HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.48 of 2012 & connected matters
Date of decision:19.2.2016

Harphool

...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.Ajay Jain, Advocate for the appellants in RFA Nos.48 to 59, 93 to 98, 446 to 450, 494, 521, 526, 535, 540 of 2012.
Mr.Arun Yadav, Advocate for the appellants in RFA No.893 of 2012.
Mr.S.S.Khurana, Advocate for the appellants in RFA No.424 of 2016.
None for the appellants in 836, 837, 1931 of 2012, 4524 of 2013.
Mr.Randhir Singh, Addl. A.G., Haryana,
Ms.Vibha Tiwari, AAG, Haryana and
Mr.Abhinash Jain, AAG, Haryana.

RAMESHWAR SINGH MALIK, J. (Oral)

This batch of 34 appeals, bearing RFA Nos.48 to 59, 93 to 98, 446 to 450, 494, 521, 526, 535, 540, 836, 837, 893, 1931 of 2012, 4524 of 2013 and 424 of 2016 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.48 of 2012 (Harphool v. State of Haryana and others).

Facts necessary for disposal of instant batch of appeals, are that State of Haryana sought to acquire the land measuring 58.93 acres, out of the revenue estate of village Gokalgarh Tehsil & District Rewari, at public expenses for public purpose i.e. for development and utilisation of land for the outer ring road/green belt, on both sides of Pataudi Road upto Jhajjar Road at Rewari. Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 (`the Act' for short) was issued on 14.11.2006, which was followed by notification dated 15.11.2006 under Section 6 of the Act. Land acquisition collector, vide his Award No.47 dated 29.3.2007, granted the compensation at the uniform rate of Rs.12,50,000/- per acre.

Land owners felt dissatisfied and filed their objections under Section 18 of the Act. As many as 34 land references were forwarded, which came to be decided by the learned reference court vide its common award dated 12.11.2011, granting the compensation at the uniform rate of Rs.20 lacs per acre.

State of Haryana did not file any appeal against the impugned award passed by the learned reference court. However, the land owners felt aggrieved against the above-said impugned award and have approached this Court by way of instant bunch of appeals, seeking further enhancement in the 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 the appeals filed by the land owners deserve to be partly accepted, suitably enhancing the amount of compensation for their acquired land, for the following more than one reasons.

Learned counsel for the land owners were found fully justified in placing reliance on the statement of PW-5 Rakesh Kumar, Patwari. The relevant part of the statement made by PW-5 before the learned reference court has been referred at page 16 of the paper-book in para 14 of the impugned award and the same reads as under:-

> *"...He is working as revenue Patwari of the revenue estate of Gokalgarh and Rewari. He has produced the original Aks-sajra of village Gokalgarh and as per the Aks-sajra, the land of village Gokalgarh and Rewari are adjacent to each other and Sector 6 and 7 of HUDA are situated in the revenue estate of village Gokalgarh and Rewari."*

A bare perusal of the site plan Ex.PW4/A, which is available at page 243 of the lower court record (`LCR' for short), would make it crystal clear that the acquired land, out of revenue estate of village Gokalgarh also included in it Khasra Nos.116, 117 and 118. It is very pertinent to note here that part of these two Khasra Nos.116 and 117 had also been acquired in the immediate preceding acquisition for the development of Sectors 6 and 7 by Haryana Urban Development Authority, Rewari (`HUDA' for short) by way of notification dated 6.1.2006. The learned reference court assessed the market value for the said land, which was acquired for Sectors 6 and 7, Rewari at the rate of Rs.1700/- per square yard vide award dated 9.2.2011 Ex.P1. This award Ex.P1 was relied upon by the land owners and discussion in this regard is in para 34 of the impugned award passed by the learned reference court.

In fact, this award Ex.P1 dated 9.2.2011 has been illegally discarded by the learned reference court only for the reason that village Gokalgarh does not find mentioned so far as the land acquired for Sectors 6 and 7, Rewari was concerned. However, this finding recorded by the learned reference court is not only factually incorrect but legally misconceived as well and the same cannot be upheld. It is so said, because vide same notification dated 6.1.2006, the land measuring 299.46 acres was acquired out of the revenue estate of Rewari bearing Hadbast No.125, whereas the land measuring 227.56 acres was acquired out of the revenue estate of village Gokalgarh bearing Hadbast No.119. It also deserves to be noticed here that vide notification dated 6.1.2006 Killa No.25 out of Khasra Nos.117 and more than 9 acres of land out of Khasra No.116 of village Gokalgarh were acquired.

It is also a matter of record that about 4 acres of land out of Khasra No.117 and more than 4 acres of land out of Khasra No.116 out of the revenue estate of village Gokalgarh has been acquired in the instant acquisition. Once the above-said material fact has gone unrebutted, it being a matter of record as well, the above-said award dated 9.2.2011 Ex.P1, pertaining to the immediate preceding acquisition qua land of village Gokalgarh itself, was the best piece of evidence, which ought to have been relied upon by the learned reference court for assessing the market value of the land, acquired by way of present acquisition. Since the learned reference court fell in serious error of law in this regard, the impugned award passed by the learned reference court cannot be sustained for this reason, as well.

Appeals arising out of above-said acquisition for Sectors 6 and

7 HUDA, Rewari came to be decided by this Court vide order dated 29.1.2016, whereby as many as 93 appeals were decided including the lead case bearing **RFA No.3341 of 2011 (Lala Ram v. State of Haryana and others).** The market value of the land acquired for the above-said Sectors 6 and 7 of HUDA Rewari was assessed by this Court at Rs.4044/- per square yard. The enhancement in compensation in **Lala Ram's** case (supra) came to be ordered by this Court, primarily on account of reduction in the percentage of cut imposed on the market value by the learned reference court. The learned reference court had imposed cut at the rate of 60%, which was reduced by this Court to 1/3rd.

Learned counsel for the land owners also argued for granting the benefit to the land owners for the time gap between these two acquisitions. Although, in normal circumstances, the land owners would be entitled for the benefit of annual increase, yet in the peculiar facts and circumstances of the instant case, since the land owners have been found entitled to receive the amount of compensation at the rate of Rs.4044/- per square yard for their acquired land, which was granted to the land owners in immediate preceding acquisition whose land was acquired for Sectors 6 and 7, Rewari, the land owners in the cases in hand have not been found entitled for the benefit of annual increase. It is also pertinent to note here that time gap between the acquisition for Sectors 6 and 7, Rewari and the present acquisition was not a substantial one, it being less than one year.

To be fair to the learned counsel for the State, his arguments are to be noted to be rejected. Relying upon the judgment of the Hon'ble Supreme Court in **Kashmir Singh v. State of Haryana and others, 2014**

(2) SCC 165, learned counsel for the State would contend that the land owners in the instant bunch of cases were not entitled for placing reliance on the earlier award Ex.P1, which was pertaining to the acquisition of land for Sectors 6 and 7, Rewari. The judgment relied upon by the learned counsel for the State in **Kashmir Singh's** case (supra) does not even remotely help the learned counsel for the State. The issue raised before the Hon'ble Supreme Court in **Kashmir Singh's** case (supra) was entirely different as the Hon'ble Supreme Court has even referred to its earlier view recorded in **Udho Dass v. State of Haryana, 2010 (12) SCC 51,** wherein it was held that some times annual increase would not be 10% or 12% or 15% but might go upto 100% a year. However, it is not the fact situation in the cases in hand.

The next argument raised by the learned counsel for the State was that when one starts going away from the existing Rewari Town in the instant case, the market value of the acquired land would keep on decreasing. Under the normal circumstances, this argument raised by the learned counsel for the State would have substance in it. However, owing to the peculiar fact situation in the instant set of appeals, as clearly depicted from the site plan Ex.PW4/A as well as draft development plan of District Rewari produced by the learned counsel for the State, during the course of hearing, the argument raised by the learned counsel for the State has not been found worth acceptance.

It is so said because in the earlier acquisition dated 6.1.2006 for Sectors 6 and 7 as well as in the instant acquisition land from the same very two Khasra Nos.116 and 117 of revenue estate of village Gokalgarh was acquired. Admittedly, there was not even one inch land which might be dividing the land acquired vide above-said notification dated 6.1.2006 for Sectors 6 and 7, and the land acquired vide present acquisition. There cannot be any better evidence for contiguity than the present one because in both the acquisitions land out of same khasra numbers was acquired.

Coming to the exact location and potentiality of the acquired land, there was already developed residential area including Garhwal Colony and Adarsh Nagar near the acquired land. Two technical institutions were situated in the close vicinity of the acquired land. It is also not in dispute that the acquired land was situated just on the outskirts of Rewari City and immediate after its acquisition, the acquired land came within the municipal area as well. The acquired land was situated between two main roads, which go from Rewari to Jhajjar and Rewari to Pataudi.

A bare look at the site plan Ex.PW4/A would leave no room for doubt about the great potentiality of the acquired land. Further, as noticed hereinabove, the acquired land was touching the land which had earlier been acquired for Sectors 6 and 7, HUDA Rewari. In this view of the matter, it can be safely concluded that the land owners in these cases are also entitled to receive the same amount of compensation for their acquired land, which was assessed by this Court in **Lala Ram's** case (supra), pertaining to immediate preceding acquisition for Sectors 6 and 7, HUDA Rewari. Ordered accordingly.

The Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Registered), Faridkot and others v. State of Punjab and others, (2012) 5 SCC 432** has held that the land owners are entitled to receive the best price for their acquired land. Similarly, in **Udho Dass's** case **(supra),** Hon'ble the Supreme Court laid down the law to the effect that the land owners are hardly compensated in the real sense of the term, in the matters of compensation, based on compulsory acquisition. The relevant observations made by the Hon'ble Supreme Court in paras 17 and 18 of its judgment in **Udho Dass's** case (supra), which can be gainfully followed in 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.*
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> *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?"*

The law laid down by the Hon'ble Supreme Court in **Udho Dass's** case (supra) has further been referred by the Hon'ble Supreme Court in para 6 of **Kashmir Singh's** case (supra) as well.

Keeping in view the peculiar fact situation obtaining in the instant set of cases and striking a balance to do complete and substantial justice between the parties, proceeding on a holistic and constructive approach, this Court is of the considered view that it would be just and expedient to treat the land owners of instant acquisition at par with the land owners of immediate preceding acquisition, whose land was acquired for Sectors 6 and 7, Rewari. Granting any lesser amount of compensation to the land owners would be wholly inadequate.

Let it be specifically recorded here 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 case 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. The land owners are held entitled to receive the compensation for their acquired land at the rate of Rs.4044/- per square yard, from the date of notification under Section 4 of the Act. Besides this, the land owners shall also 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 afore-said appeals stand disposed of, in the afore-said terms, however, with no order as to costs.

19.2.2016 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**