

# **Gulzara Singh And Ors., Etc vs State Of Punjab And Ors on 11 May, 1993**

**Equivalent citations: 1993 SCR (3) 645, 1993 SCC (4) 245**

**Author: K. Ramaswamy**

**Bench: K. Ramaswamy, R.M. Sahai**

PETITIONER:

GULZARA SINGH AND ORS., ETC.

Vs.

RESPONDENT:

STATE OF PUNJAB AND ORS.

DATE OF JUDGMENT 11/05/1993

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

SAHAI, R.M. (J)

CITATION:

1993 SCR (3) 645

1993 SCC (4) 245

JT 1993 (3) 668

1993 SCALE (2) 808

ACT:

Land Acquisition Act, 1984: Section 23(1)--Acidetest for Market Value of acquired land--Relevance of Sale deeds mutation entries, Average price, Margin for wholesale price of large extent, Deduction for development charges.

HEADNOTE:

Notification under section 4 for acquisition of 89 Acres 4 Kanals and 12 Marlas of land in a village in Punjab, published on January 27, 1978. Appellants claimed compensation Rs. 30,000 per Bigha i.e. Rs. 1500 per Biswa, on the ground that 15 Biswas of land situated near the acquired land had been sold on July 12, 1977, for Rs. 24,000 which works out to Rs. 1600 per Biswa. Land Acquisition Collector classified the acquired land in 6 blocks and awarded Market Value ranging between Rs. 30,000 to Rs. 6000 per acre. In reference under Section 18, the District Judge disagreed with classification. The learned Judge, relying

on sale deeds dated September 4, 1972, June 14, 1976, February 23, 1977 and July 15, 1977, all for small extents, awarded compensation @ Rs. 800 for the rest of land, besides solatium and interest. Appeals filed in the High Court by State of Punjab and by one batch of claimants. Another batch of claimants filed cross objections. The learned Single Judge allowed appeals filed by the State and dismissed appeals and cross-objections of the claimants. Market Value was determined, on working out average price on the basis of sale deeds dated September 4, 1972 and June 14, 1976 filed by claimants and mutation entries dated August 31, 1977 and October 4, 1977 filed by the State. Belting was carved at depth of 100 Ft. from main road and deduction of 1/3rd was made towards development charges. Consequently market value determined @ Rs. 750 per Biswa for land abutting main road and @ Rs. 500 per Biswa for the rest of land. Judgment and order of the learned Single Judge was confirmed by Division Bench.

Claimants, by special leave petition filed appeals for higher compensation. This court determined market value at Rs. 1000 per Biswa and allowing the appeals to that extent, HELD It is settled law that to determine market value of the land, the sales of land under requisition if any or the sales in the neighborhood lands,

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that possessed of same or similar features or fertility or other advantageous features would furnish basis to fix just and fair market value. (649-E)

The price for which the willing vender would offer the land and willing vendee would agree to purchase it, as a prudent man in normal market conditions, as on date of notification or near about the date, is acid test to fix market value. Sales and purchases of land at throw away price at arms length or depressed sales or facade of sales made in quick succession to inflate market value do not offer any basis to determine just Market Value. (649-F)

In order to adjudge, whether sales are bonafide, whether consideration mentioned in the deed was infect and really passed, whether the lands covered by sale deeds and relied on possessed of same or similar potentialities or fertilities or advantageous features would be brought out on record only by examination of the vendor or the vendee or if neither of them is available, the attesting witness, who has personal knowledge of the bargain and passing of consideration. Hence it is mandatory. (650-A)

Periyar & Pareekanni Rubbers Ltd. v. State of Kerala: [1991] 4 SCC 195.

Sale deeds of small extents being retail price do not offer comparable basis to fix compensation, when large block is acquired. If sale transactions relate to the lands under acquisition and if found to be genuine and bonafide transactions, then it may be considered but reasonable margin must be given in fixing wholesale price. (650-E)

Collector of Lakhimpur v. Bhuvan Chandra Dutta AIR 1971 SC 2015; Mirza Nausherwan Khan & Another v. Collector (Land Acquisition) Hyderabad [1975] 2 SCR 184; Ram Rattan & Others v. State of Uttar Pradesh [1977] 2 SCR. 184; Smt. Kaushalya Devi Bogra & Others v. Land Acquisition Officer, Aurangabad  
JUDGMENT:

Others [1977] 1 SCR 329; Administrator General of West Bengal v. Collector Varanasi AIR 1988 SC 943 and Special Tehsildar Land Acquisition v. A Mangal Gowri [1991] 4 SCC

218. Court in the first instance has to determine as to which of the sale deeds are relevant, proximate in point of time and offer comparable base to determine market value. The after average price has to be worked out and the contention that highest value should be fixed cannot be accepted. (651-D) State of Madras v. A.M. Ranjan & Another [1976] 3 SCR 356; Collector of Lakhimpur v. Bhuvan Chandra Dutta AIR 1971 SC 2015; Smt. Kaushalya Devi Bogra & Others v. Land Acquisition Officer, Aurangabad & Another [1984] 2 SCR 900 and Administrator General of West Bengal v. Collector, Varanasi AIR 1988 SC 943.

The Principle of belting is perfectly legal and unexceptionable, as the lands abutting the main road up to a specified depth depending on factual material on record, would fetch higher market value than lands situated in interior area. (652-A) If the acquired land is undeveloped, deduction of at least 1/3rd, is necessary towards development charges. (652-F) Brig. Sahib Singh Kalha & Others v. Amritsar Improvement Trust & Others [1982] 1 SCC 419; Administrator General of West Bengal v. Collector Varanasi AIR 1988 SC 943; Special Tehsildar, Land Acquisition v. A. Mangal Gowri [1991] 4 SCC 218; and Bhagwathula Swamanna & Others v. Special Tehsildar Land Acquisition Visakhapatnam [1991] 4 SCC 506. (535-D-E) & CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8670 of 1983. From the Judgment and Order dated 3. 9. 1982 of the Punjab and Haryana High Court in Regular First Appeal No. 1105 of 1981.

WITH C.A. Nos. 8634 to 86-58/83 and 8660-62/83, 8665 to 8669/83 and 8671-72/ 83 Prem Prasad Juneja and R.S. Sodhi for the Appellants. H.M. Singh for G.K. Bansal for the Respondents.

The Judgment of the Court was delivered by K. RAMASWAMY, J. The common questions of law arose for decision in these appeals. Hence they are disposed of together. Notification under s. 4 (1) of the Land Acquisition Act 1 of 1984 was published in the Punjab State Gazette on January 27, 1978 acquiring 89 acres 4 canals and 12 marlas of land situated in Dhuri village for public purpose, namely to set up new Mandi Township. The appellants claimed at the rate of Rs. 30,000 per Bighabut Land Acquisition Officer after classifying the lands into six blocks A to F, awarded market value ranging between Rs. 30,000 to Rs. 6,000 acre. On reference under s. 18 of the Act, the District Judge, Sangrur in his judgment dated May 13, 1981 disagreed with the classification and found that all the lands are possessed of the same quality. Relying on sale-deeds, Ex. p-3 dated September 4, 1972, p-5 dated June 14, 1976, p-2 dated February 23, 1977 and p-4 dated July 15, 1977, all small extents, he calculated at an average of Rs. 1300 per Biswa and awarded to the lands belonging to Jaswant Kaur Baldev Singh and Gurdev Singh at the rate of Rs. 1,000 per Biswa finding that their lands are abutting Abadi (village) and for the rest awarded at the rate of Rs. 800

per Biswa with statutory solatium at 15% and interest of 6% per annum on enhanced compensation. Dissatisfied therewith the State filed the appeals and against disallowed claims, the claimants in one batch filed appeals and in another batch filed cross-objections. The learned Single Judge relied on Ex. p3 and p-5 filed by the claimants and Ex. R-4 and R-6 filed by the State as comparable instances and calculated the average which worked out at Rs. 750 per Biswa. He found that the lands are possessed of potential value for further building purposes. Therefore, he carved out belting at a depth of 100 ft. from the main road to those lands, deducted 1/3rd towards developmental charges and awarded the market value at the rate of Rs. 750 to the land situated abutting to the main road to the depth of 100 ft. and for the balance lands at the rate of Rs.500 per Biswa. The State appeals were allowed and of the claimants and cross objection were dismissed. The Division Bench confirmed the judgment of the learned Single Judge. The claimants filed these appeals by special leave. In the first batch no witness has been examined, but in the second batch witnesses were said to have been examined in proof of these documents but their evidence was not made part of the record. Equally of the sale deeds.

It is seen that the documents in the second batch p- top-1 include those filed in the first batch. Ex. p-5 is dated Sept. 4, 1972, in which 20 Biswas of land was sold for Ice Factory. It was situated in the town itself. The price fetched therein was Rs. 20,000 Therefore, it worked out at the rate of Rs. 1,000 per Biswa. Ex. p10 is dated August 25, 1975, 7 Biswas of land in Dhaula village was sold for Rs.

75,000 which works out at rate of Rs. 1071 per Biswa. Ex. p-7 is dated June 14, 1976, 3 Bighas 16 Biswas of land situated at Dhularoad side was sold for Rs. 4,500 which works out at the rate of Rs. 1285 per Biswa. Ex.p-8 dated June 15, 1977 is for 4 Biswas of land at Dhula road sold for Rs. 4,000 which works out at Rs. 1,000 per Biswa. Ex. p-4 is dated Feb. 23, 1977, 3 Biswas of land in the heart of the town Dhuri was sold for Rs. 6,000 which works out to Rs. 2,000 per Biswa. Ex. p-6 is dated may 18, 1977, one Bigha 7 Biswas were sold for Rs. 1,000, which works out to Rs. 370 per Biswa. This land is away from the town and also from the acquired land. Ex. p-9 is dated July 12, 1977, 15 Biswas of land were sold for Rs. 24,000 working out at the rate of Rs. 1,600 per Biswa. Based thereon it was contended that Ex. p-9 fetches the highest market value and is nearer to the date of notification and would offer comparable price. The High Court ought to have fixed market value at that rate. The High Court committed illegality in relying on two sale-deeds of the claimants and two mutation entries on behalf of the state in working out the average. Therefore, fixation of the market value is illegal. The mutations are not admissible as neither sale deeds were filed nor any body connected with them are examined. The question, therefore, is whether these sale transactions would reflect the prevailing market value of the land of the total extent of 90 acres. It is seen that in the first batch no-one was examined to prove the documents. In the second batch though witnesses were said to have been examined, the evidence is not on record. Neither the reference court nor the High Court discussed the evidence and no finding was given. So we do not have the advantage of any findings in that behalf. The state filed 5 mutation entries which were marked. The sale entries Ex.R-6 is of October 4, 1977 and Ex. R-5 of November 13, 1977. The rates of lands in Saledeeds executed between March 7, 1977 to November 13, 1977, i.e. R-2 on 7.3.77, R-3 on 8.6.77, R-4 on 31.8.77 and R-5 on 30.11.77 work out between Rs. 83 to Rs. 450 per Biswa. It is settled law that to determine the market value of the land under s. 23(1) of the Act the sales of the land under requisition, if any, or the sales in the neighbourhood lands that possessed of same or similar potentialities or fertility or other

advantageous features would furnish basis to determine just and fair market value on the premise of hypothetical willing vendor and willing vendee. The willing vendor who would offer the land and willing vendee who would agree to purchase the land as a prudent man in normal market conditions as on the date of the notification or near about the date of the notification is the acid test. It is also settled law that the sale and purchase of lands at a throw away price at arm's length or depressed sales or fecal of sales brought into existence in quick succession to inflate the market value would not offer any basis to determine just market value. In order to adjudge whether sales are bonafide sales between willing vendor and willing vendee and whether the consideration mentioned in deed was, in fact and really passed on under transaction'. whether the lands covered by sale-deeds and relied on, possessed of same or similar potentialities or fertilities or advantageous features would be brought on record only by examining the vendor or the vendee or if neither of them is available, the attesting witness who has personal knowledge of the bargain and passing of the consideration are mandatory. Vide *Periyar & Pareekanni Rubbers Ltd. v. State of Kerala* [1991] 4 SCC 195 wherein this court surveyed the entire case Law in that respect. Since none has been examined in the first batch the sale transactions referred to either by the state or by the claimants cannot be relied upon. In the second batch since the evidence has not been referred to by the courts below nor discussed by them nor we have the advantage to go through the same, we cannot rely on the same to further enhance the market value. Therefore, we are left with no option. but to reject those sale-deeds. Moreover, except Ex. p-9 all other sale-deeds are of very small extents. This court consistently has taken the view in *Collector of Lakhimpur v. Bhuvan Chandra Dutta* AIR 1971 SC 2015 *Mirza Naushery voan Khan & Anr. v. Collector (Land Acquisition). Hyderabad* [1975] 2 SCR 184; *Rain Rattan & Ors. v. State of U. P.* [1977] 2 SCR 184 *Smt. Kaushalya Devi Bogra & Ors. v. Land Acquisition officer, Aurangabad & Anr.* [1984] 2 SCR 900; *Padma. Uppal v. State of Punjab & Ors.* [1977] 1 SCR 329, *Administrator General of West Bengal v. Collector. Varanasi* AIR 1988 SC 943 and *Special Tehsildar, Land Acquisition v. A. Mangala Glowri* [1991] 4 SCC 218 that sale deeds of small extents being retail price do not offer comparable basis to fix compensation when large block of land is acquired. To an intending bonafide purchaser if such block of 90 acre is offered for sale, would he agree to purchase at retail price or far less value? Under no circumstance he would agree to purchase at retail prices mentioned above. In view of the settled legal position the sale deeds, sought to be relied upon, do not give us any basis to determine the market value. Every endeavour would be made to fix fair and reasonable market value. If sale transactions relate to the lands under acquisition and if found to be genuine and bonafide transaction between willing vendor and vendee then it may be considered but reasonable margin must be given in fixing whole sale price. Therefore, all the documents except p-9 are rejected.

The next contention is that the sale-deed Ex. p-9 by which 15 Biswas were sold for Rs. 24,000 which works out at the rate of Rs. 1,600 per Biswa and whether this highest price should be given to the appellants. As stated earlier we have no evidence before us as to under what circumstances this document came to be executed and what is the distance between the lands and for what purpose the land was sold and what is the comparable nature of the land, fertility and potentialities of the land, etc. The contention relying on state of *Madras v. A.M. Ranjan & Anr.* [1976] 3 SCR 35 that highest value should be fixed cannot be accepted in view of the consistent late. view of this court. In *Collector of lakhimppur's case (supra)*, this court accepted the principle of average, but however, rejected the small extent of the lands arid enhancement based on the average at Rs. 15,000 per

Bigha was reduced to Rs. 10.000 per Bicha. In Smt. Kausalya Devi's case (supra), this court noted that large extent of land in the developed Aurangabad town was acquired for Medical College, accepted the principle of average worked out by the reference court, varying between Rs. 2.25 to Rs. 5.00 per sq. yard and this court ultimately fixed the market value at the rate of Rs. 1.50 per sq. yard. In Administrator General of West Bengal's case (supra) this court upheld rejection of the small plots of lands and accepted two sale-deeds of large extent working out the average rate at Rs. 500 per Decimal and ultimately reference court fixed the market value at the rate of Rs. 200 per Decimal. It is, therefore, clear that the court in the first instance has to determine as to which of the sale deeds are relevant, proximate in point of time and offer comparable base to determine market value. Thereafter the average price has to be worked out. It would be seen that this court has taken consistent view of working out average and further deductions have been made in fixing just and fair market value when large chunk of the land was acquired. We respectfully agree and adhere to the principle and we find no compelling reason to divert the stream or arrest the consistence.

The question then is whether the reduction of the market value by the learned Single Judge is warranted on facts and under law. In his judgment the learned Judge found that the acquired lands are situated between railway line on the one side and link road going from Dhuri to Sarona on the other side. On the third side it is surrounded by the inhabited area of Dhuri town. A small portion in Khasra No. 2585 was abutting the Dhola road and the rest of the acquired land is just behind the inhabited area. While acquiring these lands the Govt. have excluded the built up area.

He also found that there is tendency of extension of Abadi village towards acquired lands. Therefore, he found that the lands are possessed of "Potential value for being housed for urban purpose in the near future and, therefore, had to be valued as such"

Thus we have the evidence that the lands are possessed of potential value for being used for building purposes. In fact, the acquisition itself is for construction of Mandi Township. The principle of belting is perfectly legal and unexception-

ble as the lands abutting the main road upto a specified depth, depending on actual material on record, would fetch higher market rate than the lands situated in interior area. However, on facts of this case the belting is not warranted for the reason that as seen on three sides there exist roads and abutting the village. As per the plan as found by the High Court there exists a road cutting across the acquired lands. Therefore, there is not only access on three sides but also to interior lands. Thus in our view belting and fixation of differential rates of value is not justified. The next question is what would be the reasonable and just market value the lands were likely to fetch. In view of the fact that there is no evidence available and since the High Court found that the lands are possessed of potential value the rate of Rs. 1,000 per Biswa as awarded by civil court to the lands abutting abadi and the lands upto a depth of 100 ft is upheld. In view of the preceding finding we hold that the fixation of uniform rate of Rs. 1,000 per Biswa is legal.

It is seen that this acquired land of 90 acres is undoubtedly undeveloped area and necessarily requires development by laying the roads, parks, drainage, lighting and other civic amenities. In Brig. Sahib Singh Kalha & Ors. v. Amritsar Improvement Trust & Ors. [1982] 1 SCC 419 and Administrator General of West, Bengal's case (supra) this court deducted 53% of the undeveloped lands towards developmental charges while fixing market value at decimal rate etc. towards amenities. In Special Tehsildar Land Acquisition, Vishakapatnam's case, (supra) this court made deduction at 1/3rd. The appellant placed reliance on Bhagwathula Swamnana & Ors. v. Special Tahsildar Land Acquisition. Visakhapatnam [1991] 4 SCC 506 where this court did not deduct any land towards developmental charges. But in that case it was found that the lands acquired are situated in fully developed area. On those circumstances this court did not deduct any land towards developmental charges. It is seen that the consistent view of this court now is that deduction of at least 1/3rd is necessary towards developmental charges. Therefore, we uphold deduction of 1/3rd towards development charges from the market value and determine the market value at Rs. 670 per Biswa. The learned judge while deducting 1/3rd fixed market value at Rs. 759 of frontage lands and Rs. 500 to interior land. Rs. 750 is obvious mistake, but the state did not take any action to have it corrected not filed appeals. Fixation of Rs. 750 per Biswa of lands from road upto a depth of 100 ft. became final. So we cannot interfere or correct it in claimants appeal. But for the rest of the lands we award Rs. 670 per Biswa. with solatium at 15% and interest at 6% on the enhanced market value from the date of taking possession till date of payment.

The appeals are accordingly allowed to the above extent. In the circumstances parties are directed to bear their own costs.

I.S.G. Appeal allowed