

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RFA-4636-1998
Date of decision:13.1.2016

State of Haryana and another

...Appellants

Versus

Khajani (died) through her LRs. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Abhinash Jain, AAG, Haryana,
for the appellant(s) in
RFA Nos.4175 and 4633 to 4637 of 1998 and
for the respondents in RFA Nos.2562, 2563 & 4115 of
1998 and RFA No.3004 of 1999.

Mr.J.P.Dhull, Advocate for the appellant(s) in
RFA-3004-1999.

Mr.Udeyveer Singh, Advocate for
Mr.Partap Singh, Advocate for the appellant(s) in
RFA-2562-1998.

Mr.S.S.Mor, Advocate for the respondents in 4175 and 4633 to
4637 of 1998.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant order proposes to decide together 10 regular first appeals, out of which six appeals bearing RFA Nos.4175 and 4633 to 4637 of 1998 have been filed by the State of Haryana and four appeals bearing RFA Nos. 2562, 2563 and 4115 of 1998 and RFA No. 3004 of 1999 have been filed by the land owners, as all these appeals are arising out of same acquisition and raise identical questions of law and facts. However, for the facility of reference, facts are being culled out from RFA No.4636 of 1998.

Land measuring 7.57 acres was acquired by the State of

Haryana at public expense for the public purpose; namely for construction of extension of Songri Distributory from RD 12000 to 18000. The acquired land was forming the part of revenue estate of village Kithana, Tehsil and District Kaithal. The notification dated 15.4.1994 was issued under Section 4 of the Land Acquisition Act, 1894 ('the Act' for short), which was followed by notification dated 31.3.1995 under Section 6 of the Act. The Land Acquisition Collector, vide his award dated 6.5.1996 awarded the compensation @Rs.90,000/- per acre as the total acquired land was Nehri. The land owners filed their objections under Section 18 of the Act and as a consequence thereof, six land references were forwarded, which came to be decided together by the learned Reference Court, vide its impugned award dated 18.3.1998. The learned Reference Court did not order any enhancement in the compensation in favour of the land owners. However, since the Collector did not grant 12% interest from the date of publication of notification under Section 4 of the Act till the date of award, said statutory benefit was ordered to be paid to the land owners by the learned Reference Court, while passing the impugned award.

Although, it was virtually the collector's award only, yet it is interesting to note that the State of Haryana still felt aggrieved and filed the above-said six appeals before this Court, which were not even maintainable. Finding the appeals filed by the State to be wholly misconceived, bereft of merit and without any substance, the same are liable to be dismissed and are hereby dismissed. This Court hope and trust that in future the authorities concerned shall ensure not to file regular first appeals before this Court without proper application of mind and even such kind of appeals which would not be even maintainable.

Learned counsel for the land owners refers to the sale deed dated 22.11.1990 Ex.PA available at page 53 of the lower court record ('LAC' for short) and also the sale deed dated 30.5.1994 Ex.PB available at page 59 of the LCR. Vide sale-deed Ex.PA land measuring 2 kanal was sold for Rs.36,000/- @ Rs.1,44,000/- per acre. Vide sale-deed dated 30.5.1994 Ex.PB, which was executed within short span of time, that is just six weeks after notice under Section 4 of the Act, land measuring 1 kanal was sold for Rs.56,000/- @Rs.4,48,000/- per acre. He further submits that since the learned Reference Court has failed to assign any cogent reason for ignoring these sale-deeds, the impugned award is patently illegal and the land owners are entitled for much higher compensation.

Per contra, learned counsel for the State, while placing reliance on sale-deed dated 15.11.1995 Ex.R1 available at page 73 of LCR, submits that land measuring 10 kanals was sold Rs.1,25,000/- per acre and the land owners are not entitled for any enhancement. He prays for dismissal of all the appeals filed by the land owners.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of cases in hand and particularly the two sale-deeds, placed on record by the land owners as Exhibits PA and PB, their appeals deserve to be partly allowed, for the following more than one reasons.

A bare perusal of the impugned award passed by the learned Reference Court and particularly para 11 thereof would show that the only reason given by the learned Reference Court, while ignoring the above-said

two sale-deeds produced by the land owners, was that neither the vendee nor vendor thereof have been examined. However, this is no more the good law, in view of the amended provisions of the Act contained in Section 51-A of the Act. The view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Himmat Singh and others v. State of M.P. and another, 2013 (16) SCC 392.**

So far as the sale-deed Ex.R1 dated 15.11.1995, relied upon by the learned counsel for the State is concerned, that came to be executed after one year and seven months from the notification under Section 4 of the Act, which was issued on 15.4.1994. In this view of the matter, this sale-deed cannot be taken into consideration for the purpose of assessing the market value, as per the law laid down by the Hon'ble Supreme Court in **Himmat Singh's case (supra)**. The only relevant evidence, available on record, is the above-said two sale-deeds Exhibits PA and PB produced by the land owners.

Since the second sale-deed, i.e. Ex.PB was executed near about the time of acquisition, i.e. on 30.5.1994, whereas notification under Section 4 of the Act was dated 15.4.1994, there is no plausible reason, as to why this sale-deed should also not be taken into consideration. The Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Registered), Faridkot and others v. State of Punjab and others, (2012) 5 SCC 432**, observed that when the land is being compulsorily taken away from a person, he is entitled to the highest value, which similar land in the locality is shown to have fetched in a bona fide transaction, entered into between a willing purchaser and a willing seller “**near about the time of acquisition**”, (emphasis by this Court).

It is the settled proposition of law that each case is to be decided on the basis of its own peculiar facts and circumstances. Neither it is appropriate nor desirable to lay down any straight-jacket formula in this regard. Thus, keeping in view the peculiar fact situation obtaining in the present case and respectfully following the analogy from the judgment of the Hon'ble Supreme Court in **Mehrawal Khewaji Trust's** case (supra), sale-deed Ex.PB has been found near about the time of acquisition in the instant case, because of which this sale-deed deserves to be taken into consideration for assessing the market value of the acquired land.

In view of what has been discussed hereinabove, striking a balance between the parties with a view to do complete and substantial justice, this Court is of the considered view that it would be just and expedient to take average of both the sale-deeds Exhibits PA and PB. Land sold vide sale deed Ex.PA was for Rs.1,44,000/- per acre, whereas as per sale-deed Ex.PB, land was sold @Rs.4,48,000/- per acre. The average price of land sold in both the sale-deeds would come to Rs.2,96,000/- per acre.

It is also pertinent to note here that once average of above-said two sale-deeds is taken into consideration, the land owners would not be entitled for any further annual increase on the price of Rs.2,96,000/- per acre. So far as the 12% interest granted by the learned Reference Court to the land owners from the date of publication of notification under Section 4 of the Act till the date of award under Section 23 (1-A) of the Act is concerned, it goes without saying that land owners would be entitled for the statutory benefits even on the enhanced compensation.

No other argument was raised.

Considering the peculiar facts and circumstances of the cases

noted above, coupled with the reasons aforementioned, this Court is of the considered view that appeals filed by the State of Haryana deserve to be dismissed and are hereby dismissed, whereas appeals filed by the land owners deserve to be partly allowed and the same are hereby allowed, as indicated above. The land owners are held entitled to receive the compensation for their acquired land @ Rs.2,96,000/- per acre from the date of notification under Section 4 of the Act. Besides this, land owners shall also be entitled for all the statutory benefits, available to them under the relevant provisions of the Act.

Resultantly, with the above-said observations made, all the ten appeals stand disposed of, in the aforesaid terms, however, with no order as to costs.

13.1.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE