appeals are arising out of the acquisition of land of village Dadu Majra. The Land Acquisition Collector vide his award dated 5.4.1969 assessed the market value of the acquired land at the following rates:-

(a) Rs. 6750/- per acre for Chahi land.

(b) Rs. 4500/- per acre for Arzi Chahi or Mustar Chahi land.

(c) Rs. 3600/- per acre for Barani land.

3. Feeling dissatisfied with the aforesaid award, the claimants-appellants sought reference u/s 18 of the Act for enhancement of compensation payable to them. The learned District Judge, Chandigarh vide his award dated 4.5.1971 determined the market value of the acquired land at the following rates:-

(a) Rs. 9000/- per acre for Chahi land.

(b) Rs. 6000/- per acre for Arzi Chahi/Chahi Mastar land.

(c) Rs. 4800/- per acre for Barani land.

4. It is submitted here that the learned District Judge, Chandigarh determined the market value of the acquired land at the aforesaid rate on the basis of the award given by the learned District Judge in respect of the land situated in village Maloya which was also acquired by the notification of the same date and for the same purpose.

5. Against the aforesaid award of the learned District Judge, the Union of India filed R.F.A. No. 503 of 1971 etc. in this Court. This Court vide its order dated 11.11.1971 remanded the case to the learned District Judge because the cases pertaining to village Maloya were also remanded to the learned District Judge for a fresh decision. After the remand, the learned district Judge decided the reference made by the claimants-land owners on the basis of the award dated 3.3.1984 (Ex.PA) pertaining to village Maloya vide which the market value of the acquired land was fixed at the rate of Rs. 14,000/- per acre for all types of land. The said market value was fixed by the learned District Judge in the said award on the basis of a Division Bench decision of this Court in L.P.A. No. 363 of 1968, which pertains to village Maloya. The claimants-land owners of villages Maloya and Badheri filed R.F.A. No. 1619 of 1984 in this Court. The said R.F.A. was allowed by this Court and the award dated 3.3.1984 was set aside, and the matter was again remanded to the learned District Judge to decide the cases of Maloya and Badheri villages together, vide award dated 10.5.1990, by making the following observations :-

"After hearing the counsel for the parties and after giving thoughtful consideration to the entire matter. I am of the view that these cases need be remanded for fresh decision. It is well-settled proposition of law, which cannot be disputed, that the Court to whom the cases are remanded has to comply with the directions issued in the remand order. In fact the Court gets jurisdiction to decide the cases once again only by virtue of a remand order having been made. If the Court to whom remand is made is directed to record evidence, it would be recorded. If the Court to whom remand is made is restricted and directed to deal with the evidence on record, no fresh evidence would be recorded. In Maloya cases, at one stage the District Judge has observed that no fresh evidence has been produced. The District Judge was probably thinking that until and unless fresh evidence was led, no contrary conclusion could be arrived at. Once the cases are remanded, the entire evidence whether led before remand or thereafter, has got to be considered. In the present

case, the learned Judge while remanding intended that all the cases of Maloya and Badheri should be heard together because both the villages are contiguous to each other. The apparent intention of the learned Judge was that if the evidence is lacking in Maloya cases and there is better evidence in Badheri cases, the evidence brought on the judicial file of Badheri cases can well be availed of by the land acquisition court for determining the correct market value of the acquired land. This being so, the learned District Judge cannot while ignoring the remand order observe that since there is a judgment rendered in L.P.A., the same would be followed while determining the market value of the acquired land. The learned District Judge while dealing with Maloya cases along with Badheri cases might well have opted to follow the decision in L.P.A. or the judgment rendered by S.P. Goyal, J. or some other judgments but nonetheless, he was to decide Maloya cases along with Badheri cases. If Badheri cases some how or the other were not ripe for disposal, the District Judge could have adjourned Maloya cases and awaited the completion of Badheri cases as no time limit was initially fixed by R.N. Mittal, J., while passing the remand order on 5.11.1973. May be time limit was fixed by M.R. Sharma, J., while agreeing with the remand order passed by R.N. Mittal, J. but M.R. Sharma, J. observed "let the cases may be preferably decided within three months." The learned District Judge could well have awaited the completion of Badheri cases since no time limit was fixed by R.N. Mittal, J., and M.R. Sharma, J., only observed that the cases may be preferably decided within three months. This Court while agreeing with the arguments of the counsel for the claimants on the interpretation of the remand orders is of the considered view that the cases must be remanded for an additional reasoning. It has been noticed by me while reading the award in Badheri cases that the District Judge has ruled out of consideration several mutations produced by the claimants as well as Union of India on the ground that mutations are inadmissible in evidence in view of Full Bench judgment in State of Punjab v. Pohnu and Anr. 1986(1) P.L.R. 109. Since the District Judge while deciding Badheri cases did not have the advantage to go through the sale instances, I think that all such sale deeds must be made available to the Court which have got relevance and which the parties would produce on the record now after the cases are remanded. This being the precise interpretation as regards admissibility of mutations according to the Full bench judgment which has been rendered during the pendency of the proceedings for acquisition, another remand is otherwise needed so that the market value of the acquired land can be determined in the light of sale instances regarding which certified copies or original sale deeds would now be produced by the parties. The parties would be allowed to lead evidence, both oral as well as documentary. The evidence would, of course, pertain to the valuation on the date of notification only. In the light of the observations made above, all the appeals filed by the claimants are allowed. The impugned awards are set aside. The appeals filed by the Union of India, in consequence, are also allowed in the sense that the awards are being set aside and the District Judge is being directed to decide all the cases together..."

6. After the remand, the learned Additional District Judge decided those cases vide his award dated 28.7.1997 and determined the market value of the acquired land of villages Maloya as well as Badheri at the flat rate of Rs. 22,500/- per acre for all kinds of lands. A copy of the said award has been produced by the learned counsel for the appellants and the same has been taken on record and marked as "Annexure A". Against the aforesaid award dated 28.7.1997, no appeal has been preferred by the Union of India.

7. Learned counsel for the appellants submitted that the land of three villages, namely, Dadu Majra, Maloya and Badheri was acquired on the same date for the same purpose. He further submitted that all the three villages are adjacent to each other and the lands of these villages are contiguous. It has been further submitted that the learned District Judge while making the impugned award has relied upon the award dated 3.3.1984 (Ex.PA) which pertains to village Maloya. He further submitted that the said award of village Maloya was subsequently set aside and after the remand, the market value of the acquired land of village Maloya was assessed at Rs. 22,500/- vide award dated 28.7.1997. Therefore, the market value of the acquired land of the appellant of village Dadu Majra should be assessed on the basis of the award dated 28.7.1997 at the flat rate of Rs. 22,500/- per acre.

8. The learned counsel for the respondent does not dispute the fact that the award dated 3.3.1984 (Ex.PA) which was the basis of the impugned award in the instant case, which pertains to village Maloya, was set aside and the matter was remanded and after the remand, the market value of the acquired land of village Maloya has been fixed at the flat rate of Rs. 22,500/- per acre. It is also not disputed that the said award had become final as no appeal was filed against the said award by the Union of India. It is also not disputed that all the three villages are adjacent to each other and their land is contiguous. However, the learned counsel for the respondent contended that the acquired land of village Dadu Majra is being used by the Chandigarh Administration for dumping garbages whereas the land acquired in villages Badheri and Maloya had been used for establishing the residential and commercial area of Sector 39, Chandigarh. Therefore, same price cannot be given for the land of village Dadu Majra. "

9. In my opinion, the use of the land after the acquisition is having no bearing on determination of the market value of the acquired land. Merely because after the acquisition, the Chandigarh Administration is using a part of the acquired land for a particular use other than the purpose for which it was acquired, no different market value can be fixed for the said land. As far as issuance of notification u/s 4 of the Act is concerned, the public purpose for which the land was acquired was for development of Sector 39, Chandigarh in all the three villages. Therefore, I do not find any force in the contention of the learned counsel for the respondent. Thus, I am of the opinion that the market value of the acquired land of village Dadu Majra should be fixed at the flat rate of Rs. 22,500/- per acre on the basis of the award

dated 28.7,1997 which pertains to village Maloya. Accordingly. I allow the aforesaid three appeals and determine the market value of the acquired land at the flat rate of Rs. 22,500/- per acre and the appellants-land owners will be entitled for compensation at the said rate. The appellants shall not be entitled for any additional amount u/s 23(1-A) of the Act. However, they shall be entitled to 30% solatium on the enhanced compensation u/s 23(2) of the Act, and interest at the rate of 9% for one year and 15% for subsequent years till its payment u/s 28 of the Act.

10. In case the appellants-claimants have not paid the requisite sufficient court-fee on the amount enhanced by this award, they are allowed three months time to make-up the deficiency in court-fee. In case of default, the claim of the appellants would be taken to have bent decreed only to the extent to which they have already paid the court- fee.