HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.3341 of 2011 & other connected matters
Date of decision:29.1.2016

Lala Ram

...Appellant

Versus

State of Haryana 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.B.R.Rana, Sr. Advocate with
Mr.Sanjay Mittal, Advocate for the appellants in RFA Nos.3341 to 3352 of 2011, 5353 of 2011, 6826 to 6829 of 2011, 6956 of 2011, 1975 to 1977 of 2012, 2080 to 2082 of 2012, 3086 of 2012, 6922 to 6931 of 2012, 7120 and 7121 of 2012, 7288 to 7290 of 2013, RFA Nos. 974 to 982 of 2014, 1102 and 1103 of 2014 and for the respondents in State appeals.

Mr.R.D.Yadav, Advocate for the appellants in RFA Nos.6843 to 6848 of 2011, 5685 to 5687 of 2012, 217 of 2014 and 7977 & 7988 of 2014 and for the respondents in State appeal.

Mr.S.S.Khurana, Advocate for the appellant in RFA No.1086 of 2013 and for the respondent in State appeal.

Mr.Anil Kumar Rana, Advocate for the appellants in RFA Nos.457 to 461 of 2012 and for the respondents in State appeal.

None for the appellants in RFA Nos.5453, 6156, 7673, 7674 of 2011 and 2451 and 2452 of 2013.

Mr.Arun Beniwal, DAG, Haryana and
Ms.Vibha Tiwari, AAG, Haryana for the appellants in RFA Nos. 1582 to 1599 of 2013 and for the respondents in land owners appeal.

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<u>RAMESHWAR SINGH MALIK, J.</u> (Oral)

This batch of 93 appeals, out of which 18 have been filed by the State of Haryana bearing RFA Nos.1582 to 1599 of 2013 and 75 have been filed by the land owners bearing RFA Nos. 3341 to 3352 of 2011, 5353 of 2011, 5453, and 6156 of 2011, 6826 to 6829 of 2011, 6843 to 6848 of 2011, 6956 of 2011, 7673 and 7674 of 2011, 457 to 461 of 2012, 1975 to 1977 of 2012, 2080 to 2082 of 2012, 3086 of 2012, 5685 to 5687 of 2012, 6922 to 6931 of 2012, 7120 and 7121 of 2012, 1086 of 2013, 2451 and 2452 of 2013, 7288 to 7290 of 2013, 217 of 2014, 974 to 982 of 2014, 1102 and 1103 of 2014, 7977 and 7978 of 2014, is 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, for the facility of reference, facts are being culled out from RFA No.3341 of 2011 (Lala Ram v. State of Haryana and others).

Facts necessary for disposal of instant batch of appeals are that the State of Haryana sought to acquire the land measuring 304.76 acres, out of the revenue estate of Rewari and land measuring 27.56 acres out of revenue estate of village Gokalgarh, at public expenses for public purpose; namely for development of land for Sectors 6 and 7 (HUDA Rewari) for residential and commercial purposes. Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 (`the Act' for short) came to be issued on 6.1.2006, which was followed by notification dated 9.8.2006 under Section 6 of the Act. Land acquisition collector, vide his Awards No.25 and 26 dated 7.12.2006, granted compensation @ Rs.12.50 lacs per acre at flat rate for the total acquired land out of both the above-said revenue estates. Dissatisfied, the land owners filed their objections under Section 18 of the Act and as a consequence thereof, 69 land references were forwarded to the learned reference court, who decided the same vide its common award dated 9.2.2011, granting the compensation @ Rs.1700/- per square yard.

Both the parties felt aggrieved. As noted above, the State of Haryana has filed 18 appeals, whereas 75 have been filed by the land owners. However, on a pointed question put as to why the State has not filed appeal in all the cases, learned counsel for the State had no answer and rightly so, it being a matter of record. No reason is forthcoming as to how the State could choose the respondents. It does not appeal to reason as to why the State has adopted this arbitrary and discriminatory policy of pick and choose. Such a patently illegal practice is liable to be deprecated because as per the Constitutional mandate, the State is bound to treat all its citizens equally.

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 totality of facts and circumstances of the cases in hand, the appeals filed by the State of Haryana, having been found bereft of merit, are liable to be dismissed, whereas the appeals filed by the land owners deserve to be partly allowed, for the following more than one reasons.

There are two equally relevant pieces of evidence available on record. One set of evidence is in the form of sale instances Ex.PW5/1 and

Ex.PW5/2, produced by the land owners. The other sale instances are not being referred here for the reason that either they were pertaining to very small pieces of land or were post acquisition. If average of these two sale instances is taken, the same comes to Rs.2540/- per square yard. The other equally important piece of evidence was award Ex.PX/1 dated 12.6.2001 passed in LAC No. 192 dated 31.7.1997 (Bhawani Sahai and another v. State of Haryana and others).

Out of this acquisition, **RFA No.3353 of 2001 (Bhawani Sahai and another v. State of Haryana and others)** came to be filed before this Court which was decided vide judgment dated 5.5.2008 and amount of compensation was enhanced to the rate of Rs.990/- per square yard for the land which was acquired out of the revenue estate of Rewari itself vide notification dated 15.2.1990 under Section 4 of the Act. Thus, there was a time gap of 16 years. Further, since the sale instances produced on behalf of the State were found at the rate lower than that of granted by the land acquisition collector, the learned reference court rightly ignored those sale instances as the same were hit by the provisions of Section 25 of the Act. At this stage, learned counsel for the State has been found justified in contending that sale instances produced by the State can very well be taken into consideration for the purpose of assessing the market value.

However, taking into consideration all the relevant positive as well as negative determinative factors including location and potentiality of the acquired land, this Court is of the considered view that the judgment passed by this Court in **Bhawani Sahai's case (supra)** would be the best piece of evidence for assessing the market value of the acquired land in the cases in hand. It is so said, because in view of the law laid down by the Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Registered), Faridkot and others v. State of Punjab and others, (2012) 5 SCC 432**, the land owners are entitled for the best price of their acquired land. Further, in view of the peculiar fact situation obtaining in the instant bunch of appeals, the judicial precedent in **Bhawani Sahai's** case (supra) deserves to be given preference over and above the sale instances.

Since the learned reference court committed a serious error of law while taking the incorrect figure of Rs.712/- per square yard for the acquired land in **Bhawani Sahai's** case (supra), which, as a matter of fact, had been enhanced by this Court to Rs.990/- per square yard, the findings recorded in para 30 of the impugned award cannot be sustained. Again, the learned reference court without recording any reason much less cogent reason, has reduced the amount of Rs.2079/- per square yard to Rs.1700/- per square yard, while passing the impugned award and the same cannot be sustained on this count as well.

Admittedly, there was a time gap of 16 years in the land acquired in **Bhawani Sahai's** case (supra) and in the present case, because notification under Section 4 of the Act in **Bhawani Sahai's** case (supra) was issued on 15.2.1990, whereas in the present case, notification under Section 4 of the Act was issued on 6.1.2006. To be fair to the learned counsel for the State, he argued that the land owners are not entitled for annual increase beyond five years, in view of the judgment of the Hon'ble Supreme Court in **The General Manager, Oil & Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel & another, 2008(14)**

SCC 745, his argument is to be noted to be rejected because the same has not been found worth acceptance.

There is no dispute about the law laid down by the Hon'ble Supreme Court in **Rameshbhai Jivanbhai Patel's case (supra),** but a close perusal thereof would show that the same is of no help to the State of Haryana in the given fact situation of the cases in hand, as cited judgment is distinguishable on facts. Further, it is the settled principle 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 circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao (Dead) and others Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

So far as the location and potential of the acquired land is concerned, it was admittedly situated within the municipal area of Rewari City. The acquired land was surrounded by already developed residential and commercial area. Thus, in view of the law laid down by the Hon'ble Supreme Court in **Spl. L.A.O., City Improvement Trust Board v. S.G.Channabasavana Gowda etc. 2011 (14) SCC 580**, the land owners in the instant batch of appeals would be entitled for 12% annual increase on Rs.990/- per square yard, on the basis of cumulative method of calculation, for the time gap of 16 years. Though since the land was admittedly situated within the municipal area, the land owners would have been entitled for 15% annual increase, yet with a view to strike the balance between the parties and to do complete and substantial justice, this Court is of the considered view that it would be more appropriate to apply the established principle of law of 12% annual increase.

Granting the benefit of 12% annual increase and on the basis of cumulative effect, as held by the Hon'ble Supreme Court in **Ashok Kumar and others v. State of Haryana, 2015 (3) Scale 242**, the total amount per square yard comes to Rs.6065/-. At this stage, this Court would hasten to add that since the land was acquired for the development of Sectors 6 and 7 for residential and commercial purposes, a reasonable cut is warranted to be applied. In the given fact situation of the cases in hand, it would be just and reasonable to apply 1/3rd cut on the above-said market value.

After reducing 1/3rd, the amount comes to Rs.4044.17 paise per square yard, which is rounded of to Rs.4044/- per square yard. It is pertinent to note here that in **S.G.Channabasavana Gowda's** case (supra), the Hon'ble Supreme Court upheld the decision of the High Court, whereby the annual increase for the time gap of 10 years was granted. In this regard, reference can also be made to the law laid down by the Hon'ble Supreme Court in **K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another, 1996 (2) SCC 62, Om Parkash (D) by LRs and others v. Union of India and another, 2004 (10) SCC 627, Udho Dass v. State of Haryana, 2010 (12) SCC 51, Ashrafi and others v. State of Haryana and others, 2013 (5) SCC 527 and Kashmir Singh v. State of Haryana, 2014 (2) SCC 165.**

Again, the recent judgment of this Court rendered in **RFA No.5626 of 2010 (State of Haryana and others v. Murti Devi and another)** decided on 26.3.2014, has also been upheld by the Hon'ble

Supreme Court, granting the benefit of annual increase on cumulative basis for more than 10 years. The Hon'ble Supreme Court has repeatedly reiterated its earlier view and the relevant observations made by the Hon'ble Supreme Court in para 4 of its judgment in **S.G. Channabasavana Gowda**'s case (supra), which can be gainfully followed in the present case, read as under: -

> *"The aforesaid determination made by the Reference Court also did not satisfy the respondents, who filed appeals under Section 54 of the Act. The Division Bench of the High Court referred to the judgments Exhibits P5, P18 and P19 rendered in MFA Nos. 670 of 1971, 7 of 1972, 1426 of 1987 and 1492 of 1990 respectively and the judgment of this Court in* ***K.S. Shivadevamma v. Assistant Commissioner and Land Acquisition Officer and another (1996) 2 SCC 62*** *and held that the land owners are entitled to compensation at the rate of Rs. 1,74,000/- per acre with proportionate benefits for the enhanced portion including the interest on compensation. The reasons assigned by the High Court for fixing higher market value of the acquired land are contained in paragraphs 18 to 22 of the impugned judgment, which are extracted below :*
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> > *"18. In view of the said contention, it is necessary for us to examine as to whether Ex.P.5 could be relied on as the basis for fixing the market value in the present case. In this regard, we have perused the judgment of the Apex court in the case of K.S. Shivadevamma cited supra.*

While deciding the said case, the Apex court has merely referred to the order passed in MFA No. 670/71 and 7/ 72 which was relied on by the learned counsel for the claimants in that case. Though the Apex court did not decide the correctness or otherwise of the said decision, it has merely observed that the approach adopted by the court is not sound principle to form the basis for determination of compensation in that case. By the said observation, the Supreme Court has not overruled or set aside the findings in MFA No. 670/71. That apart the said decision in MFA No. 670/01 was made as the basis for the subsequent decisions rendered by this Court in MFA No. 1426/87 and 1492/90 which are marked as Ex.P.18 and 19. Though the judgment in MFA No. 1426/87 was also referred to in Shivadevamma's case, the Supreme Court has not chosen to comment on the same. Further the judgment passed in MFA No. 670/71 was not directly in issue before the Supreme Court either in that case or at any earlier point of time. On the other hand, the judgment of the reference court would indicate that the order in MFA No. 1490/ 90 Ex.P. 19 though appealed before the Supreme Court has been upheld by the Supreme Court and this fact has not been disputed by the beneficiary. Therefore, what could be deduced is, that the judgment in MFA No. 1492/90 at Ex.P.19 was *passed making P.5 herein as the basis and it has been approved by the Supreme Court and as such the compensation awarded in Ex.P.5 could be made as the basis and necessary adjustments/escalation could be granted.*

One other reasons for us to make Ex.P.5 as the basis is that apart from the sale deeds, which we have rejected as not the proper basis, what we are left with is only the judgments passed in earlier cases. It is now well settled that the judgment passed in earlier cases is a reliable piece of evidence, which could form a basis for determining the compensation. The beneficiary and the acquiring authority have not produced any other document before the Reference Court so that reliance could be placed and as such even a remand would be without purpose. Therefore, we are of the view that the market value could be fixed in the instance case by placing reliance on Ex.P.5 and also taking into consideration that the Reference Court has thereafter made adjustments and has granted a lower market value than what has been granted in Ex.P.5.

20. That takes us to the question as to what is the proper market value to be fixed in the present case. The market value fixed in Ex.P.5 is at Rs. 35/- per square yard. The Reference Court after taking into consideration all the *relevant factors has rightly fixed the market value at Rs. 18/- per square yard. Therefore, we deem it proper to retain the same market value, which has been fixed by the Reference Court by making proper adjustment after keeping Ex.P.5 as the basis. The said market value has been fixed in respect of the preliminary notification dated 24.4.1969. In the instant case, the preliminary notification is of the year 5.7.1979. The fact that there has been development in the surrounding area cannot be disputed since several other bits of lands have been acquired for different purposes. Even the present acquisition is for the second stage of the housing layout. In respect of granting escalation, it is settled law that the same could be granted between 5% to 10%. In the instant case, taking into account the material on record with regard to development, we deem it proper to grant escalation at 10%.*

21. The appreciation/escalation on Rs. 18/- per square yard at 10% would be Rs. 1.80 per square yard. The time gap between the two notification is 10 years and as such the total escalation would be in a sum of Rs. 18/- per square yard. Thus, the market value is to be determined and fixed at Rs. 367 per square yard, which would work out to Rs. 1,74,240/- per acre and the same is rounded of to Rs. 1,74,000/- per acre. After having arrived at the *said market value, the question that would arise for consideration is as to whether any further deduction is required to be made towards development costs. In this regards, the well established position is that the appropriate deduction towards the development costs is to be made when smaller extent of lands are taken as the basis for determining the market value of the larger extent. In the instant case, while determining the market value in the decision rendered at Ex.P.5, the court had considered the value of smaller extent of lands and after granting deduction towards development costs had fixed the market value. What we have done in the present case is only keeping the same as a basis and granted the escalation at the rate of 10%. Therefore, we are of the view that making further deduction towards development costs would not arise and the market value determined at Rs. 1,74,000/- per acre to be awarded without any further deductions.*

22. Even though we have fixed the market value in respect of the properties acquired at Rs. 1,74,000/- per acre, it is noticed that in MFA No. 4742/ 2001 the claimant has sought for enhancement from Rs. 87,000/- to Rs. 1,50,000/- and the appeal memo has been valued accordingly and the court fee has been paid. Since we have decided to fix the market value at Rs. 1,74,000/- the *claimant in the said appeal also would be entitled to the market value subject to the appellant in MFA No. 4741/2001 paying the deficit Court fee within a period of six weeks from today."*

Similarly, the benefit of 12% annual increase granted by this Court at flat rate for a time gap of more than 10 years in **Murti Devi's** case (supra), was not only upheld by the Hon'ble Supreme Court in **SLP No.20531-20565 of 2014 (Narbadi Devi and others v. State of Haryana and others) decided on 22.8.2014** but benefit was further modified from flat rate to the cumulative effect. The relevant para reads 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 in 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 Ashrfi 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 out on cumulative basis."*

Further, in the case of **Om Parkash (D) by LRs and others v. Union of India and another, 2004 (10) SCC 627**, Hon'ble Supreme Court upheld granting of benefit of annual increase for a time gap of more than 20 years, from 1963 to 1968. The relevant observations made by the Hon'ble

Supreme Court in paras 11 and 12 of its judgment in **Om Parkash's** case (supra), which aptly apply to the facts of the case, read 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 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 this 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% for every year, not cumulatively, but at a flat rate of 12% per annum from 1963 to 1983, the amount would work out to Rs. 56,112/- 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 & Ors. 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 8.12.1982 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 categories of lands situated in the villages in question as on the date of acquisition should be fixed at Rs. 82,255/- per bigha."*
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> *Having heard the learned counsel and perused the judgment, we find it difficult to disagree with the exercise carried out by the High Court. We think that the High Court was justified in assessing the market value at a higher rate on account of some increased potentiality of the lands. If at all, the High Court has erred on the safer side in fixing the market value at Rs. 82,255/- per bigha. In the circumstances, we are unable to accept the contention advanced by the claimants-appellants and the Union of India in their respective appeals. Taking an overall view of the matter, we are satisfied that the judgment of the High Court requires no interference under Article 136 of the Constitution of India.*

So far as the above-said figures are concerned, learned counsel for the parties did not dispute the same.

Learned counsel for the State also places reliance on the judgment of the Hon'ble Supreme Court in **Nirmal Singh etc. v. State of Haryana through Collector, 2015 (2) SCC 160**, to contend that the above-said 1/3rd cut was on a lower side and that should be 60% instead of 1/3rd. A perusal of the judgment of the Hon'ble Supreme Court in **Nirmal Singh's** case (supra) would show that 60% cut in the said case was applied towards developmental expenses. However, keeping in view the peculiar fact situation of the present cases, this judgment would be of no help to the State of Haryana for the reason that Haryana Urban Development Authority always charge the developmental expenses from the plot holders. This material fact has gone undisputed before this Court, because of which 1/3rd

cut would be just and reasonable and any cut beyond 1/3rd would be wholly unwarranted.

Let it be specifically recorded that no 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 are wholly 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 partly allowed to the extent indicated above. The land owners, in all these cases, are held entitled to receive the compensation @Rs.4044/- per square yard 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 other statutory benefits available to them under the relevant provisions of the Act.

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

29.1.2016 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**