IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.5758 of 2009 and other connected matters
Date of decision: 22.01.2016

State of Haryana and another

... Appellants

Vs.

Subh Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Randhir Singh, Addl. AG, Haryana,
Mr. Abhinash Jain, AAG, Haryana and
Ms. Vibha Tewari, AAG, Haryana
for the appellant (s) (in RFA Nos.5758 to 5770 of 2009, 101, 5024 of 2010, 5331 to 5345 of 2009, 5347 to 5359 of 2009, 5748 of 2009) and for the respondent (s)
(in RFA Nos.3143, 3144, 3349, 3367 to 3372, 4302, 4883 of 2009, 5574, 5181 of 2010, 3387, 5896 to 5906 of 2009, 496, 497, 547, 802, 2116 to 2119, 3491, 938, 4878, 5293, 5328 of 2010 & 3398 of 2011).

Mr. H.S. Virk, Advocate for
Mr. N.D. Achint, Advocate
for the appellants (in RFA Nos.3143, 3144 of 2009, 938 of 2010)&
for the respondent (s) (in RFA Nos.5759, 5768 of 2009).

Mr. Abhimanyu Antil, Advocate for
Mr. Sudhir Mittal, Advocate
for the respondent (in RFA No.5024 of 2010).

Mr. Pulkit Dagar, Advocate for
Mr. Rajesh Lamba, Advocate
for the appellants (in RFA No.802 of 2010).

Mr. Sandeep Sharma, Advocate
for the appellants (in RFA No.3349 of 2009) and
for the respondents (in RFA No.5766 of 2009).

Mr. Bhim Singh, Advocate
for the appellants (in RFA No.3398 of 2011).

Mr. Gaurav Sharma, Advocate for
Mr. Amit Jain, Advocate
for the appellant (s) (in RFA Nos.3367 to 3372, 3387, 4302, 4883

of 2009, 5181 & 3491 of 2010) and
for the respondent (s) (in RFA Nos.5758, 5760, 5764, 5765, 5761, 5769, 5763, 5762 of 2009).

Mr. Shailendra Jain, Senior Advocate with
Mr. Sanjay Vij, Advocate,
Mr. Bhagender, Advocate and
Mr. Vikrant Rana, Advocate
for the appellant (s) (in RFA Nos.5896 to 5906 of 2009, 496, 497 of 2010) and for the respondent (s)
(in RFA Nos.5348, 5349, 5342, 5338, 5353, 5352, 5355, 5343, 5354, 5351, 5350, 5333 to 5345, 5347 to 5359 of 2009).

Mr. Gautam Kaile, Advocate for
Mr. Rajiv Sharma, Advocate
for the appellant (in RFA No.547 of 2010) and
for the respondent (in RFA No.5341 of 2009).

Mr. Sudhir Aggarwal, Advocate
for the appellant (s) (in RFA Nos.2116 to 2119 of 2010, 4878 of 2010) and for the respondent (s)
(in RFA Nos.5331, 5334, 5336, 5345, 5347 of 2009).

Mr. Ram Avtar Yadav, Advocate
for the appellant (s) (in RFA Nos.5293 of 2010).

Mr. P.R. Yadav, Advocate for
the appellant (s) (in RFA Nos.5574, 5328 of 2010).

Mr. Arun Walia, Senior Advocate with
Mr. Gitish Bhardwaj, Advocate
for the respondent-HUDA.

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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RAMESHWAR SINGH MALIK, J.

This batch of 83 appeals, out of which 44 appeals bearing Regular First Appeal Nos.5758 to 5770 of 2009, 101, 5024 of 2010, 5331 to 5345, 5347 to 5359 and 5748 of 2009 have been filed by the State of Haryana and 39 appeals bearing Regular First Appeal Nos.3143, 3144, 3349, 3367 to 3372, 4302, 4883, 3387, 5896 to 5906 of 2009, 496, 497, 547, 802, 938, 2116 to 2119, 3491, 4878, 5181, 5293, 5328, 5574 of 2010 & 3398 of 2011, filed by the land owners, arising out of two acquisitions pertaining to the land acquired out of the revenue estates of three Villages namely Tikri, Islampur and Fazilpur, is being decided vide this common order, as all these appeals raise identical questions of law and facts. With the consent of learned counsel for the parties and for the facility of reference, facts are being culled out from RFA No.5758 of 2009 (State of Haryana Vs. Subh Ram and others).

Briefly put, facts necessary for disposal of this batch of appeals, are that the State of Haryana sought to acquire land measuring 16.80 acres out of revenue estate of Village Tikri and land measuring 13.16 acres out of the revenue estate of Village Islampur at public expenses for public purpose i.e. for the development and utilization of land for Sector Master Road, Sector-48, Gurgaon. Notifications under Sections 4 & 6 of the Land Acquisition Act, 1894 ('the Act' for short) were issued on the same date i.e. 06.12.2001. Land Acquisition Collector, vide his award Nos.27 & 28 dated 26.03.2003 pertaining to abovesaid two villages; namely Tikri and Islampur, granted an amount of Rs.12,00,000/- per acre for Chahi and Gair Mumkin land, whereas Rs.6,00,000/- per acre was granted for Barani and Banjar type of land. The land owners felt dissatisfied and filed their objections under Section 18 of the Act. Land references were forwarded to the learned reference Court who decided 14 land references vide common impugned award dated 01.05.2009, granting the compensation at uniform rate of Rs.660/- per square yard.

Similarly, vide notification dated 31.01.2002 issued under Section 4 of the Act, State of Haryana sought to acquire 60.65 acres of land out of the revenue estate of Village Tikri and land measuring 16.17 acres out of the revenue estate of Village Fazilpur, at public expenses for public purpose i.e. for construction of Sewerage Treatment Plant, Gurgaon. Notification under Section

6 of the Act was issued on 24.12.2002. Land Acquisition Collector, vide his award Nos.37 & 38 of even date i.e. 25.03.2004, granted the compensation exactly at the same rate, which was granted to the land owners vide abovesaid two award Nos.27 & 28 dated 26.03.2003 i.e. at the rate of Rs.12,00,000/- per acre for Chahi and Gair Mumkin land. Rs.6,00,000/- per acre was granted for Bhood and Banjar type of land. Land owners filed their objections under Section 18 of the Act and as a consequence thereof, 29 land references were forwarded which came to be decided by the learned reference Court vide common impugned award dated 28.08.2009. The learned reference Court granted the same amount of compensation i.e. at the rate of Rs.660/- per square yard at flat rate.

Feeling aggrieved against the abovesaid two impugned awards passed by the learned reference Court, both the parties have approached this Court through their abovesaid respective appeals. State of Haryana is seeking reduction in the compensation granted by the learned reference Court, whereas the land owners are seeking enhancement thereof.

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 the cases in hand, appeals filed by the State of Haryana have been found bereft of merit and the same are liable to be dismissed. The appeals filed by the land owners deserve to be partly allowed, suitably enhancing the amount of compensation for the acquired land. To say so, reasons are more than one, which are being recorded hereinafter.

So far as the sale instances produced by the State of Haryana before the learned reference Court in support of its case were concerned, these were three sale deeds Ex.R2, Ex.R3 and Ex.R4, as discussed by the learned reference Court in para 21 of its impugned award dated 01.05.2009. The argument raised by learned Senior Counsel for the land owners that these three sale deeds produced by the State of Haryana are liable to be altogether ignored, has not been found worth acceptance in view of the law laid down by the Hon'ble Supreme Court in **Lal Chand Vs. Union of India and others, 2009 (15) SCC 769.** Said argument raised by learned Senior Counsel holds good only for the learned reference Court, which could not have granted the compensation at a lower rate than granted by the Land Acquisition Collector, in view of the provisions contained in Section 25 of the Act.

However, these sale deeds cannot be ignored altogether for the purpose of assessing the market value of the acquired land. This is what was held by the Hon'ble Supreme Court in **Lal Chand**'s case (supra). Learned counsel for the land owners have placed reliance on five sale deeds contained in Ex.P2, Ex.P3, Ex.P5, Ex.PW3/5 and Ex.PW3/2. It is pertinent to note here that all these sale deeds were executed on 12.11.1996 and 22.11.1996 and market value disclosed in all these five sale deeds was at the rate of Rs.80,00,000/- per acre. On the other hand, three sale deeds Ex.R2, Ex.R3 and Ex.R4 relied upon by learned counsel for the State disclosed much lower market value. Vide sale deed Ex.R2, land was sold at the rate of Rs.6,27,653/- per acre, whereas vide sale deed Ex.R3 and Ex.R4, land was sold at the rate of Rs.5,35,273/- per acre.

In the absence of any better evidence available on record, it would be just and expedient to take the average of two best sale deeds, one each from both sides, in favour of the respective parties, which have been relied upon by them. It is very pertinent to note here that learned counsels for both the parties are ad idem that they would place reliance on the same evidence for both sets of appeals arising out of abovesaid two acquisitions and all these appeals may be decided accordingly. Taking the average of sale deed Ex.P3 and Ex.R2, the market value comes to Rs.43,13,782/- per acre. So far as the prime location of the acquired land is concerned, there is no dispute about this fact. It is crystal clear from the bare perusal of the site plan Ex.PW2/1 available on the lower Court record. In view of the law laid down by the Hon'ble Supreme Court in **General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and another, 2008 (4) SCC 745,** the land owners in these cases would be entitled for 15% annual increase on the abovesaid market value, for the time gap between the abovesaid sale deeds and the date of notification under Section 4 of the Act. It is so said because the acquired land, in these cases, was situated in the urban area and could have been put to use for commercial, residential as well as industrial purposes.

Applying the cumulative method of annual increase, as held by the Hon'ble Supreme Court in **Ashok Kumar Vs. State of Haryana, 2015 (3) Scale 242** and granting 15% annual increase on the abovesaid market value of Rs.43,13,782/- for a period of five years, the market value would come to Rs.86,76,554/- per acre. Since the State acquired a large track of land of more than 100 acres, a reasonable cut deserves to be applied. Considering all the relevant positive as well as negative determinative factors in view of the peculiar fact situation obtaining in these cases, this Court is of the considered view that 25% cut would be just and reasonable. After applying 25% cut, the market value comes to Rs.65,07,415/- per acre, which is rounded off to Rs.65,08,000/- per acre and the land owners in all these cases are held entitled to receive the compensation at the rate of Rs.65,08,000/- per acre for their acquired land from the date of notification under Section 4 of the Act.

To be fair to learned counsel for the State, his argument that once the judicial pronouncements were available, these sale deeds produced on behalf of both the parties ought not to have been made the basis for assessing the market value is concerned, the same is to be noted to be rejected, as it has not been found worth acceptance. It is so said because if the land owners in the cases decided earlier, failed to produce the relevant sale instances, the land owners of later acquisition, i.e. present one, cannot be made to suffer for none of their fault. It is also the settled proposition of law that land owners are entitled to receive best price for their acquired land. It was so held by the Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Regd.), Faridkot and others Vs. State of Punjab and others, 2012 (5) SCC 432.**

Another argument raised by learned counsel for the State that in view of the circumstances of the case, the land owners were not entitled for more than 12% annual increase and at least 1/3th cut instead of 25% is warranted to be applied on the abovesaid average market value. In this regard, he places reliance on judgment of the Hon'ble Supreme Court in **Ashrafi and others Vs. State of Haryana and others, 2013 (5) SCC 527.** So far as the judgment in **Ashrafi**'s case (supra) relied upon by learned counsel for the State is concerned, there is no dispute about the law laid down therein. However, on close perusal of the said judgment, the same has not been found of any help to learned counsel for the State, being distinguishable on facts. It is the settled proposition of law that peculiar facts of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of one additional fact or circumstance can make a world of difference, as held by the Hon'ble Supreme Court in **Padmausundra**

Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.

As noticed hereinabove, the acquired land in the present set of cases was situated on a prime location. It was surrounded by already fully developed area. It is also 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 desirable nor possible to lay down any straight-jacket formula, which might be made applicable in every given situation.

On both these issues, the abovesaid view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **Bhagwathula Samanna Vs. Special Tehsildar and Land Acquisition Officer, 1992 L.A.C.C. 314** and **Special Tehsildar (Adi Dravidar Welfare) Vs. Abdul Reguman, 1996 L.A.C.C. 394,** wherein the Hon'ble Supreme Court has held that in a given situation, applying cut may not at all be warranted. The abovesaid law laid down by the Hon'ble Supreme Court was followed by the Division Bench of this Court in **Harbans Singh and others Vs. State of Punjab through the Land Acquisition Collector, Patiala, 2006 (1) RCR (Civil) 634.**

The relevant observations made by the Division Bench referring to the abovesaid law laid down by the Hon'ble Supreme Court in para 12 and 13 of its judgment in **Harbans Singh'**s case (supra), which can be gainfully followed in the present case, read as under: -

> *"There is no quarrel with the proposition, as has been laid down by the Hon'ble Apex Court in* ***Administrator General of West Bengal Vs. Collector's case*** *(supra), that where the sale instance relied upon by the claimants comprised of small plot of land, than a cut has to be applied while evaluating a large tract of land.*

However, in our considered view, the aforesaid proposition of law would not be attracted to the present case. As has been noticed by the learned reference Court as well as by the learned Single Judge, it is clear that the acquired land was situated within the municipal limits. G.T. Road was situated on one side of the acquired land whereas on the other side of the acquired land a by-pass road connecting Sirhind town with the G.T. Road was situated. There were certain shops, workshops, and petrol-pumps near the acquired land. In this view of the matter, certain observations made by the Hon'ble Apex Court in ***Bhagwathula Samanna and others Vs. Special Tehsildar and Land Acquisition Officer, 1992 (1) RRR 257: 1992 L.A.C.C. 314*** *may be noticed:*

> *"The proposition that large area of land cannot possible fetch a price at the same rate at which shall plots are sold is not absolute proposition and in the given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted. With regard to the nature of the plots involved in these two cases, it has been satisfactory shown on the evidence on record that the land has facilities of road and other amenities and is adjacent to a developed colony and in such circumstances it*

is possible to utilise the entire area in question as house sites. In respect of the land acquired for the road, the same advantages are available and it did not required any further development. We are, therefore, of the view that the High Court has erred in applying the principle of deduction and reducing the fair market value of land from Rs.10/- per sq. yard to Rs.6.50 per sq. yard. In our opinion, no such deduction is justified in the facts and circumstances of these cases."

*Following the aforesaid dictum laid down by the Hon'ble Supreme Court of India, a Division Bench of Madras High Court in **Special Tehsildar (Adi Dravidar Welfare) Vs. Abdul Reguman, 1996 L.A.C.C. 394** held as follows:*

"In our view the observation made by the Supreme Court is squarely applicable to the case in hand. Admittedly, the land in question is already in a developed area and situated in an advantageous position and quite suitable for building purpose. It is also proved in evidence that the land in question has all the amenities such as roads, drainage, electricity, communications etc. Therefore, we are of the view that the learned Subordinate Judge is not justified in deducting 20% from the market value. We, therefore, set aside that part of the order of the learned Subordinate Judge, fixing the market value at Rs.1325/- less 20%. The cross-objection is, therefore, allowed and the order of the Subordinate Judge is modified to this extent."

Similarly, the Hon'ble Supreme Court in the case of **Mohinder Singh and others Vs. State of Haryana, 2014 (8) SCC 897,** held that applying a particular percentage of cut on the market value would be dependent on a peculiar fact situation of each case. In **Mohinder Singh'**s case (supra), 40% cut applied by this Court was reduced by the Hon'ble Supreme Court to 1/4th. The relevant observations made by the Hon'ble Supreme Court in para 10 of its judgment in **Mohinder Singh'**s case (supra), which aptly apply to the facts of the present case, read as under: -

> *"In our view, the High Court on the facts of the case was justified in taking into consideration the size of the plots which were exhibited for the purpose of comparison with the size of the plot acquired, but we are unable to uphold the cut of 40% which has been imposed by the High Court since the acquired lands are already within developed municipal limits and the deduction of 1/4th of the market value made by the Reference Court is appropriate and liable to be restored."*

No other argument was raised by either side in both the abovesaid sets of appeals arising out of the two acquisitions.

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, have since been found misconceived, bereft of merit and without any substance, thus, these must fail and the same are hereby dismissed.

The appeals filed by the land owners are allowed to the extent indicated above. The land owners in all these appeals are held entitled to receive the compensation at the rate of Rs.65,08,000/- per acre for their acquired land, from the date of notification under Section 4 of the Act. Besides this, the land owners shall also be entitled for all the statutory benefits available to them, under the relevant provisions of the Act.

Resultantly, with the observations made above, all these 83 appeals stand disposed of, in the abovesaid terms, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
22.01.2016 **JUDGE**
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