IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.564 of 2014 and other connected matters
Date of decision: 12.02.2016

Mahavir and others

... Appellants

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms. Anita Balyan, Advocate for the appellant(s) (in RFA Nos.564 to 571, 2810 to 2817, 3827, 9029, 9039, 9362 to 9364, 9518, 9519, 9646, 9657, 9687, 9706, 9721, 9831, 10056, 6023 to 6043, 7708, 7808 to 7810, 7846, 7971 to 7975, 8093, 8376 to 8378, 8440, 8441, 8964, 9556, 10562, 10564 of 2014, 293, 909 of 2015)

Mr. Rakesh Nehra, Advocate for the appellant(s) (in RFA Nos.9564 to 9584, 856 of 2014, 833 of 2015)

Mr. Pritam Singh Saini, Advocate for HSIIDC.

Mr. Vibha Tewari, AAG, Haryana.

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 97 appeals filed by the land owners, bearing Regular First Appeal Nos.564 to 571, 856, 2810 to 2817, 3827, 6023 to 6043, 7708, 7808 to 7810, 7846, 7971 to 7975, 8093, 8376 to 8378, 8440, 8441, 8964, 9029, 9039, 9362 to 9364, 9518, 9519, 9556, 9564 to 9584, 9646, 9657, 9687, 9706, 9721, 9831, 10056, 10562, 10564 of 2014, 293, 833 & 909 of 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 the facility of reference, facts are being culled out from RFA No.564 of 2014 (Mahavir and others Vs. State of Haryana and another).

Brief facts of the case are that the State of Haryana, with a view to acquire the land at public expenses for public purpose; namely for construction of Express Highway known as Kundli-Manesar-Palwal (KMP) by Haryana State Industrial and Infrastructure Development Corporation (HSIIDC), invoked the urgency Clause under Section 17 of the Land Acquisition Act, 1894 (for short 'the Act') and accordingly notification dated 29.09.2005 was issued under Sections 4 & 6 of the Act. Land of two villages was sought to be acquired vide this notification. 126 Acres, 01 Kanal and 10 Marla of land out of the revenue estate of Village Asoudha Todran and 93 Acres, 05 Kanal and 10 marla of land out of the revenue estate of Village Mandothi was acquired. Both these villages fall in Tehsil Bahadurgarh, District Jhajjar. Land Acquisition Collector, vide his award No.25 dated 28.04.2006 pertaining to village Asoudha Todran and award No.26 dated 15.06.2006 pertaining to village Mandothi, granted the compensation at the uniform rate of Rs.12,50,000/- per acre to the land owners of both the abovesaid villages.

Dissatisfied, the land owners filed their objections under Section 18 of the Act and as a consequence thereof, 72 land references from village Asoudha Todran and 43 land references from village Mandothi were forwarded to the learned reference Court. Land references of village Asoudha Todran were decided together vide one common impugned award dated 01.07.2013 passed by the learned reference Court, granting the amount of compensation @ Rs.14,24,996/- per acre. Similarly, land references of village Mandothi were decided together by the learned reference Court vide its award dated 09.04.2014 and granted the compensation at the uniform rate of Rs.14,69,052/- per acre.

State of Haryana as well as the beneficiary department i.e. HSIIDC have not filed any appeals against the abovesaid two awards passed by the learned reference Court. However, the land owners felt aggrieved and have approached this Court by way of this set of appeals, seeking further enhancement 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 peculiar facts and circumstances of this bunch of cases, appeals filed by the land owners deserve to be partly allowed, suitably enhancing the amount of compensation for their acquired land, for the following more than one reasons.

The sale instances relied upon by the land owners-appellants as well as by the State have been referred by the learned reference Court in the impugned award. The land owners produced three sale instances in the form of Ex.P2 dated 27.04.2001 pertaining to village Rohad, Ex.P3 dated 06.06.2002 pertaining to village Asoudha Todran and Ex.P4 dated 08.07.2002 pertaining to village Rohad. Although village Rohad and Asoudha Todran were adjoining with each other, yet once the sale deed of a large chunk of land measuring 08 Kanal from village Asoudha Todran itself was available on record, the other two sale deeds Ex.P2 and Ex.P4 pertaining to a different village Rohad cannot be made the basis for assessing the market value of the acquired land. Having said that, this Court feels no hesitation to conclude that the best piece of evidence for assessing the market value of the acquired land is sale instance Ex.P3 dated 06.06.2002, whereby land measuring 08 Kanal out of the revenue estate of Village Asoudha Todran itself was sold for an amount of Rs.30,00,000/-. This sale deed has been duly proved on record.

So far as the sale instance in the form of Ex.R1 dated 07.10.2004 relied upon by the State is concerned, it was pertaining to the land measuring 01 Kanal, 15 Marlas of village Asoudha Todran and was sold at the rate of Rs.5,50,857/- per acre. This sale deed was ignored by the learned reference Court observing, being a solitary instance. Findings recorded by the learned reference Court in this regard deserves to be upheld, for another strong reason that the market value disclosed in this sale deed is wholly unrealistic. It is so said because the State of Haryana itself has fixed the market value of the acquired land at the rate of Rs.12,50,000/- per acre vide its policy dated 28.04.2005. Further, this sale instance was also ignored by the Land Acquisition Collector while announcing his abovesaid two awards dated 28.04.2006 and 15.06.2006, granting the compensation for the acquired land at the uniform rate of Rs.12,50,000/- per acre.

Although three sale instances relied upon by the land owners disclosed almost the same market value but since two sale deeds contained in Ex.P2 and Ex.P4 relate to a different village namely Rohad, sale instance Ex.P3 pertaining to village Asoudha Todran itself would be a safe guide for assessing the market value of the acquired land. Since the land sold through this sale deed Ex.P3 was measuring 08 Kanal, which was of reasonable size, no cut on the market value disclosed in this sale deed would be warranted. There is a reason to say so and that is that both the villages Asoudha Todran as well as Mandothi, were situated just on National Highway No.10 (Delhi-Rohtak-Hisar Road).

It has also come on record that the acquired land was abutting this National Highway No.10. Both these villages were adjoining with each other. Potentiality of the acquired land can be adjudged from numerous positive determinative factors, including the fact that the land of these villages had been earmarked for cargo airport. Further, the Petroleum Plant, Parle Biscuit Factory, Somani Tiles Factory, Hindustan Sanitary Wares, Surya Tube Factory were already existing near the acquired land. 1000 Mega Watt Gas Power Plant project had been sanctioned to be set up on the nearby land. Both these villages were also within the National Capital Region ('NCR' for short). The acquired land was situated in the close proximity of Bahadurgarh city and because of these reasons, the acquired land was no more a simple agricultural land. It is so said because the acquired land could have been easily put to residential, commercial as well as industrial use.

Then comes the benefit of annual increase on the abovesaid market value disclosed in the sale deed Ex.P3, for the time gap between this sale deed and the notification under Section 4 of the Act. Since this sale deed was dated 08.07.2002 and notification under Section 4 of the Act came to be issued on 29.09.2005, there was a time gap of about three years. Since the acquired land was semi-urban in nature, the land owners would be entitled for 15% annual increase on cumulative basis, 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** and **Ashok Kumar and others Vs. State of Haryana and others, 2015 (3) Scale 242.** Granting the benefit of 15% annual increase for a period of three years, the amount comes to Rs.45,62,625/- per acre, therefore, the land owners in all these cases are held entitled to receive the compensation for their acquired land at the rate of Rs.45,62,625/- per acre from the date of notification under Section 4 of the Act.

Since both these villages were situated on National Highway No.10, as noticed hereinabove and potentiality of the acquired land of both the villages was also at par, this Court has found no reason nor any pointed out by learned counsel for the respondents, to treat the land owners of village Mandothi differently. In fact, learned counsel for the land owners-appellants from village Mandothi submits that the land of village Mandothi was situated on a better location. Be that as it may, even if the land owners of village Mandothi were placed on a slightly better footing but since there is no clinching evidence available on record in this regard, the land owners of both these villages have been found entitled for equal treatment. Accordingly, land owners of both these villages are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.42,62,625/- per acre from the date of notification under Section 4 of the Act.

It is pertinent to note here that applying a particular percentage of cut on the market value disclosed in the sale deed is not an absolute rule. Each case would depend upon on its own peculiar facts and circumstances. Sometimes, in a given situation, as in the present case, no cut at all might be warranted. The view taken by this Court in this regard also finds support from the Division Bench judgment of this Court in **Harbans Singh and others Vs. State of Punjab through the Land Acquisition Collector, Patiala, 2006 (1) RCR (Civil) 634,** which in turn, was based on the law laid down by the Hon'ble Supreme Court.

Relevant observations made by the Division Bench of this Court in paras 12 & 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:*
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> > *"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 utilize 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."*

In the case of **Mehrawal Khewaji Trust (Regd.), Faridkot and others Vs. State of Punjab and others, 2012 (5) SCC 432,** the Hon'ble Supreme Court has held that the land owners are entitled to receive the best price for their acquired land. In a particular case, there can be a scope of 100% annual increase in the prices and the land owners would hardly get the real and actual market value for their acquired land, as held by the Hon'ble Supreme Court in **Udho Dass Vs. State of Haryana, 2010 (12) SCC 51.**

The relevant observations made by the Hon'ble Supreme Court in Paras 17 & 18 of its judgment in **Udho Dass**'s case (supra), 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?"

Coming to the issue of severance charges, since it has been held in the forgoing paragraphs that the acquired land was no more a simple agricultural land and was enjoying the semi-urban nature, the land owners in these cases would not be entitled for any severance charges, because this Expressway-KMP would certainly increase the potentiality of the unacquired land further and the land owners would be in a position to put the unacquired land to any use alike, including commercial, residential and industrial. This is the reason that the land owners in these cases are not being held entitled for any severance charges.

No contrary evidence or judicial precedent was 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. The land owners of both the abovesaid villages are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.42,62,625/- per acre, 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 97 appeals stand disposed of, in the abovesaid terms, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

12.02.2016
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