

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RFA No. 2718 of 2011 (O&M)
Date of decision: September 03, 2015

Dilbagh Singh and others

.. Appellants

v.

State of Haryana

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Deepak Sharma and Mr. Jasmer Chand, Mr. Bhag Singh, Mr. J. S. Cooner, Mr. A. P. Bhandari, Mr. Mohd. Shameem for Mr. Sandeep Sharma, Mr. Veneet Chaudhary, Mr. Sanjay Jain, Mr. Anuj Balian, Mr. Naveen Gupta, Mr. H. N. Mehtani and Mr. U. K. Agnihotri, Advocates for the landowners.

Mr. Randhir Singh, Additional Advocate General, Haryana.

...

Rajesh Bindal J.

1. This order will dispose of

RFA Nos. 2718 to 2750, 3135 to 3180, 3481 to 3483, 3704, 3707, 4000 to 4007, 4045 to 4073, 4079, 4150, 4151, 4312, 4466, 4510, 4511, 4514, 4516, 4523, 4538, 4539, 4780 to 4783, 4800 to 4805, 4808, 4809, 4815, 4816, 4828, 4829, 4879 to 5128, 5288, 5289, 5467 to 5475, 5502 to 5530, 5565 to 5570, 5968 to 5976, 6087, 6088, 6109, 6120, 6747 to 6764, 6893, 6947, 6948, 6952, 7107, 7141, 7177 to 7182, 7214 to 7218, 7313 to 7316, 7319 to 7328, 7549 to 7551 and 7885 of 2011;

RFA Nos. 233, 235, 255, 277, 433 to 437, 803, 822, 823, 919, 925, 1006, 1196, 1404 to 1421, 1554, 1621, 6371, 6372, 7115 to 7119, 7213, 7229, 7392 and 7393 of 2012;

RFA Nos. 419, 420, 436 to 438, 491, 1044, 1045, 1084, 1471 to 1474, 1484 to 1487, 1664, 1676, 1925, 1985 to 1987, 2148, 2304, 2364,

2365, 2457, 2458, 2606, 2626, 2628, 2866, 3341, 3342, 3507, 4103, 4104, 4335, 4399, 4742, 5783, 6169, 6939 to 6941, 6980, 7552 to 7566 and 7922 to 7925 of 2013;

RFA Nos. 38, 72, 73, 229 to 231, 1043, 1044, 1227, 1228, 1265, 1269, 1290 to 1294, 1582, 1593, 2139, 2160, 2161, 2265, 2837 to 2841, 3204 to 3218, 3283, 3284, 4308, 4337 to 4342, 4433, 4997, 5013, 5973, 6138, 6189 to 6192, 6614, 6617, 7195, 7262, 8500, 8778, 8871, 9429, 9720, 9828, 10589, 10666 and 10844 of 2014;

RFA Nos. 299, 301, 533, 2793, 2939, 4229 and 4230 of 2015;

Cross Objections Nos. 106-CI to 110-CI, 112-CI to 118-CI, 131-CI, 132-CI, 145-CI to 147-CI of 2011;

Cross Objections No. 46-CI of 2012;

Cross Objections Nos. 3-CI of 2013;

Cross Objections Nos. 7-CI and 20-CI of 2015;

as common questions of law and facts are involved.

2. The landowners are in appeal seeking further enhancement of compensation for the acquired land awarded by the learned court below, whereas in the appeals filed by the State, the prayer is for reduction thereof.

3. Briefly, the facts of the case are that vide notification dated 10.11.2000, issued under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act'), State of Haryana sought to acquire 88.18 acres of land, situated in village Shahpur, Had Bast No. 125, Tehsil and District Ambala for development and utilisation thereof for residential, commercial and industrial area for Sectors 10 and 11 (New Nos. 32 and 33), Ambala Cantt. The same was followed by notification dated 8.11.2001, issued under Section 6 of the Act. The Land Acquisition Collector (for short, 'the Collector'), vide award dated 5.11.2003, assessed the compensation @ ₹ 7,00,000/- per acre for the land upto the depth of one acre from GT road, ₹ 5,00,000/- per acre for the land upto the depth of two acres from GT road, ₹ 2,75,000/- per acre for chahi land and ₹ 1,50,000/- per acre for Gair Mukin/Banjar land. Aggrieved against the award of the Collector, the landowners filed objections which were referred to the learned court below,

who keeping in view the material placed on record by the parties, determined the fair value of the acquired land @ ₹ 327/- per square yard upto the depth of one acre adjoining the GT road and for rest of the land @ ₹ 297/- per square yard.

4. Vide another notification dated 4.12.2000, issued under Section 4 of the Act, State of Haryana sought to acquire 184.33 acres of land, situated in village Shahpur, Had Bast No. 125, Tehsil and District Ambala for development and utilisation thereof for residential, commercial and industrial area for Sectors 10, 11 and 12 (New Nos. 32, 33 and 34), Ambala Cantt. The same was followed by notification dated 3.12.2001, issued under Section 6 of the Act. The Collector, vide award dated 11.9.2003, assessed the compensation @ ₹ 7,00,000/- per acre for the land upto the depth of one acre from GT road, ₹ 5,00,000/- per acre for the land upto the depth of two acres from GT road, ₹ 2,75,000/- per acre for chahi land, ₹ 2,00,000/- per acre for Barani land and ₹ 1,50,000/- per acre for Gair Mukin/Banjar land. Aggrieved against the award of the Collector, the landowners filed objections which were referred to the learned court below, who keeping in view the material placed on record by the parties, determined the fair value of the acquired land @ ₹ 327/- per square yard upto the depth of one acre adjoining the GT road and for rest of the land @ ₹ 297/- per square yard.

5. Vide same notification dated 4.12.2000, issued under Section 4 of the Act, State of Haryana sought to acquire the land measuring 27.43 acres, situated in the revenue estate of village Nanhera, Hadbast No. 104, Tehsil and District Ambala for development and utilisation thereof for residential, commercial and industrial area for Sectors 10, 11 and 12 (New Nos. 32, 33 and 34), Ambala Cantt. The same was followed by notification dated 3.12.2001, issued under Section 6 of the Act. The Collector, vide award dated 11.9.2003, assessed the compensation @ ₹ 4,00,000/- per acre for the land falling in the vicinity of abadi of village upto the depth of 5 acres; ₹ 3,00,000/- per acre for Chahi land; ₹ 2,00,000/- per acre for Barani land and ₹ 1,50,000/- per acre for Gair Mumkin/Banjar land. Aggrieved against the award of the Collector, the landowners filed objections which

were referred to the learned court below, who keeping in material placed on record by the parties, determined the fair value of the acquired land @ 297/- per square yard.

6. Vide notification dated 4.12.2000, issued under Section 4 of the Act, State of Haryana sought to acquire the land measuring 26.71 acres, situated in the revenue estate of village Ghasitpur, Tehsil and District Ambala for development and utilisation thereof for residential, commercial and industrial area for Sectors 10, 11 and 12 (New Nos. 32, 33 and 34), Ambala Cantt. The same was followed by notification dated 3.12.2001, issued under Section 6 of the Act. The Collector, vide award dated 11.9.2003, assessed the compensation @ ₹ ₹ 3,00,000/- per acre for chahi land; ₹ 2,00,000/- per acre for Barani land; and ₹ 1,50,000/- per acre for Gair Mumkin/Banjar land situated around phirni upto the depth of two acres and ₹ 2,25,000/- per acre for Chahi land; ₹ 1,55,000/- per acre for Barani land and ₹ 1,00,000/- per acre for Gair Mumkin/Banjar land for remaining land. Aggrieved against the award of the Collector, the landowners filed objections which were referred to the learned court below, who keeping in material placed on record by the parties, determined the fair value of the acquired land @ ₹ 297/- per square yard.

7. The aforesaid awards have been impugned in the present set of appeals by the landowners as well as by the State.

8. It is pertinent to mention here that appeals filed by the State pertaining to valuation of compensation for the land acquired vide same notification were dismissed by this court on 17.10.2011 in RFA No. 6413 of 2011—The State of Haryana v. Padma Devi @ Padma Shori. The State having not preferred any appeal against the said order, the same has attained finality.

9. It is also mentioned that reference to the exhibits in the judgment have been made from LAC No. 39 of 2004.

10. Learned counsel for the landowners, while referring to site plan (Ex. P6), pointed out the location of the acquired land. It was submitted that the land is located adjoining to the municipal boundary of Ambala Cantt just beyond river Tangri. Part of it abuts G.T. Road. The land of revenue

estate of village Nanhera is close to Ambala and then comes the land of village Shahpur. The land of village Ghasitpur is located behind that. The landowners produced five sale deeds on record, four pertaining to the revenue estate of village Shahpur, whereas one is pertaining to the revenue estate of village Nanhera. Earlier also, in the same area, there was acquisition of land pertaining to villages Shahpur and Nanhera, where notification under Section 4 of the Act was issued on 8.2.1989. For the aforesaid acquisition, this Court in RFA No. 2060 of 1999—Sant Singh (deceased) through his LRs v. The State of Haryana, decided on 18.9.2012, assessed the compensation of the land of village Nanhera @ ₹ 4,53,125/- per acre and ₹ 4,08,000/- per acre for village Shahpur. While referring to the sale deeds, learned counsel for the landowners submitted that vide sale deed (Ex. P2), 17-1/2 marlas of land pertaining to the revenue estate of village Shahpur, located on G.T. Road, was sold at an average price of ₹ 550/- per square yard. There is time-gap of 2-1/2 years till the issuance of notification under Section 4 of the Act in the present case. If increase @ 12% per annum is added thereon and a cut of 1/3rd is applied, the amount of compensation shall come out to about ₹ 490/- per square yard. In the alternative, it was submitted that even if the average of sale-deeds (Ex. P1 to Ex. P4) is taken and increase for the time-gap is granted, the compensation would come out to about ₹ 397/- per square yard. However, it was submitted that compensation be assessed considering the sale deeds produced on record by the landowners and not by granting increase for the time-gap from the earlier acquisition. There was lot of construction activity in the area, as there were industrial and commercial establishments including schools already existing. It had great future potential.

11. Further reference was made to the judgment of this Court in RFA No. 5605 of 2009—State of Haryana v. Gurdeep Singh and another, decided on 5.8.2015, whereby for acquisition of land located in Ambala City, which was three kilometers away from G.T. Road and notification under Section 4 of the Act was issued on 6.7.2000, compensation of ₹ 879/- per square yard was granted. In the case in hand, the land is abutting G.T. Road, hence, at least same amount of compensation deserves to be

granted, if not more, considering the location of the land. It was further submitted that whatever amount is calculated, the same should be compensation for the land, which is not abutting G.T. Road and for the land which is abutting G.T. Road, additional amount of compensation should be paid on account of its special location. Further, it was argued that even the State had also produced sale deed (Ex. P1), produced by the landowners, as Ex. R15, hence, it cannot go out of that.

12. In support of his arguments, reliance was placed upon the judgments of Hon'ble the Supreme Court in Mehrawal Khewaji Trust (Regd.) Faridkot and others v. State of Punjab and others, 2012(2) RCR (Civil) 893; Ashrafi and others v. State of Haryana and others, 2013(2) RCR (Civil) 856; Kashmir Singh v. State of Haryana and others, (2014) 2 SCC 165 and Ram Kanwar and others v. State of Haryana and another, 2015(1) RCR (Civil) 234.

13. Additional argument raised by learned counsel for the landowners in appeals pertaining to acquisition of land vide notification 10.11.2000 was that the sale deed showing maximum value should be relied upon. The same is sale deed (Ex. P2) showing the rate at ₹ 550/- per square yard. If increase @ 12% per annum is granted thereon for the time gap of 2-1/2 years till the issuance of notification under Section 4 of the Act and cut of 20% is applied, the value of the acquired land would come out to ₹ 575/- per square yard.

14. Learned counsel for the State could not dispute the fact that the sale deed (Ex. R15) was the same, as was produced by the landowners as Ex. P1, vide which 2 kanals and 1 marla of land was sold at an average price of ₹ 362/- per square yard. However, he submitted that there is another sale deed (Ex. P4) dated 17.4.2000, produced by the landowners themselves, vide which 1 kanal and 10 marlas of land was sold at an average price of ₹ 247/- per square yard. The most relevant piece of evidence, according to the learned counsel, is the aforesaid sale deed as the same is close to the date of issuance of notification under Section 4 of the Act. All other sale deeds were registered earlier. He further submitted that the land pertaining to sale deeds (Ex.P1 and Ex. P2) is located on G.T. Road

at village Shahpur, where some commercial activities are on. It is for that reason that small plots were being sold there. The land pertaining to sale deed (Ex. P4) is located away from G.T. Road. Distinguishing the judgment of Hon'ble the Supreme Court in Kashmir Singh's case (supra), learned counsel for the State submitted that in the aforesaid judgment, it has specifically been mentioned that the same is not to be treated as a precedent. He further submitted that any sale transaction pertaining to an area, which is not located close to the acquired land and is not comparable, cannot be relied upon. He did not dispute the fact that against the order passed by this court in Padma Devi @ Padma Shori's case (supra), dismissing the appeals filed by the State pertaining to valuation of compensation for the land acquired vide same notification, the State has not preferred any further appeal and the aforesaid judgment has attained finality.

15. Heard learned counsel for the parties and perused the relevant referred record.

16. Site plan (Ex. P6) shows the location of the land. The same is located on G.T. Road (Ambala-Delhi) on left side. At the time of issuance of notification under Section 4 of the Act, it was outside the municipal boundary. The land is located beyond river Tangri. If moving away from Ambala Cantt to Delhi, the land pertaining to the revenue estate of village Nanhera is located close to Ambala Cantt. Adjoining to the same is the land of revenue estate of village Shahpur abutting G.T. Road, whereas the land of revenue estate of village Ghasitpur is behind that. There were certain industrial and commercial establishments on road close to the acquired land abutting G.T. Road. One school was also located there. The landowners produced on record the following sale deeds:

Ex.	Dated	Location	Area	Total price in ₹	Price per square yard in ₹
P.1	27.5.1998	Shahpur	2K-1M	4,50,000/-	362/-
P.2	25.5.1998	Shahpur	17-1/2 M	3,00,000/-	550/-
P.3	3.6.1998	Shahpur	19 M	2,50,000/-	434/-
P.4	17.4.2000	Nanhera	1K-10M	2,24,500/-	247/-
P.5	10.6.1992	Shahpur	16K-6M	10,18,750/-	103/-

17. While relying upon the sale deed (Ex. P1), which was also produced by the State as Ex. R15, applying a cut of 1/3rd and granting increase for the time gap of 31 months between registration of the sale deed and issuance of notification under Section 4 of the Act @ 9% per annum, the learned court below assessed the value of the acquired land @ ₹ 297/- per square yard. That was the value awarded for the land, which was not abutting G.T. Road even though the land pertaining to the aforesaid sale deed was located on G.T. Road. For the land upto the depth of one acre from G.T. Road, 10% further increase was granted and the value was assessed @ ₹ 327/- per square yard.

18. A perusal of the aforesaid sale deeds (Ex. P1 to Ex. P3) shows that the sale consideration paid therein, land pertaining to which is located close-by and registered almost at the same time, is quite in variance from ₹ 360/- to ₹ 550/- per square yard. Small plots dealt with therein were located on G.T. Road, where there were some commercial activities. The land pertaining to sale deed (Ex. P4), which was subsequently acquired and was registered on 17.4.2000, the average sale consideration was merely ₹ 247/- per square yard. The aforesaid land pertains to village Nanhera. The area dealt with therein was 1 kanal and 10 marlas. It was not abutting G.T. Road. Sale deed (Ex. P5) is not relevant for the reason that the same was registered more than 8 years prior to the date of issuance of notification under Section 4 of the Act.

19. A perusal of the three sale deeds (Ex. P1 to Ex. P3) shows that the land pertaining thereto, which was sold almost at the same time, was purchased by Swami Kirpal Ruhani Mission, Kirpal Ashram, Delhi. The variation in the sale consideration paid therein shows that the buyer therein was ready to pay any price to purchase the land to make it a compact block. It is only that the sale deeds had been registered on close dates, however, the exercise to purchase the land to make it a compact block may be in progress earlier. This is the reason that one buyer, while purchasing the land at the same place at the same time, paid the price which ranges from ₹ 362/- per square yard to ₹ 550/- per square yard. The area of land dealt with

therein is ranging from 17-1/2 marlas to 2 kanals and 1 marla, i.e., the maximum price of ₹ 550/- per square yard was paid for the plot measuring 17-1/2 marlas, whereas for the land measuring 2 kanals and 1 marla, the price was ₹ 362/- per square yard. The sale deed, which was got registered on 25.5.1998, the sale consideration paid was at an average price of ₹ 550/- per square yard, which was reduced to ₹ 362/- per square yard in the sale deed dated 27.5.1998 and then increased to ₹ 434/- per square yard in the sale deed dated 3.6.1998. It is not disputed that the land pertaining to the aforesaid sale deeds is abutting G.T. Road. The average sale consideration paid in the sale deeds (Ex. P1 to Ex. P3) is ₹ 448/- per square yard. There is another sale deed (Ex. P4), which was registered about 8 months prior to the date of issuance of notification under Section 4 of the Act. It pertains to the revenue estate of village Nanhera. Vide aforesaid sale deed, land measuring 1 kanal and 10 marlas was sold at an average price of ₹ 247/- per square yard.

20. The issue regarding application of reasonable cut while considering the sale deeds pertaining to small plots was considered by Hon'ble the Supreme Court in Major General Kapil Mehra and others v. Union of India and another, (2015) 2 SCC 262. The application of cut falls in two categories, namely, the area required to be utilised for development works and infrastructural facilities and the second is regarding cost of development. The principles for the purpose as laid down in Lal Chand v. Union of India, (2009) 15 SCC 769 were reiterated by Hon'ble the Supreme Court in Major General Kapil Mehra's case (supra). Para 40 thereof is extracted below:

“40. Rule of one third deduction towards development appears to be the general rule. But so far as Delhi Development Authority is concerned, or similar statutory authorities, where well planned layouts are put in place, larger land area may be utilized for forming layout, roads, parks and other common amenities. Percentage of deduction for development of land to be made in DDA or similar statutory authorities with reference to various types of layout was succinctly considered by this

Court in Lal Chand's case (supra) and observing that the deduction towards the development range from 20% to 75% of the price of the plots, in paras 13 to 22, this Court held as under:

“13. The percentage of “deduction for development” to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the layout in which the exemplar plots are situated.

14. The “deduction for development” consists of two components. The first is with reference to the area required to be utilized for developmental works and the second is the cost of the development works. For example, if a residential layout is formed by DDA or similar statutory authority, it may utilize around 40% of the land area in the layout, for roads, drains, parks, playgrounds and civic amenities (community facilities), etc.

15. The development authority will also incur considerable expenditure for development of undeveloped land into a developed layout, which includes the cost of levelling the land, cost of providing roads, underground drainage and sewage facilities, laying water lines, electricity lines and developing parks and civic amenities, which would be about 35% of the value of the developed plot. The two factors taken together would be the “deduction for development” and can account for as much as 75% of the cost of the developed plot.

16. On the other hand, if the residential plot is in an

unauthorized private residential layout, the percentage of “deduction for development” may be far less. This is because in an unauthorized layout, usually no land will be set apart for parks, playgrounds and community facilities. Even if any land is set apart, it is likely to be minimal. The roads and drains will also be narrower, just adequate for movement of vehicles. The amount spent on development work would also be comparatively less and minimal. Thus the deduction on account of the two factors in respect of plots in unauthorized layouts, would be only about 20% plus 20% in all 40% as against 75% in regard to DDA plots.

17. The “deduction for development” with reference to prices of plots in authorized private residential layouts may range between 50% to 65% depending upon the standards and quality of the layout.

18. The position with reference to industrial layouts will be different. As the industrial plots will be large (say of the size of one or two acres or more as contrasted with the size of residential plots measuring 100 sq. m to 200 sq. m), and as there will be very limited civic amenities and no playgrounds, the area to be set apart for development (for roads, parks, playgrounds and civic amenities) will be far less; and the cost to be incurred for development will also be marginally less, with the result the deduction to be made from the cost of an industrial plot may range only between 45% to 55% as contrasted from 65% to 75% for residential plots.

19. If the acquired land is in a semi-developed urban area, and not an undeveloped rural area, then the deduction for development may be as much less, that is, as little as 25% to 40%, as some basic infrastructure will already be available. (Note: The percentages mentioned

above are tentative standards and subject to proof to the contrary).

20. Therefore the deduction for the “development factor” to be made with reference to the price of a small plot in a developed layout, to arrive at the cost of undeveloped land, will be far more than the deduction with reference to the price of a small plot in an unauthorized private layout or an industrial layout. It is also well known that the development cost incurred by statutory agencies is much higher than the cost incurred by private developers, having regard to higher overheads and expenditure.

21. Even among the layouts formed by DDA, the percentage of land utilized for roads, civic amenities, parks and playgrounds may vary with reference to the nature of layout-whether it is residential, residential-cum- commercial or industrial; and even among residential layouts, the percentage will differ having regard to the size of the plots, width of the roads, extent of community facilities, parks and playgrounds provided.

22. Some of the layouts formed by the statutory development authorities may have large areas earmarked for water/sewage treatment plants, water tanks, electrical substations, etc. in addition to the usual areas earmarked for roads, drains, parks, playgrounds and community/civic amenities. The purpose of the aforesaid examples is only to show that the “deduction for development” factor is a variable percentage and the range of percentage itself being very wide from 20% to 75%, Lal Chand's case deals with acquisition of lands by DDA under the Rohini Residential Housing Scheme where 40% deduction was made towards the land area to be utilized for laying down of roads, drains etc. Further

deduction of 35% of the value of the developed plot towards cost of levelling the land, cost of providing roads, underground drainage, laying down water lines, electricity lines was made.”

21. In the case in hand, it is not in dispute that the area dealt with in the sale deeds, referred to by the landowners is quite small. No doubt, it was not part of developed colony, but still the land pertaining to sale deeds (Ex. P1 to Ex. P3) was abutting the G.T. Road. Meaning thereby, all infrastructural facilities were available.

22. The learned court below, while relying upon the sale deed (Ex. P1), applying a cut of 1/3rd and granting increase for the time gap, had assessed the compensation for the land abutting G.T. Road upto the depth of one acre @ ₹ 327/- per square yard and @ ₹ 297/- per square yard for the land beyond that. If the principles laid down in the judgment of Hon'ble the Supreme Court in Major General Kapil Mehra's case (supra) pertaining to application of cut for the purpose of assessment of compensation while relying upon the sale transactions pertaining to small plots are applied in the present case, the amount of compensation will not come out to be more than what has already been granted by the learned Reference Court to the landowners. This court is not entering into that exercise considering the fact that the appeals filed by the State against the same award have already been dismissed by this court in Padma Devi @ Padma Shori's case (supra) and the same attained finality. However, no case is made out for enhancement of compensation.

23. The award pertaining to the land situated at Ambala City, which is located more than 15 kilometers away from the acquired land, cannot be considered to be a relevant piece of evidence for the reason that every land has its own positive and negative factors considering its location. Merely because both the lands are situated in District Ambala, the award cannot be relied upon if the land pertaining thereto is not comparable in location.

24. For the reasons mentioned above, I do not find any reason to interfere with the impugned awards. Accordingly, the appeals filed by the landowners as well as the State are dismissed.

(Rajesh Bindal)
Judge

September 03, 2015
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(Refer to Reporter)