IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 01.06.2016

1. RFA No.295 of 2005 (O&M)

Thakur Dwara Kalan Ul-Maruf Baraglan Wala

... Appellant

Vs.

State of Haryana and others

... Respondents

2. RFA No.2400 of 2004 (O&M)

The Central Warehousing Corporation

... Appellant

Vs.

Thakur Dwara Kalan-Ul-Maruf Baraglan Wala and others

... Respondents

3. RFA No.2522 of 2004 (O&M)

State of Haryana and another

... Appellants

Vs.

Thakur Dwara Kalan-Ul-Maruf Baraglan Wala

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sunil Pawar, Advocate
for the appellant (in RFA No.295 of 2005) and
for the respondent(s) (in RFA No.2400, 2522 of 2004).

None for the appellant (in RFA No.2400 of 2004).

Ms. Vibha Tewari, AAG, Haryana.

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

VISHNU
2016.06.28 10:51
I attest to the accuracy and
integrity of this document
High Court Chandigarh

*****

RAMESHWAR SINGH MALIK, J.

These 03 appeals, out of which one appeal bearing Regular First Appeal No.2400 of 2004 filed by the beneficiary department i.e. Central Warehousing Corporation, second appeal bearing Regular First Appeal No.2522 of 2004 filed by the State of Haryana and third appeal bearing Regular First Appeal No.295 of 2005 filed by the land owner, are being decided vide this common order, as all 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 extracted from RFA No.295 of 2005 (Thakur Dwara Kalan Ul-Maruf Baraglan Wala Vs. State of Haryana and others).

Briefly put, facts of the case are that State of Haryana sought to acquire land measuring 80 kanal, 11 marla out of the revenue estate of Naraingarh, District Ambala, at public expenses for public purpose namely; for Construction of Godown by Central Warehousing Corporation. Accordingly, notification dated 10.11.2000 was issued under Section 4 of the Land Acquisition Act, 1894 ('Act' for short), which came to be followed by notification dated 19.03.2001 under Section 6 of the Act. Land Acquisition Collector ('LAC' for short), vide his award dated 12.10.2001 (Annexure R-1), assessed the market value of the acquired land at the rate of Rs.3.50 lacs per acre i.e. Rs.2187.50 per marla equivalent to Rs.72.31 per square yard.

Dissatisfied with the market value assessed by LAC, land owner filed objections under Section 18 of the Act and as a consequence thereof, land reference was forwarded to the learned reference Court, for its decision. After hearing the learned counsel for the parties and going through the evidence

VISHNU
2016.06.28 10:51
I attest to the accuracy and
integrity of this document
High Court Chandigarh

brought on record, learned reference Court, vide its impugned award dated 07.09.2004, assessed the market value of the acquired land at the rate of Rs.10,09,600/- per acre i.e. Rs.6310/- per marla equivalent to Rs.208.59 per square yard. Beneficiary Department, State of Haryana as well as land owner felt aggrieved against the abovesaid impugned award passed by the learned reference Court. Each one of the three parties have approached this Court, by way of abovesaid three appeals. Beneficiary Department as well as the State of Haryana are seeking reduction in the amount of compensation awarded by the learned reference Court, whereas the land owner is seeking further enhancement in the amount of compensation for the acquired land. That is how, all these three appeals are being decided together.

Having heard the learned counsel for the parties at considerable length, after going through the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that so far as the appeals filed by the beneficiary department i.e. Central Warehousing Corporation and State of Haryana are concerned, the same have been found without any merit and are liable to be dismissed. However, the appeal filed by the land owner deserves to be partly allowed, suitably enhancing the amount of compensation for the acquired land, for the following more than one reasons.

A bare perusal of the impugned award passed by the learned reference Court would show that although the learned reference Court rightly placed reliance on an earlier judicial precedent, available on record in the form of Ex.P12 dated 30.08.2000 and made it the basis for assessing the market value of the acquired land, yet the learned reference Court fell in serious error of law, while not granting the benefit of appropriate annual increase for the time gap. In

VISHNU
2016.06.28 10:51
I attest to the accuracy and
integrity of this document
High Court Chandigarh

fact, learned reference Court granted the benefit of 12% annual increase but not on cumulative basis, as per its patently illegal finding recorded in para 23 to 25. Since this finding recorded by the learned reference Court runs counter to 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,** it cannot be sustained and the same is hereby set aside.

So far as the location and potentiality of the acquired land is concerned, it had never been in dispute. Admittedly, the acquired land was situated within municipal limits of Naraingarh at the time of its acquisition. It has been so admitted by RW1, whose statement is available at page 203 of the lower Court record ('LCR' for short). Again, it was admitted by PW2 as well, whose statement is available at page 169 of the LCR. PW2 was Clerk of Municipal Committee, Naraingarh itself, who deposed before the Court that the acquired land was part of Ward No.1 of Municipal Committee, Naraingarh. Once the acquired land had already come within the municipal area, it can be safely concluded that it was situated at a prime location and was having immense potentiality.

Location and potentiality of the acquired land having been established on record, the only material issue that falls for consideration of this Court is, as to whether the land owner was entitled for 15% annual increase on the market value assessed by way of earlier judicial pronouncement (Ex.P12), for the time gap between said acquisition and the present acquisition and that too on cumulative basis. The answer to the question posed hereinabove is and has to be in the affirmative. That is what is the law laid down by the Hon'ble Supreme Court in **Rameshbhai Jivanbhai Patel**'s case (supra).

VISHNU
2016.06.28 10:51
I attest to the accuracy and
integrity of this document
High Court Chandigarh

However, before proceeding further, solitary contention raised by learned counsel for the State, deserves to be dealt with. While referring to para No.12 of the judgment of the Hon'ble Supreme Court in **Rameshbhai Jivanbhai Patel**'s case (supra), learned counsel for the State submits that it would not be safe to grant the benefit of annual increase beyond a period of five years. However, when confronted with the judgment dated 26.03.2014 passed by this Court in **RFA No.5626 of 2010 (State of Haryana and others Vs. Murti Devi and another)**, whereby the benefit of annual increase was granted for 10 years and 03 months, which came not only be upheld by the Hon'ble Supreme Court, but was further modified, granting the benefit of annual increase on cumulative basis, vide order dated 22.08.2014 passed in **SLP (C) No.21223-21230 of 2014 (Narbadi Devi and others etc. Vs. State of Haryana and others etc.),** she had no answer and rightly so, it being a matter of record.

The relevant part of the order dated 26.03.2014 passed by this Court in **Murti Devi**'s case (supra), which can be gainfully followed in the present case, reads as under: -

> *It has been held in **'Om Parkash (D) by LRs and others versus Union of India and another' The Punjab Law Reporter Vol. CXXXVIII (2004-3), 727**, wherein it was held as under:-*
>
> > *"In the circumstances, the High Court was justified in working out the fair market value of the lands in question on the basis of Rs. 16,750/- per bigha as on 30.10.1963. The High Court noticed that in several judgments of this Court escalation at different and varying rates i.e. 6% per annum from 1959 to 1965, @ 10% per annum for every year from 1966 to 1973 and @ 12% per annum from 1975 had been*

VISHNU
2016.06.28 10:51
I attest to the accuracy and
integrity of this document
High Court Chandigarh

considered to be reasonable increase to arrive at the fair market value, assuming that the pace of escalation during this period was normal for the entire period from 1959 onwards. Since no material was placed on record to show that there was any abnormality during the period, the High Court applied the same principle to the facts and circumstances before it, and accepted increase of 10% every year progressively from 1963 to 1973 and thereafter @ 12% every year progressively upto the date of acquisition. The High Court noticed in the judgment that if escalation is allowed on the basis, the fair market value, would be Rs. 1,28,889/- per bigha. In case progressive increase is allowed @ 10% for the entire period, the amount will work out to Rs. 1,08,397/- per bigha. Allowing appreciation @ 12% per annum from 1963 to 1983, the amount would work out to Rs. 56,11/- per bigha. The High Court in its judgment under appeal pointed out that the market value of Rs. 16,750/- per bigha fixed in the case of Dharambir and others v. Union of India was not in respect of commercial land but only of agricultural land. That the market value of agricultural land is much lower than that of land suitable for commercial purposes, is trite. After having worked out the market value of the lands on various bases and keeping in view the fact that between 8.12.1992 and 2.6.1983, the lands in question had at least some commercial potentiality, the High Court decided that the fair market value of all

VISHNU
2016.06.28 10:51
I attest to the accuracy and
integrity of this document
High Court Chandigarh

categories of lands situated in the villages in question as on the date of acquisition should be fixed at Rs. 82,225/- per bigha."

Thus, the claimants are entitled to receive market value of the land as assessed by the Apex Court at the rate of Rs.325/- per square yard + 12% increase per year for 10 years and 3 months. The amount of enhancement works out to Rs.325 x 12% x 10¼ years = Rs.399.75 paisa. Therefore, the claimants are entitled to receive compensation at the rate of Rs.325 + Rs. 399.75 paisa=Rs.724.75 paisa."

The relevant observations made by the Hon'ble Supreme Court in **Narbadi Devi**'s case (supra), while reiterating its earlier view taken in ***Ashrafi and others Vs. State of Haryana and others, 2013 (5) SCC 527,*** read as under:-

"From the impugned judgment of the High Court, it transpires that the High Court has followed the judgment of this Court in Asharfi and others Vs. State of Haryana and others 2013 (5) SCC 527 and has given increase at the rate of 12%. This was the demand of the petitioners herein which has been accepted following the ratio of Asharfi case (supra). To the extent there is no quarrel. However, it is pointed out by the learned counsel for the petitioner that in Asharfi case (supra), yearly increase of 12% was granted cumulatively and not at flat rate. This position as contained in Asharfi case (supra) could not be disputed by Mr. Narender Hooda, learned senior counsel for the State. Accordingly, the order of the High Court is modified to the extent that the 12% increase granted by the High Court shall be worked

VISHNU
2016.06.28 10:51
I attest to the accuracy and
integrity of this document
High Court Chandigarh

out on cumulative basis."

The Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Regd.), Faridkot and others Vs. State of Punjab, (2012) 5 SCC 432,** held that the land owners are entitled for receiving the best price for their acquired land. Further, the Hon'ble Supreme Court in para 17 & 18 of its judgment in **Udho Dass Vs. State of Haryana, 2010 (12) SCC 51,** 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*

VISHNU
2016.06.28 10:51
I attest to the accuracy and
integrity of this document
High Court Chandigarh

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

VISHNU
2016.06.28 10:51
I attest to the accuracy and
integrity of this document
High Court Chandigarh

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

VISHNU
2016.06.28 10:51
I attest to the accuracy and
integrity of this document
High Court Chandigarh

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?"

Similarly, the law laid down by the Hon'ble Supreme Court in **Civil Appeal Nos.2714-2721 of 2012 (Ashok Kumar and another etc. v. State of Haryana),** decided on 18.02.2016, while interpreting the scope of Section 25 of the Act and duty cast on the courts to grant just compensation, reads as under:-

"Learned counsel appearing for the appellants however points out that in the matter of fixation of just and fair compensation, the Court is not bound by claim made by the owner. It is for the Court, in the facts and circumstances of each case, to award just and fair compensation.

xxx xxx xxx

The pre-amended provision put a cap on the maximum; the compensation by court should not be beyond the amount claimed. The amendment in 1984, on the contrary, put a cap on the minimum; compensation cannot be less than what was awarded by the Land Acquisition Collector. The cap on maximum having been expressly omitted, and the cap that is put is only on minimum, it is clear that the amount of compensation that a court can award is no longer restricted to the amount claimed by the applicant. It is the duty of the Court to award just and fair compensation taking into consideration the true market value and other relevant

VISHNU
2016.06.28 10:51
I attest to the accuracy and
integrity of this document
High Court Chandigarh

factors, irrespective of the claim made by the owner.

Although in the context of the Motor Vehicles Act, 1988, this Court in ***Sanjay Batham v. Munna Lal Parihar*** *held that*

> *"17. It is true that in the petition filed by him under Section 166 of the Act, the Appellant had claimed compensation of Rs. 4,20,000/- only, but as held in Nagappa v. Gurudayal Singh, (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."*

In ***Bhag Singh and Others v. Union Territory of Chandigarh****, this Court held that there may be situations where the amount higher than claimed may be awarded to the claimant. The Court observed –*

> *"3. … It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land*

VISHNU
2016.06.28 10:51
I attest to the accuracy and
integrity of this document
High Court Chandigarh

acquired and if according to the judgments of the learned single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where, as for instance, under' agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution, be deprived of land which is not being personally cultivated by him or which is in excess of the ceiling area with payment of little compensation or no compensation at all, but where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms, declares that he shall be paid such market value. …"

In ***Krishi Utpadan Mandi Samiti v. Kanhaiya Lal****, this Court held that under the amended provisions of Section 25 of the Act, the Court can grant a higher compensation than claimed by the applicant in his pleadings –*

"17. Award being in this case between the dates 30th April,

VISHNU
2016.06.28 10:51
I attest to the accuracy and
integrity of this document
High Court Chandigarh

1982 and 24th September, 1984 and as per the Union of India and Anr. v. Raghubir Singh (Dead) by LRs. etc. (Supra), the amended provisions would be applicable under which there is no restriction that award could only be upto the amount claimed by the claimant. Hence High Court order granting compensation more than what is claimed cannot be said to be illegal or contrary to the provisions of the Act. Hence the review itself, as is confined for the aforesaid reasons, has no merit."

*Further, in **Bhimasha v. Special Land Acquisition Officer and others**, a three-Judge bench reiterated the principle in **Bhag Singh** (supra) and rejected the contention that a higher compensation than claimed by the owner in his pleadings cannot be awarded by the Court. In that case, the High Court had concluded that although the market price of the land was Rs 66,550/- per acre, since the appellant had only claimed compensation at the rate of Rs. 58,500/- per acre in his pleadings, therefore he could only be awarded compensation limited to his claim. This Court, while reversing the decision of the High Court, awarded the petitioner the market value, i.e., Rs. 66,550/- per acre thereby holding that the award would not be limited to the claim made by him."*

In this regard, it is also relevant to refer to the new Land Acquisition Act known as 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the New Act'). The legislature has found the Land Acquisition Act, 1894 (for short

VISHNU
2016.06.28 10:51
I attest to the accuracy and
integrity of this document
High Court Chandigarh

`the Old Act') to be an outdated law, because of which it was thought appropriate to bring the new piece of legislation in the form of the New Act. The statement of objects and reasons for framing the New Act are not being reproduced here for the sake of brevity and only highlights thereof would suffice, which read as under:-

> *"HIGHLIGHTS OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABIITATION AND RESETTLEMENT ACT, 2013 (30 OF 2013)*
>
> - *Payment of compensation upto four times the market value in rural area and two times the market value in urban areas.*
> - *To address historical injustices, the Law applies retrospectively to cases where no land acquisition award has been made.*
> - *No one shall be dispossessed until and unless all payments are made and alternative sites for the resettlement and rehabilitation have been prepared.*
> - *Compensation to those who are dependent on the land being acquired for their livelihood.*
> - *In cases where Public-Private Partnership PPP projects are involved or acquisition is taking place for private companies, the Act requires the consent of not less than 70 per cent and 80 per cent respectively (in both cases) of those whose land is sought to be acquired.*
> - *To safeguard Food Security and to prevent arbitrary acquisition, the Act directs States to impose limits on the*

VISHNU
2016.06.28 10:51
I attest to the accuracy and
integrity of this document
High Court Chandigarh

area under agricultural cultivation that can be acquired.

- *In case, land remains unutilized after acquisition, the new Act empowers State to return the land either to the owner or to the State Land Bank.*
- *No income-tax shall be levied and no stamp duty shall be charged on any amount that accrues to an individual as a result of the provisions of the new Law.*
- *Where acquired land is sold to a third party for a higher price then 40 percent of the appreciated land value (or profit) will be shared with the original owners.*
- *The Act requires a Social Impact Assessment study to be conducted for every acquisition of land."*

In view of what has been discussed hereinabove, this Court feels no hesitation to conclulde that the land owner was entitled to annual increase at the rate of 15% for the time gap between the acquisition decided by way of Ex.P12 and the present acquisition. Although admitted time gap between these two acquisitions was 11 years and 09 months, yet to be on safer side, granting benefit of annual increase at 15% on cumulative basis, for a period of 11 years, would meet the ends of justice. Admittedly, acquired land was part of municipal area, hence urban land.

Land was assessed @ Rs.2720/- per marla, by way of earlier judicial pronouncement dated 30.08.2000 (Ex.P12), which was further enhanced by this Court vide its order dated 13.11.2009 passed in **RFA No.2617 of 2001 (Surinder Kumar Vs. State of Haryana and another)** to Rs.3200/- per marla. Granting the benefit of 15% annual increase for the abovesaid time gap of 11 years on cumulative basis, amount comes to Rs.493/- per square yard.

VISHNU
2016.06.28 10:51
I attest to the accuracy and
integrity of this document
High Court Chandigarh

Accordingly, the land owner-appellant is held entitled to receive the compensation for the acquired land at the uniform rate of Rs.493/- per square yard, from the date of notification under Section 4 of the Act.

Let it be specifically recorded here that no other better evidence or judicial precedents were 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 the appeals filed by the State of Haryana as well as by the beneficiary department i.e. Central Warehousing Corporation have been found wholly misconceived, bereft of merit and without any substance, thus, these must fail and the same are hereby dismissed.

The appeal filed by the land owner deserves to be partly accepted and the same is allowed to the extent indicated above. The land owner is held entitled to receive the compensation for the acquired land at uniform rate of Rs.493/- per square yard, from the date of notification under Section 4 of the Act. Besides this, land owner shall also be entitled for all the statutory benefits available to him, under the relevant provisions of the Act.

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

[RAMESHWAR SINGH MALIK]
JUDGE

01.06.2016
vishnu

VISHNU
2016.06.28 10:51
I attest to the accuracy and
integrity of this document
High Court Chandigarh