IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.6809 of 2014 and other connected matters
Date of decision: 18.02.2016

Raghbir and others

... Appellants

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Satyapal Khatri, Advocate
for the appellant(s) (in RFA Nos.6544 to 6549, 6809 to 6830, 6869, 6870, 7209, 7311 to 7314, 7833 to 7839, 7850, 7919, 7922 to 7925, 7928 to 7934, 7966, 7967, 7979 to 7983, 8099, 8137 to 8144, 8193, 8317 to 8319, 8369 to 8373, 8501, 8513 to 8515, 8644, 8652, 8662, 8770, 8771, 8860, 8861, 8928, 8929, 8973, 9054, 9056, 9062, 9097, 9169, 9170, 9425, 9450, 9681, 9683, 9684, 9698 of 2014, 221, 2353 of 2015)

Mr. B.R. Vohra, Advocate
for the appellant(s) (in RFA Nos.5538, 5539, 6011 to 6015, 6294 to 6297, 6611, 8647, 8691, 8692, 8783, 9051, 9374, 9375 of 2014)

Mr. Vinod Kumar, Advocate for
Mr. Harkesh Manuja, Advocate
for the appellant(s) (in RFA Nos.5573, 5574, 6203, 6204, 6349, 6354 to 6356, 7217, 7358 to 7364, 7660, 7666, 7667, 8504, 8693, 8694 of 2014)

Mr. Birender Singh Rana, Senior Advocate with
Mr. Rajinder Paul, Advocate
for the appellant(s) (in RFA No.336 of 2015)

Mr. Anil Rathee, Advocate for
Mr. Nitin Rathee, Advocate
for the appellant(s) (in RFA No.8872 of 2014)

Mr. Pratibha Yadav, Advocate for
Mr. Surinder Saini, Advocate
for the appellant(s) (in RFA Nos.8442, 8443 of 2014)

Mr. Vikram Singh, Advocate
for the appellant(s) (in RFA Nos.6207 to 6209, 6251 to 6253, 6320, 6375 to 6378, 7765, 8059, 8060, 8825, 9004 of 2014, 1464 of 2015)

Mr. Ram Pal Verma, Advocate
for the appellant(s) (in RFA Nos.1596 to 1608, 2068 to 2070, 2179, 2269 to 2281, 2558 to 2565, 2637 to 2648, 3568 to 3571 of 2015).

Mr. Navneet Singh, Advocate
for the appellant(s) (in RFA No.9108 of 2014)

Mr. Ashok Tyagi, Advocate for
Mr. Satyapal Tyagi, Advocate
for the appellant(s) (in RFA Nos.9449, 10267, 10268 of 2014)

Mr. Satyapal Khatri, Advocate for
Mr. Naveen Singh Panwar, Advocate
for the appellant(s) (in RFA No.8650 of 2014)

Mr. Satyapal Khatri, Advocate for
Mr. Ajit Malik, Advocate
for the appellant(s) (in RFA Nos.9081 of 2014)

Mr. Satypal Khatri, Advocate for
Mr. T.P.S. Teji, Advocate
for the appellant(s) (in RFA No.9661 of 2014)

Ms. Vibha Tewari, AAG, Haryana.

Mr. Pritam Singh Saini, Advocate and
Mr. Hitesh Pandit, 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.

This batch of 231 appeals, bearing Regular First Appeal Nos.5538, 5539, 5573, 5574, 6011 to 6015, 6203, 6204, 6207 to 6209, 6251 to 6253, 6294 to 6297, 6320, 6349, 6354 to 6356, 6375 to 6378, 6544 to 6549, 6611, 6809 to 6830, 6869, 6870, 7209, 7217, 7311 to 7314, 7358 to 7364, 7660, 7666, 7667, 7765, 7833 to 7839, 7850, 7919, 7922 to 7925, 7928 to 7934, 7966, 7967, 7979 to 7983, 8059, 8060, 8099, 8137 to 8144, 8193, 8317 to 8319, 8369 to 8373, 8442, 8443, 8501, 8504, 8513 to 8515, 8644, 8647, 8650, 8652, 8662, 8691 to 8694, 8770, 8771, 8783, 8825, 8860, 8861, 8872, 8928, 8929, 8973, 9004, 9051, 9054, 9056, 9062, 9081, 9097, 9108, 9169, 9170, 9374, 9375, 9425, 9449, 9450, 9661, 9681, 9683, 9684, 9698, 10267, 10268 of **2014**, 221, 336, 1464, 1596 to 1608, 2068 to 2070, 2179, 2269 to 2281, 2353, 2558 to 2565, 2637 to 2648 and 3568 to 3571 of **2015**, which have been 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.6809 of 2014 (Raghbir and others Vs. State of Haryana and others).

State of Haryana sought to acquire land, at public expenses for public purpose, i.e. for development of Industrial and residential complex for Phase-III at Barhi, from the revenue estates of three villages namely; Lalheri, Barhi and Garhi Kesari, Tehsil Gannaur, District Sonepat. Accordingly, notification dated 02.05.2007 was issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act'), which was followed by notification dated 30.04.2008 under Section 6 of the Act. Land Acquisition Collector, vide his different awards of even date i.e. 28.01.2010 for all the three villages, awarded the compensation at the uniform rate of Rs.30,00,000/- per acre for the total acquired land. Award No.16 was pertaining to village Lalheri, award No.17 was pertaining to Village Barhi and award No.18 was pertaining to village Garhi Kesari. Land measuring 55 Acres, 07 Kanal, 15 Marlas was acquired from the revenue estate of village Barhi. Land measuring 111 Acres, 03 Kanals, 07 Marlas was acquired from the revenue estate of village Lalheri and land measuring 478 Acres, 07 Kanal, 03 Marlas was acquired from the revenue estate of village Garhi Kesari. Purpose of acquisition was the same.

Dissatisfied, the land owners filed their objections under Section 18 of the Act and as a consequence thereof, land references were forwarded to the learned reference Court. As many as 200 land references from village Garhi Kesari were decided by the learned reference Court vide its common impugned award dated 24.03.2014. Another set of 64 land references from village Lalheri was decided together by the learned reference Court vide separate award of even date i.e. 24.03.2014. Similarly, bunch of 23 land references from village Barhi was decided by the learned reference Court vide separate award of even date i.e. 24.03.2014. All the land references from the abovesaid three villages came to be dismissed by the learned reference Court.

Feeling aggrieved against the abovesaid three impugned awards passed by the learned reference Court, the land owners have approached this Court by way of instant bunch of appeals, seeking enhancement in the compensation for their acquired land.

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, instant batch of appeals filed by the land owners deserve to be partly allowed, suitably enhancing the amount of compensation for the acquired land. To say so, reasons are more than one, which are being recorded hereinafter.

A bare reading of the impugned awards passed by the learned reference Court would show that with a view to substantiate their respective stands taken, both the parties produced voluminous evidence before the learned reference Court. Numerous sale instances were produced by the land owners as well as by the State. Since some of the sale exemplars were post-acquisition, the learned reference Court ignored the same. Most of the sale instances produced by the State were since below the rate of Land Acquisition Collector's award, the same were rightly ignored by the learned reference Court, in view of the provisions contained in Section 25 of the Act, while assessing the market value of the acquired land. Learned counsel for the land owners have been found justified in contending that the learned reference Court illegally ignored the sale instances, which were very much available on record before it in the form of Ex.P59, Ex.P60, Ex.P61 as well as Ex.P13 and Ex.P14. They submits that in all these sale deeds, the market value disclosed was Rs.95,00,000/- per acre.

On the other hand, learned counsel for the beneficiary department i.e. Haryana State Industrial and Infrastructure Development Corporation ('HSIIDC' for short) opposed the arguments raised on behalf of land owners. He placed reliance on sale deeds Ex.R2 and Ex.R3 wherein the market value disclosed was Rs.11,94,030/- per acre.

To be fair to all concerned, average of four sale deeds, two each relied upon by both the parties, is being taken so that no party may have any grouse in this regard. Taking the average of four sale deeds i.e. Ex.P13 and Ex.P14 relied upon by land owners and Ex.R2 as well as Ex.R3 relied upon by the respondents, the amount comes to Rs.53,47,015/- per acre.

The other important question of law that falls for consideration of this Court is whether any cut is to applied or not. The answer is and has to be an emphatic no. Firstly, if in any earlier similar acquisition, the land owners received less compensation as they did not or could not produce relevant evidence including sale exemplars, the land owners, in later acquisition, who produced cogent evidence, including sale instances disclosing much higher market value, as in the present case, cannot be made to suffer, denying them higher compensation, for none of their faults. Secondly, since the land sold vide very many sale deeds relied upon by land owners, was measuring as much as 126 Kanals 4 Marla vide sale deed No.4777 dated 10.03.2006 (Ex.P6) @ Rs.95,00,000/- per acre, 51 Kanals 06 Marla vide sale deed No.4814 dated 13.03.2006 (Ex.P8) @ Rs.95,00,000/- per acre as well as abovesaid Ex.P13 and Ex.P14, at page 140 of the paper book, these sale instances cannot be said to be of small pieces of land.

As far as the issue of applying any particular percentage of cut is concerned, it is not an absolute rule. Neither it is desirable nor possible to lay down a straight-jacket formula in this regard, which may be made applicable in every given situation. It is equally true that each case is to be decided as per its own peculiar facts and circumstances. In view of the material and undisputed fact that the adjoining area had already been developed for same purpose, no cut is warranted to be imposed on abovesaid market value.

The view that has been taken by this Court finds support from a 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. The relevant observations made in paras 12 & 13 in **Harbans**

Singh's case (supra), which aptly apply to the facts of 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:*
>
> > *"The proposition that large area of land cannot possible fetch a price at the same rate at which small 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 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 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."*

The next issue that arises for consideration of this Court is, granting the benefit of annual increase to the land owners for the time gap between the abovesaid sale deeds and the instant acquisition. Admittedly, there was a time gap of more than one year, to be precise, one year and about one month. Although, in view of the nature and location of the acquired land, land owners might be entitled for annual increase at 15% per annum, yet keeping in view the totality of facts and circumstances of these cases, this Court is of the view that 12% annual increase would be just and expedient. Granting benefit of 12% annual increase to the land owners, the amount comes to Rs.59,88,656.80, which is rounded off to Rs.59,88,657/- per acre. These facts and figures have not been disputed by learned counsel for both the parties.

So far as the potentiality and location of the acquired land is concerned, it was located between the railway line (Delhi-Ambala) and GT Road-National Highway No.1 and because of this reason, its potentiality had never been in dispute. Adjoining Phase-I and Phase-II of this very industrial complex had already been developed. The acquired land was not far away from

Sonepat. The acquired land could have been easily put to residential, commercial as well as industrial use. As per the site plan, some part of acquired land was abutting the G.T. Road and many other establishments, including commercial ones, were already existing nearby.

The Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Regd.), Faridkot and others Vs. 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 Vs. State of Haryana, 2010 (12) SCC 51,** the Hon'ble Supreme Court had held that the land owners are hardly compensated, in true sense of the word, in the matters of acquisition. The relevant observations made by the Hon'ble Supreme Court in paras 17 & 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.*

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 findings recorded by the learned reference Court, while ignoring the abovesaid sale deeds have been found totally perverse and the same cannot be upheld. The law laid down by the Hon'ble Supreme Court in number of judgments, including **Mehrawal Khewaji**'s case (supra) and **Udho Dass**'s case (supra) has not been followed by the learned reference Court. In fact, the acquired land was located at such a place, which had been a most happening place in the recent past, being very close to Delhi and within the National Capital Region. In such a situation, granting any lesser amount of compensation to the land owners, in these cases, would be wholly inadequate.

Let it be specifically recorded here that no better evidence or any relevant 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. The land owners are held entitled to receive the compensation for their acquired land at the rate of Rs.59,88,657/- per acre, from the date of notification under Section 4 of the Act. Besides this, the land owners shall also be entitled for all the statutory benefits available to them, under the relevant provisions of the Act.

Resultantly, with the observations made above, all these 231 appeals stand disposed of, in the abovesaid terms, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
18.02.2016 **JUDGE**
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