HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.1121 of 2012 and other connected matters
Date of decision:9.5.2016

Smt.Krishna and others

...Appellant(s)

Versus

State of Haryana and another

...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.M.L.Sarin, Sr. Advocate with
Mr.Nitin Sarin, Advocate for the appellant(s) in
RFA Nos.1121 to 1124 of 2012 & RFA No.1581 of 2012.

Mr.Shailendra Jain, Sr. Advocate with Mr.Bagender, Advocate for the appellant(s) in RFA Nos.631 to 639 of 2012 and RFA No.1108 of 2013.

Mr.Atul Yadav, Advocate for the appellant(s) in RFA Nos.609 to 617 of 2012, 1576 and 5398 of 2012.

Mr.Amit Jain, Advocate for the appellant(s) in RFA Nos.626 to 630 of 2012, 1185, 1210 and 1585 of 2012.

Mr.P.R.Yadav, Advocate for the appellant(s) in RFA No.770 of 2012, 2148 of 2012 and 4731 of 2012.

Mr.Jagjot Singh, Advocate for
Mr.Kunal Dawar, Advocate for the appellant(s) in RFA No.4443 of 2013.

Mr.Arun Beniwal, DAG, Haryana.

RAMESHWAR SINGH MALIK, J. (Oral)

This batch of 38 Regular First Appeals, bearing RFA Nos.609 to 617, 626 to 639, 770, 1121 to 1124, 1185, 1210, 1576, 1581, 1585, 2148, 4731, 5398 of 2012, 1108 and 4443 of 2013, all filed by the land owners, 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, with the consent of learned counsel for the parties and for the facility of reference, facts are being culled out from **RFA No.1121 of 2012** **(**Smt.Krishna and others v.State of Haryana and another).

Facts are not in dispute. State of Haryana sought to acquire the land measuring 126.25 acres, out of the revenue estate of village Budhera, Tehsil and District Gurgaon, at public expenses for public purpose; namely for development and utilisation of land for Master Water Supply Scheme, Gurgaon. Accordingly, notification dated 13.3.2006 came to be issued under Section 4 of the Land Acquisition Act, 1894 (`the Act' for short), which was followed by notification dated 14.3.2006 under Section 6 of the Act. Land acquisition collector (`LAC' for short), vide his award No.15 dated 13.10.2006, assessed the market value of the acquired land at the uniform rate of Rs.12,50,000/- per acre.

Dissatisfied with the market value assessed by the LAC, land owners filed their objections under Section 18 of the Act and as a consequence thereof, as many as 36 land references were forwarded for decision. Learned reference court, vide its common award dated 28.10.2011, assessed the market value of the acquired land at the uniform rate of Rs.19,61,000/- per acre, irrespective of the nature and quality of land.

Feeling aggrieved against the above-said impugned award dated 28.10.2011 passed by learned reference court, only the land owners have approached this Court, seeking further enhancement in the amount of compensation for their acquired land. That is how, all 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 totality of facts and circumstances of these cases, the appeals filed by the land owners deserve to be partly accepted. The compensation for the acquired land deserves to be suitably enhanced, for the following more than one reasons.

Before proceeding further, application bearing CM No.1828-CI of 2013 in RFA No.1121 of 2012, under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, which was ordered to be heard with the main case vide order dated 18.2.2013, is to be considered and decided. Applicants, by way of instant application, seek to place on record copy of award dated 29.9.2012 passed by learned reference court, pertaining to a later acquisition of village Basai, Tehsil and District Gurgaon and also the Aks-Shijra (Annexure A-2), as well as Final Development Plan for controlled areas of Gurgaon-Manesar Urban Complex, as Annexure A-3. Since all these three documents are coming from proper custody and authenticity thereof cannot be doubted, present application deserves to be accepted and the same is hereby allowed, as prayed for. The above-said documents are permitted to be placed on record. CM stands disposed of.

So far as potentiality of the acquired land is concerned, a bare reading of Aks-Shijra (Annexure A-2), prepared by the revenue officials of the respondent-State, as well as Final Development Plan (Annexure A-3), prepared by the authorities concerned of the State of Haryana, would make it crystal clear that the acquired land, out of the revenue estate of village Budhera, was situated at a very prime location and very close to Delhi border on Delhi-Badli Road. There was 30 meters wide green belt on both sides of this road. In this view of the undisputed fact situation obtaining in the present set of appeals, this Court feels no hesitation to conclude that the acquired land was having immense potentiality.

So far as the evidence produced by the State before learned reference court is concerned, sale-deeds, relied upon by the State, were disclosing lesser market value, than what was granted by the land acquisition collector. The sale-deeds Ex.R1 and R2 produced by the State were not only hit by Section 25 of the Act, but the same are to be ignored even on their individual merits. It is so said because these sale-deeds Ex.R1 and R2 were either undervalued transactions or were the result of distress sales. In either of these two situations, both these sale-deeds are liable to be ignored, in view of the law laid down by the Hon'ble Supreme Court in para 32 of its judgment in **Lal Chand v. Union of India and another, 2009(15) SCC 769**, which reads 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, there were four sale-deeds, out of which Ex.P1 dated 17.1.2006 and Ex.P2 dated 14.10.2005 were pertaining to the revenue estate of village Budhera itself. Remaining two sale-deeds were Ex.P3 dated 18.7.2006, pertaining to the revenue estate of village Kherki Majra and sale-deed Ex.P4 dated 18.11.2005 pertaining to the revenue estate of village Dhankot. Since the sale-deed Ex.P3 was a post acquisition sale-deed, the same cannot be relied upon. Similarly, when sale-deeds Ex.P1 and P2, pertaining to the revenue estate of village Budhera itself were available and the sale-deed Ex.P4 was pertaining to village Dhankot, the same cannot be safely made the basis for assessing the market value of the acquired land. It is so said because in case, the sale-deed Ex.P4 is to be taken into consideration, then sale-deeds Ex.P1 & P2 have to be ignored, 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.** In that situation, it is the only sale-deed Ex.P4, which shall be the relevant piece of evidence, as it discloses the highest market price. As the above-said two sale-deeds Ex.P1 and P2 are available on record pertaining to village Budhera itself, sale-deed Ex.P4 pertaining to village Dhankot, cannot be preferred over and above the sale-deeds of village Budhera, out of whose revenue estate, the land was acquired in the present set of cases.

Another equally important question of law that arises for consideration of this Court is, whether learned reference court was justified in applying 1/3rd cut on the market value disclosed in the sale-deed Ex.P2, in spite of the fact that the land sold thereunder was measuring 4K-4M, which cannot be said to be a small piece of land.

Keeping in view the totality of facts and circumstances of the cased noticed hereinabove and proceeding on a holistic, pragmatic and constructive approach, with a view to do complete and substantial justice between the parties, this Court is of the considered opinion that no cut was warranted to be imposed in the present case. Applying any particular percentage of cut on the market value disclosed, is, in fact, not an absolute rule. It is also the settled proposition of law that each case is to be decided on the basis of its own peculiar fact situation. Neither it is desirable nor it is possible to lay down any straight jacket formula in this regard, which might be made applicable in all the fact situations in every case.

In view of what has been discussed hereinabove, keeping in view the above-said undisputed fact situation obtaining in the instant set of appeals, coupled with the material fact that no development of the land, as such, was required, learned reference court has proceeded on a patently illegal approach, while applying 1/3rd cut. Since the acquired land was going to be utilised for Master Water Supply Scheme, Gurgaon and it was already abutting a metaled road, neither any land was supposed to be left for carving out any public parks nor for any other public utilities. In such a situation, imposition of 1/3rd cut on the price of the land disclosed in the above-said sale-deed Ex.P2, is not at all justified and the finding recorded by learned reference court in this regard cannot be sustained.

The above-said view taken by this Court also finds support from the law laid down by a Division Bench of this Court in **Harbans Singh and others v. State of Punjab through the Land Acquisition Collector, 2006(1) RCR (Civil) 634.** The relevant observations made by the Division Bench in paras 12 and 13 of its judgment in **Harbans Singh's** case (supra)**,** which can be gainfully followed in the present case, read as under:-

> *"12. There is no quarrel with the proposition, as has been laid down by the Hon'ble Apex Court in* ***Administrator General of West Bengal v. Collector's case*** *(supra), that where the sale instance relied upon by the claimants comprised of small plot of land, then 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 v. 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 possibly fetch a price at the same rate at which shall plots are sold is not absolute proposition and in 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 satisfactorily 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 require 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."

13. 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) v. 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."

As per the law laid down by the Hon'ble Supreme Court in **Mehrawal Khewaji Trust'** case (supra), the land owners are entitled to receive the best price for their acquired land. Similarly, the observations made by the Hon'ble Supreme Court in paras 17 and 18 of its judgment in **Udho Dass v. State of Haryana, 2010 (12) SCC 5**, which aptly apply to the facts of the present case, read 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 is a matter of record that the land measuring 4K-4M was sold by way of sale-deed Ex.P2 on 14.10.2005 at the rate of Rs.590/- per square yard, out of the revenue estate of village Budhera itself. Notification under Section 4 of the Act came to be issued on 13.3.2006, thus, there was a time gap of five months between sale-deed Ex.P2 and instant acquisition. In view of the law laid down by the Hon'ble Supreme Court in **Mehrawal Khewaji Trust's** case (supra) and **Ashok Kumar and others v. State of Haryana, 2015 (3) Scale 242**, the land owners would be entitled for 12% annual increase for this time gap of 5 months. After granting the benefit of 12% annual increase, for this time gap of 5 months, on the market value disclosed in Ex.P2, i.e. Rs.590/- per square yard, amount comes to Rs.619.50 paise, per square yard, which is rounded off to Rs.620/- per square yard. According, the land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.620/- 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 land owners deserve to be partly accepted and the same are hereby allowed to the extent indicated above.

Accordingly, the land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.620/- per square yard, from the date of notification under Section 4 of the Act. Besides this, the land owners shall be entitled to all the statutory benefits available to them under the relevant provisions of the Act.

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

9.5.2016 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**