IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 02.06.2016

1. RFA No.3475 of 1999 (O&M)

State of Haryana and another

... Appellants

Vs.

Parduman Kumar Sandhir and others

... Respondents

2. RFA No.2990 of 1999 (O&M)

Parduman Kumar Sandhir and others

... Appellants

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Arun Beniwal, DAG, Haryana
for the appellants (in RFA No.3475 of 1999) and
for respondents No.1 & 2 (in RFA No.2990 of 1999).

Mr. Hemant Bassi, Advocate
for the appellants (in RFA No.2990 of 1999) and
for respondents No.1 to 6 (in RFA No.3475 of 1999)

Mr. Rajesh K. Sheoran, Advocate
for Haryana State Electricity Board.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

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<u>RAMESHWAR SINGH MALIK, J.</u>

These two appeals, out of which one appeal bearing RFA No.3475 of 1999 has been filed by the State of Haryana and other filed by the land owners bearing RFA No.2990 of 1999, are being decided vide this common order, as both these appeals arise out of the same acquisition and raise identical questions of law and facts. However, with the consent of learned counsel for the parties and for the facility of reference, facts are being culled out from RFA No.3475 of 1999 (State of Haryana and another Vs. Parduman Kumar Sandhir and others)

Briefly put, facts necessary for disposal of these two appeals are that State of Haryana sought to acquire land measuring 04 kanal, 18 marla out of the revenue estate of village Satroad Khas, Hadbast No.154, Teshil and District Hisar, at public expenses for public purpose namely; for Installation of 132 K.V. Hisar-Fatehabad link line from 220 K.V. I/A sub-station Hisar. Invoking the urgency clause, notification under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act') was issued on 06.10.1994. Land Acquisition Collector (for short 'LAC'), vide his award No.10 dated 07.03.1996 assessed the market value of the acquired land at the rate of Rs.2,00,000/- per acre.

Dissatisfied with the assessment of the market value at the hands of LAC, land owners have filed their objection sunder Section 18 of the Act and as a result thereof, land reference was forwarded to the learned reference Court for its decision. Learned reference Court vide impugned award dated 10.08.1999 assessed the market value of the acquired land at the rate of Rs.100/- per square yard and also awarded 50% as compensation on account of severance charges.

Both the parties felt aggrieved against the abovesaid impugned award passed by the learned reference Court. One appeal has been filed by the State of Haryana, seeking reduction in the amount of compensation awarded by the learned reference Court, whereas the land owners by way of their independent appeal, are seeking further enhancement in the amount of compensation for their acquired land. That is how, both these appeals are being decided together.

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 facts and circumstances of the case, appeal filed by the State of Haryana is without any merit and the same is liable to be dismissed. However, the appeal filed by the land owners deserves to be partly allowed, suitably enhancing the amount of compensation for their acquired land. To say so, reasons are more than one, which are being recorded hereinafter.

So far as the location and potentiality of the acquired land is concerned, a bare perusal of the site plan EX.P2 available at page 31 of the lower Court record (for short 'LCR') would make it crystal clear that the acquired land was situated very close to National Highway No.10 which goes from Delhi to Hisar. The acquired land was also situated very close to another metalled road which goes from Hisar to Raipur.

The relevant observations made by the learned reference Court in first part of para 25 of the impugned award read as under: -

> *"The acquired land is situated in the middle of total 134 K 1 M of land belonging to the petitioners in a compact block. The total land is situated on three sides of the inter sections on National Highway No.10, Hisar-Sirsa bye-pass and Hisar Raipur Road. As per the site plan Ex.P5 the Municipal limits of Hisar have been extended upto the bye-pass of Hisar Sirsa on National Highway No.10 i.e. upto the lands of the petitioners. The acquired land is*

just across the National Highway and abuts it on the other side. Site plan Ex.P4 which shows the proposed development of the Hisar City as per the record of District Town Planners, Sectors 25 & 26 of the HUDA are proposed adjacent to this bye-pass on Hisar-Delhi Road. A perusal of Ex.P5 which is the Urban area plan also shows that this land falls within the controlled area and the area of proposed urban development. Similarly, site plan Ex.P2 depicts the location of the land as well as its distance from residential areas and other facilities. Hisar is a growing city and residential sectors 1 and 4 of Haryana Urban Development Authority have already been developed towards the Hisar-Delhi bye-pass. Blue Bird, Tourist Complex, Complex of Police Lines, the Campus of Guru Jambheshwar University, the Engineering College and Aerodrome of Hisar are all located along with Hisar Delhi bye-pass. Heavy industries like Associated Distilleries and Ceramics Factories are also set up along this bye-pass. There are petrol pumps and religious institutions like Radha Swami Satsang Bhawan on either side of this bye-pass. The topography clearly shows that the land on this junction which is the main crossing on the bye-pass has got rich potential of residential and commercial value."

From the reading of abovesaid part of the impugned award and the evidence available on the case file, it can be safely concluded that the acquired land was situated at a prime location and was having immense potentiality. Oweing to its location and potentiality, the acquired land could have been easily put to residential as well as commercial use.

As far as the evidence produced by the State of Haryana is concerned, three sale deeds were relied upon, which were Ex.R2, Ex.R3 and Ex.R4. Learned reference Court was well justified, while ignoring all these three sale deeds recording its cogent finding in para 26 of the impugned award and the said finding deserves to be upheld. It is so said because sale deeds Ex.R2 and Ex.R3 were not found to be genuine sale deeds, both the transactions being amongst the family members. So far as the sale deed Ex.R4 is concerned, it was admittedly disclosing much lesser market price than what was assessed by LAC.

Sale instance Ex.R4 is not only hit by the provisions of Section 25 of the Act but the same is also liable to be ignored on its individual merits as well. Either it was an undervalued sale transaction or it was the result of a distress sale. In either of these two situations, this sale deed Ex.R4 has to be kept out of consideration in view of the law laid down by the Hon'ble Supreme Court in **Lal Chand Vs. Union of India and another, 2009 (15) SCC 769.**

The relevant observations made by the Hon'ble Supreme Court in para 32 of its judgment in **Lal Chand**'s case (supra), which can be gainfully followed in the present case, read as under: -

> *"The existence of several other sale deeds showing a much higher value and the fact that the Land Acquisition Collector chose to award a higher rate in regard to some of the acquired lands, leads to an inevitable inference that Ex.R3 to R7 were either undervalued or were distress sales. Whatever be the reason, they are liable to be excluded from consideration."*

Coming to the evidence produced by the land owners which has been discussed by learned reference Court in para 27 of the impugned award, there were more than one sale exemplars. In fact, the thrust of the arguments raised on behalf of the land owners is that now their case is squarely covered by the judgment of the Hon'ble Supreme Court in **Ashrafi and others Vs. State of Haryana and others, 2013 (5) SCC 527.** Referring to the observations made by the Hon'ble Supreme Court in para 16 and 42 of its judgment in **Ashrafi**'s case (supra), learned counsel for the land owners would contend that the Hon'ble Supreme Court assessed the market value of the land, out of the revenue estate of this very village Satroad Khas, at the uniform rate of Rs.325/- per square yard. Land in the present case was also acquired from the revenue estate of village Satroad Khas. He concluded by submitting that since there was a time gap of about two years, the land owners may be granted the benefit of annual increase on cumulative basis, for this time gap.

Per contra, learned counsel for the State submits that since the land owners themselves have earlier placed reliance on the judgment of this Court in **Atam Parkash and others Vs. Haryana State and others, 2000 (2) PLR 590,** they are not entitled to the benefit of judgment of the Hon'ble Supreme Court in **Ashrafi'**s case (supra). He also submits that some land owners who approached the Hon'ble Supreme Court against the order passed by this Court in **Atam Parkash**'s case (supra), their appeals were dismissed. However, this contention raised by learned counsel for the State was contested by learned counsel for the land owners, contending that the matter was reconsidered by the Hon'ble Supreme Court in **Ashrafi's** case (supra) and that was the reason that **Atam Parkash**'s case was referred in para 42 of the judgment. Be that as it may, this Court has found no reason to deny the benefit of the judgment of the Hon'ble Supreme Court in **Ashrafi's** case (supra) to the land owners, in the instant acquisition.

The Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Regd.), Faridkot and others Vs. State of Punjab, (2012) 5 SCC 432** and its recent judgment rendered in **Civil Appeal Nos.2714-2721 of 2012 (Ashok Kumar and another etc. v. State of Haryana)** which was decided on 18.02.2016, held that the land owners are entitled to receive the best price for their acquired land. Relevant observations made by the Hon'ble Supreme Court in **Ashrafi's** case (supra), which aptly apply to the facts of the present case, read as under: -

> *"Mr. Manoj Swarup, learned Advocate, appeared in several of the matters relating to acquisition of the lands in Hisar, covered by various Notifications issued under Section 4 of the 1894 Act. Mr. Swarup, firstly, referred to the case of* ***Atam Singh & Anr. v. State of Haryana & Ors., being SLP(C) Nos. 33337-33340 of 2010,*** *involving lands measuring 112 kanals and 12 marlas situated in village Basti Bhiwan, Tehsil Fatehabad, District Hisar, notified for acquisition for establishing new fruit, vegetable and fodder market, under Section 4 of the aforesaid Act. Mr. Swarup also referred to the case of* ***Sarwan Singh v. State of Haryana & Anr., being SLP(C) Nos. 20144-20150 of 2007,*** *involving lands measuring 429.75 acres of land, which is the subject matter of a Notification dated 21.03.1991, under Section 4 of the above Act for the development of a part of Sectors 11, 13, 15, 16 and 17, Hisar, Haryana. Reference was also made to the case of* ***Mukesh Kumar v. State of Haryana & Ors., being SLP(C) No. 19668 of 2006,*** *involving lands measuring*

227.44 acres in Hisar, which was the subject matter of Notification dated 20.08.1992, under Section 4 of the above Act for use as a residential sector by Haryana Urban Development Authority (HUDA). Mr. Swarup, lastly, referred to the case of ***Mukesh v. State of Haryana & Anr., being Civil Appeal Nos. 319-352 of 2011,*** *involving lands measuring 157.20 acres situated in Fatehabad, District Hisar, under Notification dated 21.07.1993, also for residential and commercial purposes in Sector 3, Fatehabad.*

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In Mukesh Kumar's case (Supra), Mr. Manoj Swarup had pointed out that having regard to the potentiality of the acquired lands, the belting system should not have been resorted to. We are inclined to accept Mr. Swarup's contention on this score. We are also inclined to accept Mr. Swarup's other submissions that, although, the High Court had allowed a yearly increase of 12%, taking 1983 as a base-year, such increase was not commensurate with the yearly escalation of prices and that was required to be calculated on a cumulative basis, as was held in Rameshbhai Jivanbhai Patel's case (supra). Accordingly, in Mukesh Kumar's case and the other cases heard along with the said case, we are of the view that while adding 12% annual increase to the value of the lands acquired, the same should be done on a cumulative basis. In Mukesh Kumar's *case, the compensation awarded was at the rate of L 235/- per sq. yard along with all statutory benefits, as provided under Sections 23(1-A), 23(2) and 28 of the Land Acquisition Act. Having discarded the belting system which has been resorted to, we are of the view that the compensation as awarded at the rate of L 235/- per sq. yard, has to be reassessed by applying the cumulative rate of increase at the rate of 12% per annum with the base year being the date of the Notification under Section 4 of the Land Acquisition Act, together with the statutory benefits, as indicated hereinabove. The stand taken on behalf of the State of Haryana, regarding the amount of escalation fixed at 12% being improper, does not appeal to us having regard to the potentiality of the lands acquired and the sharp increase in the value of the lands in recent times. The valuation of the compensation of the acquired land at the rate of L 235/- per sq. yard by the High Court, appears to have been influenced by the compensation already assessed in Atam Prakash's case, where the market value of the land acquired in Sectors 9 and 11 was assessed at L 235/- per sq. yard. According to Mr. Swarup, the said lands were far away from the lands involved in the present set of cases and, accordingly, the rate of compensation for the lands under consideration should be definitely higher than awarded in respect of the lands covered in Atam Prakash's case. Accordingly, we re-assess the compensation assessed in* *respect of the lands covered by these cases by applying the cumulative rate of interest, taking the date of Notification under section 4 of the Land Acquisition Act as the base year for such calculation at L 325/- per sq. yard. The said valuation will also be applicable in* ***Mahabir & Anr. v. State of Haryana & Anr., [SLP(C) No. 1512 of 2007], Sarwan Singh & Anr. v. State of Haryana & Anr., [SLP(C) Nos. 20144-20150 of 2007]*** *and* ***State of Haryana & Anr. v. Partap Singh & Anr., [SLP(C) No. 21597 of 2006].*** *As far as the lands in village Patti Mehar, Saunda and Jandli in Ambala District and forming the subject matter in Surinder Kumar's case [SLP(C) Nos. 16372-16404 of 2008], in Manohar Lal Khurana's case and in other cases falling in the same category are concerned, the compensation will be at the above rate on a uniform basis."*

Further, in para 17 and 18 of its judgment in **Udho Dass Vs. State of Haryana, 2010 (12) SCC 51**, the Hon'ble Supreme Court held as under: -

"Although, in the present matter, sale instances around or near abouts the date of Notification of the present acquisition are available yet these cannot justify or explain the potential of a particular piece of land on the date of acquisition as the potential can be recognized only some time in the future and it is open to a landowner claimant to contend that the potential can be examined first at the time of the Section 18 Reference, the first Appeal in the High Court or in the Supreme Court in appeal as well. We must

also highlight that Collectors, as agents of the State Government, are extraordinarily chary in awarding compensation and the land owners have to fight for decades before they are able to get their due. We take the present case as an example. The land was notified for acquisition in May 1990. The collector rendered his award in May 1990 awarding a sum of Rs. 2,00,000/- per acre. The Reference Court by its award dated January 2001 increased the compensation to Rs. 125 per square yard for the land of the road behind the ECE factory and Rs. 150 per square yard for the land abutting the road which would come to Rs. 6,05,000/- and Rs. 7,26,000/- respectively for the two pieces of land. This itself is a huge increase vis-a-vis the Collector's award. The High Court in First Appeal by its judgment of 24th September 2007 enhanced the compensation for the two categories to Rs. 135 and 160 respectively making it Rs. 6,53,400/- and Rs. 7,74,400/-. In other words, this is the compensation which ought to have been awarded by the Collector at the time of his award on 12th May 1993. This has, however, come to the land owner for the first time as a result of the judgment of the High Court which is under challenge in this appeal; in other words, a full 17 years from the date of Notification under Section 4 and 14 years from the date of the award of the Collector on which date the possession of the land must have been taken from the landowner. Concededly, the Act *also provides for the payment of the solatium, interest and an additional amount but we are of the opinion, and it is common knowledge, that even these payments do not keep pace with the astronomical rise in prices in many parts of India, and most certainly in North India, in the land price and cannot fully compensate for the acquisition of the land and the payment of the compensation in driblets. The 12% per annum increase which Courts have often found to be adequate in compensation matters hardly does justice to those land owners whose land have been acquired as judicial notice can be taken of the fact that the increase is not 10 or 12 or 15% per year but is often upto 100% a year for land which has the potential of being urbanized and commercialized such as in the present case. Be that as it may, we must assume that the landowners were entitled to the compensation fixed by the High Court on the date of the award of the Collector and had this amount been made available to the landowners on that date, it would have been possible for them to rehabilitate their holdings in some other place. This exercise has been defeated for the simple reason that the payment of compensation has been spread over almost two decades. In this view of the matter, we are of the opinion that a landowner is entitled to say that if the compensation proceedings continued over a period of almost 20 years as in the present case, the potential of the land acquired from him must also be adjudged keeping in* *view the development in the area spread over the period of 20 years if the evidence so permits and cannot be limited to the near future alone. We, therefore, feel that in the circumstances, the appellants herein were fully entitled to say that the potential of the acquired land had not been fully recognized by the High Court or by the Reference Court. We must add a word of caution here and emphasize that this broad principle would be applicable where the possession of the land has been taken pursuant to proceedings under an acquiring Act and not to those cases where land is already in possession of the Government and is subsequently acquired.*

There is another unfortunate aspect which is for all to see and to which the Courts turn a Nelson's eye and pretend as if the problem does not exist. This is a factor which creates an extremely grim situation in a case of compensation based exclusively on sale instances. This is the wide spread tendency to under value sale prices. The provision of Collector's rates has only marginally corrected the anomaly, as these rates are also abnormally low and do not reflect the true value. Where does all this leave a landowner whose land is being compulsorily acquired as he has no control over the price on which some other landowner sells his property which is often the basis for compensation?"

It has gone undisputed before this Court that the land of village Satroad Khas itself was finally assessed by the Hon'ble Supreme Court at the rate of Rs.325/- per square yard, which is clear from para 42 of the judgment. It is pertinent to note here that the order dated 14.10.1999 passed by this Court in RFA No.2436 of 1999 (Atam Parkash and others Vs. Haryana State and others) was pertaining to the land of village Satroad Khas, Satroad Khurd and Hisar. In this view of the undisputed fact situation obtaining in the present case, this Court feels no hesitation to conclude that the judgment of the Hon'ble Supreme Court in **Ashrafi's** case (supra) is the best piece of evidence, which can be safely made the basis for assessing the market value of the acquired land.

Learned counsel for the parties are ad idem that time gap between **Ashrafi's** case (supra) and the present acquisition was more than two years, to be precise two years and one month. In view of the law laid down by the Hon'ble Supreme Court in **The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and another, 2008 (14) SCC 745** and **Ashok Kumar and others Vs. State of Haryana and others, 2015 (3) Scale 242,** the land owners would be entitled for the benefit of annual increase for this time gap of two years and on cumulative basis.

As noticed hereinabove, since the acquired land was no more a simple agricultural land and it could have been easily put to residential as well as commercial use, having been situated just on the outskirts of Hisar city and very close to National Highway No.10, thus being semi-urban land, the land owners would be entitled for 15% annual increase on the abovesaid market value assessed by the Hon'ble Supreme Court in **Ashrafi's** case (supra). Following the law laid down by the Hon'ble Supreme Court in **Rameshbhai Jivanbhai Patel**'s case (supra), the land owners have been found entitled for

15% annual increase for the abovesaid time gap.

Granting the benefit of 15% annual increase for the time gap of two years and one month on cumulative basis, on the abovesaid market value of Rs.325/- per square yard, assessed by the Hon'ble Supreme Court in **Ashrafi's** case (supra), the amount comes to Rs.435.19 per square yard, which is rounded off to Rs.436/- per square yard. Accordingly, the land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.436/- per square yard, from the date of notification under Section 4 of the Act.

The next equally important question of law that falls for consideration of this Court is, as to whether the learned reference Court was well within its jurisdiction to grant 50% of the market value as compensation, on account of severance charges. A bare perusal of the site plan Ex.P2 would show that three electric lines, including two high tension lines have been installed over the acquired as well as unacquired land of the land owners. Since it was compulsory acquisition and the land owners had no role to play, they cannot be made to suffer for all times to come and that too for none of their fault.

Erection of three electric lines through and over the land would substantially reduce the market value of the unacquired land. Even for putting the unacquired land to agriculture use, the land owners will have to live under a constant fear, while working in their fields. The witness produced by the State of Haryana, as RW6 Kublir Singh SDO, has categorically admitted before the learned reference Court that it will not be possible for the land owners to raise any construction under the electro magnetic field. Keeping all these abovesaid relevant considerations in view, coupled with the provisions contained in

Section 23 (1) fourthly and fifthly of the Act, this Court is of the considered opinion that the learned reference Court was well within its jurisdiction to grant 50% of the market value, as compensation to the land owners on account of severance charges. Having said that, it is held that the land owners shall be entitled to 50% of the abovesaid market value as compensation on account of severance charges.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***Smt. Tribeni Devi and others Vs. The Collector, Ranchi, 1972 (1) SCC 480.***
2. ***Prem Nath Kapur Vs. National Fertilizers Corporation, 1996 (2) SCC 71.***
3. ***State of Haryana Vs. Gurbax Singh (dead) by LRs and another etc., 2008 (11) SCC 65.***
4. ***Smt. Bindu Garg Vs. State of Haryana, 1999(2) R.C.R.(Civil) 261.***
5. ***State of Haryana Vs. Kartar Singh, 2010(2) R.C.R.(Civil) 443.***
6. ***Chanan Singh Vs. State of Punjab, 2010 (5) RCR (Civil) 283.***
7. ***State of Punjab and another Vs. Ishar Singh, 2010(5) R.C.R. (Civil) 239***
8. ***IVO Agnelo Santimano Fernandes and others Vs. Government of Goa and another, 2011 (11) SCC 506.***
9. ***Himmat Singh and others Vs. State of M.P. and another, 2015 (1) SCC (Civil) 351.***

Let it be specifically recorded here that no better evidence or other judicial precedent was pressed into service nor any other argument was raised on behalf of either of the parties.

Considering the peculiar facts and circumstances of the cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that so far as the appeal filed by the State of Haryana is concerned, it has been found wholly misconceived, bereft of merit and without any substance, thus, it must fail and the same is hereby dismissed. Appeal filed by the land owners deserves to be accepted and it is allowed to the extent indicated above.

Consequently, the land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.436/- per square yard, from the date of notification under Section 4 of the Act. They are also held entitled to receive 50% of the abovesaid market value as compensation for their unacquired land, on account of severance charges. Besides this, land owners shall be entitled to all the statutory benefits available to them, under the relevant provisions of the Act.

However, lest there be any ambiguity in this regard, it is clarified that the land owners shall be entitled for 50% of the abovesaid market value as compensation on account of severance charges, for their unacquired land measuring 21 kanal and the findings recorded by the learned reference Court in this regard are upheld.

Resultantly, with the abovesaid observations made, both the abovesaid appeals stand disposed of, in the abovesaid terms, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
02.06.2016 **JUDGE**
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