

(2001) 01 P&amp;H CK 0073

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Regular First Appeal No. 537 of 1986

Murari Lal Bhargava

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** Jan. 19, 2001**Acts Referred:**

- Land Acquisition Act, 1894 - Section 18, 19, 23, 28, 4

**Citation:** (2001) 2 RCR(Civil) 256**Hon'ble Judges:** R.L. Anand, J**Bench:** Single Bench**Advocate:** Mr. K.K. Mehta, for the Appellant; Mr. Sultan Singh, AAG, for the Respondent

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**Judgement**

R.L. Anand, J.

By this judgment I am disposing of R.F.A. No. 537 of 1986, Murari Lal Bhargava v. State of Haryana and R.F.A. No. 1997 of 1985, Murari Lal v. State of Haryana, as in the opinion of this Court a common question of law and fact arises in these two cases.

2. First of all, I will take the facts of RFA No. 537 of 1986 Murari Lal v. State of Haryana.

3. Notification u/s 4 of the Land Acquisition Act was issued on 1.10.1973. This Notification was published in Haryana Government Gazette Notification dated 9.10.1973 The land in question is situated in Faridabad which was acquired by the State for the development of Sector 25. The Land Acquisition Collector by his award dated 21.9.1978 assessed compensation at the rate of Rs. 1050/- per Pukhta Biswa. The compensation was also assessed for a tubewell and grape and other fruit bearing trees.

4. The appellants were not satisfied with the award of the Collector and they made a reference u/s 18 of the Land Acquisition Act alleging that the market value of the

acquired land was Rs. 150/- per square yard. It was averred that there were 4500 plants of grape the value of which was Rs. 300/- per plant. A sum of Rs. 25,000/- was claimed as compensation for the tubewell. A sum of Rs. 1,50,000/- was claimed for training material for preservation of grape plants. Rupees two lacs were claimed for cold storage and Rs. 20,000/- per shed and another sum of Rs. 20,000/- for instruments of grape cultivation. A further sum of Rs. 20,000/- was claimed for underground system.

5. The claim petition u/s 18 was resisted by the State and it was pleaded that the compensation awarded by the Collector was fair and adequate.

6. Reference Court made the following issues for the disposal of the reference :-

1. What was the market value of the land in question on the date of notification u/s 4 of the Land Acquisition Act ?

2. Whether the petitioners are entitled to enhanced compensation over and above the amount awarded by the Land Acquisition Collector. If so how much ?

3. Relief.

7. In R.F.A. No. 1997 of 1985, titled Murari Lal v. State of Haryana, the Notification u/s 4 of the Land Acquisition Act was issued on 30.9.1977 and the land in question situated in Faridabad was acquired for the development of Sector 19. The Land Acquisition Collector vide award dated 4.12.1979 awarded compensation of the land at the rate of Rs. 1100/- per pukhta biswa. The compensation was also granted for grape plants, a kotha, gobar gas plant, angle irons, well and tube well etc.

8. The appellants were not satisfied with the award of the Collector and they made a reference u/s 18 of the Land Acquisition Act before the Reference Court alleging that the market value of the land on the date of the acquisition was much more than the one assessed by the Collector.

9. The State filed written-statement and denied the allegations. From the pleadings of the parties the following issues were framed :-

1. What was the market value of the land in dispute on the date of notification u/s 4 of the Land Acquisition Act ?

2. Whether Murari Lal petitioner is entitled to enhanced compensation over and above the amount awarded by the Land Acquisition Collector. If so how much ?

3. Out of the compensation awarded by the Collector, what is the share of Murari Lal petitioner, Gutzari Lal Bhargava, Lilawati Charitable Trust and Yi-nod Kumar Bhargava and how that compensation to be apportioned between these four parties ?

4. Relief.

10. In the first reference the parties led evidence in support of their case and while deciding issues No. 1 and 2, the learned Reference Court awarded the compensation of the land at the rate of Rs. 18/-per square yard and also awarded compensation at the rate of Rs. 185/- per plant taking the number of plants as 1726.

11. Still not satisfied with the decision dated 28.8.1985. of the Reference Court, i.e. District Judge, Faridabad, RFA No. 537 of 1986 has been filed.

12. The parties were also given opportunities to lead evidence in the second appeal i.e. RFA No. 1997 of 1985, and while deciding issues No. I and 2, the learned-District Judge vide award dated 28.8.1985 awarded compensation of the land at the rate of Rs. 18/- per square yard and he also awarded compensation at the rate of Rs. 185/- per plant and total number of the grape trees were taken as 5249.

13. Still the appellants were not satisfied with the decision of the District Judge dated 28.8.1985. Hence the filed RFA No. 1997 of 1985.

14. I have heard Shri K.K. Mehta, learned counsel appearing on behalf of the appellants of both the appeals and Shri Sultan Singh, learned State counsel appearing on behalf of the respondent and with their assistance have gone through the record of the cases.

15. The learned counsel for the appellants firstly submitted that the compensation with regard to the land is inadequate and the Reference Court committed an error when it awarded compensation at the rate of Rs. 18/- per square yard.

16. The argument of the learned counsel for the appellant cannot be accepted. In the first appeal the Notification u/s 4 was also issued in the year 1973 i.e. 1.10.1973 and in these circumstances we have to see what was the market value of the land on that date. The Tribunal has rightly placed reliance on Ex.P.39, a copy of the judgment dated 18.4.1979 of the High Court titled Radhey Sham v. State of Haryana. In that case also, the land in Faridabad was acquired for Sector 28 in pursuance of the same notification dated 1.10.973 and the learned Judge of the Hon"ble High Court assessed the compensation at the rate of Rs. 18/-per square yard. To the same effect is another judgment Ex.P.41 dated 9.5.1984. In that ease also the compensation was assessed at the rate of Rs. 18/- per square yard. The judgment dated 9.5.1984 was not challenged by the claimants. We have to go by instances and Exs. P.39 and P.41 are the best instances which can conclusively determine the market value of the land in question. The land of the claimants is also situated in Faridabad and from their land, Sector 28 was to be carved out. If the market value of the similarly situated land, has been assessed by the competent Court of jurisdiction, that is the guiding factor for any Court to adopt. Since the High Court has awarded compensation at there rate of Rs. 18/-per square yard, therefore, the Reference Court was right in adopting that very yardstick and it has rightly granted the compensation at the rate of Rs. 18/- per square yard. Thus, there is no scope of enhancement.

17. Reverting to the market value of the plants, subject matter of RFA No, 537 of 1986, the case of the claimants was that there were 10 to 13 thousands grape plants. The learned counsel for the appellants submitted that it is proved on the record that there were 13000 grape plants and, therefore, the Reference Court committed an illegality by holding that there were 1726 grape plants. He further submitted that the price of the plants at the rate of Rs. 185/- per plant, is also on the lower side. In support of his contention, the teamed counsel for the appellants relied upon the statements of Shri Murari Lal, Shri Mukand Lal Behari and Shri Om Parkash, Murari Lal stated that there were 13000 grape plants but his evidence is contradictory to the statement of Shri Om Parkash who deposed that there were 10000 plants on the acquired area. The statement of both these witnesses is further inconsistent with the statement of Mukand Lal Behari.

18. In this view of the matter no reliance can be placed on the inconsistent oral statement. There is no evidence led by the claimants to show that for how many plants of grapes they made a claim before the Land Acquisition Collector. Then we have to discuss the statement of Shri J.C. Anand who simply deposed that the area of the garden was about 14 or 15 acres and there were about 12000 to 13000 plants but this evidence is again inconsistent with the case set up by the appellants himself who averred in the claim petition u/s 18 that there were 4500 plants of grape. In fact, the land of Shri Murari Lal fell in two Sectors i.e. Sector 28 and Sector 19 which were developed later on. Perhaps he is collecting the total number of the plants. There is no evidence that the plants were ever numbered or any list of the plants were given in any Orchard Department of the Government. In the cross-examination Shri Murari Lal stated that he has led evidence with regard to the value of the grape trees and other structure in the entire land of which he was the owner and which has been utilised by the State for Sectors 19 and 28. In the absence of any specific evidence about the number of the plants upon which Sector 28 was developed, it cannot be taken as a gospel truth that there were 10 or 13 thousands plants of the appellants on this acquired area. In my opinion the reference Court has rightly come to the conclusion that there were 1726 grape plants, which was the subject matter of this acquisition and in this regard I can refer to the observations of the Reference Court where it was observed as follows :-

"The statement u/s 19 appended with the reference made by the Land Acquisition Collector shows that compensation for grapes was paid in respect of land comprised in Khasra No. 92/1, 93/1, and 102/1 measuring 5 Bighas 1 biswa 12 biswas. The evidence discussed above shows that the petitioners claimed to have planted more than 10000 grape plants in the area of about 15 acres. Consequently, the claim now made for 4500 plants in the acquired land in question is only imaginary and no satisfactory evidence has been led to show that the plants were more than in number what the Land Acquisition Collector found. I thus hold that there were 1726 grape plants in the land."

19. Reverting to the price of the land, the main argument of the learned counsel for the appellants is that Madhuban Nursery is very close to the acquired area. In that Nursery there were also grape plants. The learned Reference Court took that evidence into consideration and came to the conclusion that the grape plants of Madhuban Nursery, seven in number, were evaluated at Rs. 1295/-. Thus, the value of the one plant comes to Rs. 185/- only. In the case of the appellants, 550 plants were evaluated for Rs. 19250/-, eight for Rs. 120/-, 419 for Rs. 14665/-, five for Rs.75/- and 744 for Rs. 26040/-. The average value of per plant comes to Rs. 35/-. We all know that the capacity of every fruit giving plant differs from one plant to other. A uniform criteria can never be taken from each plant. Every mango or grape plant gives different yields. There always remains uncertainty of weather.

20. In this view of the matter, the learned Reference Court rightly came to the conclusion that the appellants are entitled to Rs. 185/- per plant by way of compensation and the number of plants as 1726, has rightly been taken.

21. It was then submitted by Shri Mehta that the Reference Court has committed an error in rejecting the case of the appellants for tubewell, for agricultural instruments or for the tubewell kotha etc.

22. I do not subscribe to the argument raised by the learned counsel for the appellants for the reasons given in para Nos. 11, 12, 13 and 14 of the judgment dated 28.8.1985 given by the learned District Judge. Onus is upon the appellant to establish if he wants to get the enhancement. He cannot be granted the compensation for a building which was never acquired by the Government. In the absence of any evidence, no additional compensation was payable to the appellants. Therefore, I affirm the award of the Reference Court qua RFA No. 537 of 1986.

23. Reverting to the submissions of Shri Mehta in RFA No. 1997 of 19851 can simply say that the submissions were repetitive to the one made by the learned counsel in RFA No. 537 of 1986. In this case also, the decision of the Hon"ble High Court dated 18.4.1979 Ex. P.39, was made the basis by the learned District Judge while passing the impugned award. The land in that appeal was also situated in Faridabad and it was acquired for the development of Sector 28. In the present case, from the land of the appellants Sector 19 was developed in Faridabad and the date of the Notification is the same. The Hon"ble High Court observed in Radhey Sham v. State of Haryana Ex.P.39 that Sector 28 was situated along with Mathura Road just adjacent to Sector 19. Thus, the potential value of the land from which Sectors 19 and 28 were developed, is the same. Therefore, the learned District Judge rightly assessed and gave the compensation at the ratio of Rs. 18/- per square yard and no further interference is called for the reasons which I have already given while disposing of RFA No. 537 of 1986.

24. With regard to the grape plants it is proved on the record that there were 5249 grape plants on the land which is the subject matter of this appeal. Since the

present land is very close to Sector 28 and the value of the grape plants situated on that land has been assessed at Rs. 185/- per plant, therefore, the same ratio has to be applied in the present case.

25. With regard to the higher compensation of tubewell, cold storage etc. there is no satisfactory evidence. The cold storage of the appellants was never acquired by the Government. There is no evidence that this cold storage has become useless or that it has been rendered of no use. In this view of the matter, no compensation can be granted to the appellants on this count.

26. With regard to the compensation of the tubewell, a bald statement has been made that Rs. 65,000/- were spent on three tubewells and there is no documentary evidence in this behalf. No cash memo/receipts have been produced. With regard to the compensation of the kothas, Shri Bihari Lal Chadha, an architect visited the site in 1984. He applied the rate of 1980. The acquisition in this case is of 1977 when the Notification u/s 4 of the Land Acquisition Act was issued.

27. The onus is on the claimants to prove about the market value of the tubewell kothas or structure. Similarly, there is no evidence with regard to the steel structure nor there is any evidence that these were ever installed. On the bald statement of Shri Behari Lal, which is not even supported by the claimants, no compensation can be awarded.

28. Thus, I am of the considered opinion that there is no scope for interference in the finding of the learned Reference Court i.e. District Judge, Faridabad, which is the subject matter of RFA No. 1997 of 1985.

29. Net result is that the learned Reference Court has rightly assessed the compensation of the land and the grape plants. Just compensation has also been granted for the number of plants and there is no parameter to hold that 13000 grape plants were acquired by the Government.

30. As a result of my above discussion. both the appeals i.e. RFA Nos. 537 of 1986 and 1997 of 1985, fail and these are dismissed with no order as to costs.

31. Appeals dismissed.