IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No. 3365 of 2014 (O&M)
Date of decision: 15.2.2016

Kanwar

.. Appellant

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sanjiv Gupta, Advocate
for the appellant in RFA No. 3365, 4303, 4401 of 2014.

Mr. Shailendra Jain, Sr. Advocate with
Mr. Bhagendra, Advocate
in RFA Nos. 3390, 4178 to 4181, 5216, 5963, 5964 of 2014.

Mr. Ashish Gupta, Advocate
for the appellant in RFA No. 4335, 4336, 6285 of 2014.

Mr. Vishwajeet Singh, Advocate for
Mr. Vikram Singh, Advocate
for the appellants
in RFA Nos. 3374, 3695, 4232, 7369 of 2014.

Mr. Naveen Mandhan, Advocate for
Mr. Pankaj Bali, Advocate
for the appellants
in RFA No. 6961 to 6963 of 2014.

Mr. Parminder Singh, Advocate
for the appellants in RFA Nos. 13 to 15, 938, 1036 to 1042, 2227, 5207 and 5208 of 2015.

Mr. Madan Pal, Advocate
for the appellants
in RFA No. 5547, 9656 of 2014.

Mr. Nonish Kumar, Advocate
for the appellants
in RFA No. 3233, 4622 of 2015.

Mr. J.P. Sharma, Advocate
for the appellants in RFA No. 5983 of 2014.

Mr. Shrey Goel, Advocate
for the appellants in RFA No. 2138 of 2015.

Ms. Divya Sharma, Advocate
for the appellants in
RFA No. 9504 to 9510 of 2014
RFA No. 4606 of 2015.

Mr. Vinod S. Bhardwaj, Advocate
for the appellants in
RFA No. 6610, 9071 of 2014
for the respondents
in RFA No. 10089, 10100 of 2014.

Mr. Sumeet Goel, Advocate and
Mr. Manav Bajaj, Advocate
for the appellants in RFA No. 5281, 5416, 5417 of 2014,
3397 of 2015.

Ms. Sapna Seth, Advocate for
Mr. Tushar Sharma, Advocate for the appellants in
for RFA No 8209 to 8214, 9352, 9353, 9756 of 2014

Mr. J.S. Virk, Advocate
for the appellants in RFA No. 8769 of 2014
for the respondents in RFA No. 10094 of 2014

Mr. Pawan Kumar Mutneja, Advocate
for the appellants
in RFA No. 6488 to 6497, 6525 to 6528, 7762 of 2014.

Mr. Munish Mittal, Advocate
for the appellants in RFA No. 7231 of 2014.

Mr. B.S. Sudan, Advocate
for the appellants in RFA No. 8112 of 2014.
for respondent No.1 and cross objectors
in RFA No. 10110, 10115, 10167 of 2014
XOBJR No. 44 to 46 of 2015.
for respondents No. 1 to 7 in RFA No. 10150 of 2014.

Mr. O.P.S. Tanwar, Advocate for
the appellants in RFA No. 2135 of 2015.

Mr. Ashok Khubbar, Advocate
for the appellants in RFA No. 7252 of 2014

None for the appellants in RFA No. 4252-53 of 2014.

Ms. Vibha Tewari, Assistant A.G. Haryana.

Mr. Pritam Singh Saini, Advocate
for HSIIDC.

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. (Oral)

This bunch of 182 appeals, out of which 96 appeals filed by the Haryana State Industrial Development Corporation now Haryana State Industrial and Infrastructure Development Corporation ('HSIIDC' for short) bearing RFA Nos.10086 to 10089 & 10091 to 10182 of 2014 and remaining 86 appeals bearing RFA Nos. 3365, 3374, 3390, 3695, 4178 to 4181, 4232, 4252, 4253, 4303, 4335, 4336, 4401, 5216, 5281, 5416, 5417, 5547, 5963, 5964, 5983, 6285, 6488 to 6497, 6525 to 6528, 6610, 6961 to 6963, 7231, 7252, 7369, 7762, 8112, 8209 to 8214, 8769, 9071, 9352, 9353, 9504 to 9510, 9656, 9756 of 2014 and 13 to 15, 938, 1036 to 1042, 2135, 2138, 2227, 3233, 3397, 4606, 4622, 5207, 5208, of 2015 filed by the landowners as well as the cross objections Nos. 44 to 46-CI-2015 , 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 facility of reference, facts are being culled out from RFA No. 3365 of 2014 (Kanwar Vs. State of Haryana and others).

Briefly put, facts necessary for disposal of this bunch of appeals are that State of Haryana sought to acquire land measuring

226 acres 6 kanals and 3 marla out of revenue estate of village Kambopura in Tehsil and District Karnal, at public expenses for public purpose; namely for Development of Industrial Estate, Karnal. Accordingly, notification dated 27.4.2006 came to be issued under Section 4 of the Land Acquisition Act, 1894 ('the Act' for short), which was followed by notification dated 27.4.2007 under Section 6 of the Act. The Land Acquisition Collector, vide his award No.1 dated 23.4.2009, granted compensation @ ₹15,650/- per biswa for the land up to two acres from G.T. Road and ₹12,500/- per biswa for the land situated beyond the depth of 2 acres for G.T. Road.

Dissatisfied, landowners filed their objections under Section 18 of the Act and as a consequence thereof, as many as 97 land references were forwarded to the learned reference court. All the 97 land references were decided together vide common impugned award dated 10.1.2014 granting compensation @ ₹47,74,400/- per acre for the land up to the depth of 2 acres from G.T. Road and ₹38,19,520/- per acre for the land beyond 2 acres from G.T. Road. It is pertinent to note that RFA No. 4606 of 2015 is directed against the separate and later impugned award dated 18.12.2014 passed by the learned reference court but arising out of the same acquisition.

Both the parties felt aggrieved against the impugned awards passed by the learned reference court. 96 appeals have been filed by the HSIIDC, seeking reduction in the compensation awarded by the learned reference court, whereas 86 appeals have been filed by the landowners, seeking further enhancement in the compensation for their acquired land.

Having heard learned counsel for the parties at considerable length, after careful perusal of record of the cases and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that appeals filed by the beneficiary-department, i.e. HSIIDC, are bereft of merit and are liable to be dismissed, whereas appeals filed by the landowners deserve to be partly allowed. To say so, reasons are more than one, which are being recorded hereinafter.

A bare reading of the impugned award would show that both the parties led voluminous documentary as well as oral evidence, with a view to substantiate their respective stands taken before the learned reference court. The landowners produced as many as 46 sale instances whereas the beneficiary-department produced 21 sale instances. The sale instances produced by the beneficiary-department were rightly ignored by the learned reference court, as the same were admittedly of less market value than granted by the Land Acquisition Collector vide his abovesaid award, thus, the sale instances relied upon by the beneficiary-department were hit by Section 25 of the Act. However, learned counsel for the beneficiary-department, while placing reliance on the judgment of the Hon'ble Supreme Court in **Lal Chand Vs. Union of India and another, 2009 (15) SCC 769**, submits that the sale instances produced on record by HSIIDC deserve to be taken into consideration at the hands of this Court, for assessing the market value for the acquired land.

So far as location and potentiality of the acquired land is concerned, it had never been in dispute at any point of time. A bare perusal of site plan Ex. P-1 and P-2, at page 44 and 45 of the lower court record ('LCR' for short) would show that the acquired land was abutting the GT Road, which is National Highway No.1. Numerous establishments, including commercial establishments were already existing very close to the acquired land on both sides of GT Road. The acquired land was situated on eastern side of the G.T. Road. Since these facts are not in dispute, there is no doubt left to hold that the acquired land was having great potentiality and the same could have been easily put to residential, industrial as well as commercial use.

The acquired land was no more a simple agricultural land. However, at this stage, learned counsel for the beneficiary-department submits that if the other sale instances relied upon by the landowners are to be taken into consideration then the sale instances relied upon by the beneficiary-department may also be taken into consideration, imposing 1/3rd cut, as rightly imposed by the learned reference court. However, the abovesaid argument raised by the learned counsel for the beneficiary department has been found wholly misplaced for the reason that imposition of cut is not an absolute rule which might be made applicable in every given fact situation. It is the settled proposition of law that each case is to be decided on the basis of its own facts and circumstances. Neither it is desirable nor possible to lay down any straightjacket formula for imposing any particular percentage of cut in all cases.

The view taken by this Court in this regard also finds support from the judgment rendered by a Division Bench of this Court in **Harbans Singh and others Vs. State of Punjab through the Land Acquisition, 2006 (1) RCR (civil) 634**, which, in turn, was based on the law laid down by the Hon'ble Supreme Court. The relevant observations made by the Division Bench in para 12 and 13 of its judgment in Harbans Singh's (supra), which can be gainfully followed in these cases, 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. Vs. 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 Vs. Special Tehsildar and Land Acquisition Officer, 1992 (1) RRR 257 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 that 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) Vs. Abdul Reguman, 1996 LA.C.C. 394 held as follows:

" In our view the observations made by the Supreme Court is squarely applicable to the case in hand developed. 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."*

Respectfully following the law laid down by the Hon'ble Supreme Court as well as Division Bench of this Court, in the cases referred to hereinabove, this Court feels no hesitation to conclude that owing to the peculiar facts and circumstances of the cases in hand, imposition of 1/3rd cut, as argued by the learned counsel for the HSIIDC, is not warranted. Further, the Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Registered), Faridkot and others Vs. State of Punjab and others, (2012) 5 SCC 432,** has held that the landowners are entitled to receive the best price for their acquired land. In the case of **Udho Dass Vs. State of Haryana, 2010 (12) SCC 51,** the Hon'ble Supreme Court has held that sometimes there may be a case, in which there would be 100% annual increase.

Striking a balance and adopting a holistic and pragmatic approach, with a view to do complete and substantial justice between the parties, this Court is of the considered view that two best sale instances on behalf of both the parties can be taken and average of all the four sale instances would be just and expedient for assessing the market value of the acquired land.

Learned counsel for the both the parties were given a choice to point out their two best sale instances in their favour and as a consequence thereof, learned counsel for the appellants-landowners has placed reliance on two sale instances contained in sale deeds Ex.P-27 dated 13.1.2006 and Ex.P-39 dated 13.1.2005. Similarly, learned counsel for the beneficiary-department HSIIDC, has placed reliance on two sale instances contained in Ex. R-13 dated 28.2.2006 and Ex.R-19 dated 2.5.2005. Thus, to be fair to all concerned, average of all the abovesaid four sale deeds is being taken, in order to arrive at a just and reasonable market value of the acquired land, so that none of the party may have any grouse in this regard.

Average of all the four sale instances, i.e. Ex.P-27 and Ex. P-39 relied upon by learned counsel for the landowners on one hand and Ex.R-13 as well as Ex.R-19, relied upon by learned counsel for beneficiary department on the other hand, comes to ₹1609/- per sq. yard. These facts and figures have not been disputed by the learned counsel for the parties. Accordingly, the landowners are held entitled to receive the compensation @ ₹1609/- per sq. yards from the date of notification under Section 4 of the Act.

The next question that falls for consideration of this Court is: whether the belting system adopted by the learned reference court deserves to be upheld or not. Since it is undisputed on record that total acquired land was going to be utilised for one and the same purpose, i.e. for development of Industrial Estate, the exact location or quality of the land, whether it was touching GT road or was situated beyond 2 acres from GT Road and also whether the land was *Chahi* or *Banjar Kadim,* would be hardly of any consequence. Further, it was already a fully developed area, therefore, belting was not at all warranted in the instant case.

The abovesaid view taken by this Court on the belting system, also finds support from more than one following judgments of the Hon'ble Supreme Court as well as of this Court:-

(1) Union of India Vs. Harinder Pal Singh and others, 2005 (12) SCC 564 (SC)

(2) Udho Dass Vs. State of Haryana, 2010 (12) SCC 51 (SC)

(3) Ashrafi and others Vs. State of Haryana, 2013 (5) SCC 527 (SC)

(4) Kehar Singh Vs. State of Punjab, 1992(1) R.R.R. 81 (P&H)

(5) Harinderpal Singh Vs. Punjab State through the Collector, Amritsar, 1997 (3) RCR (civil) 431 (P&H)

(6) Union of India Vs. Dr. Balbir Singh, 1999 (2) RCR (civil) 546 (P&H)

(7) Pawan Kumar and another Vs. Land Acquisition Collector and others, 2001 (1) RCR (civil) 598 (P&H)

(8) Harjit Singh @ Kaka Singh Vs. State of Punjab and another, 2004 (1) RCR (civil) 484 (P&H)

(9) Smt. Mahabiri Devi and others Vs. State of Haryana and another, 2005 (4) RCR (civil) 142 (P&H)

(10) Gulzar Singh Vs. State of Haryana 2006 (3) RCR (civil) 174 (P&H)

(11) Kashmira Singh and others Vs. Land Acquisition Tribunal Ludhiana Improvement Trust Ludhiana through

its President and others, 2006 (2) LAR 69 (P&H)

(12) Gursher Singh and others Vs. President, Improvement Trust Tribunal, Jalandhar and others, 2007 (1) RCR (civil) 429 (P&H)

(13) Baru Ram and others Vs. State of Haryana and another, 2010 (3) RCR (civil) 754 (P&H)

So far as time gap between the sale instances and date of acquisition is concerned, although there was time gap of one year between Ex.R-19 and date of acquisition, yet in the totality of facts and circumstances of the case, the landowners have not been found entitled for any annual increase. It is so said because a bare perusal of the sale deeds relied upon by the landowners would show that there was time gap of about three months only, which cannot be said to be a substantial one.

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 case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the appeals filed by the beneficiary-department, i.e. HSIIDC, are wholly misconceived, bereft of merit and without any substance, thus, these must fail and the same are hereby dismissed.

Appeals as well as cross objections filed by the landowners deserve to be partly accepted and the same are allowed to the extent indicated above. The landowners are held entitled to receive the compensation for their acquired land at the uniform rate of ₹1609/- 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 these appeals as well as cross objections stand disposed of in the abovesaid terms, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

15.2.2016
AK Sharma