IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.8271 of 2014 and other connected matters
Date of decision: 12.04.2016

Dharam Chand and others

... Appellants

Vs.

Haryana State through Collector, Hisar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.S. Patter, Advocate
for the appellant(s) (in RFA No.5810 of 2015)

Mr. J.S. Thind, Advocate for
Ms. Sushma Chopra, Advocate
for the appellant(s) (in RFA Nos. 9645 of 2014 & 2583, 2584 of 2015).

Mr. Ravinder Malik, Advocate
for the appellant(s) (in RFA No.3996 of 2007).

None for the appellant(s) (in RFA Nos.8271 to 8291 of 2014)

Mr. Shivendra Swaroop, AAG, Haryana.

Mr. Gaurav Jindal, Advocate
for Market Committee, Uklana.

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 26 appeals, bearing Regular First Appeal Nos.3996 of 2007, 8271 to 8291, 9645 of 2014, 2583, 2584, 5810 of 2015, 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.8271 of 2014 (Dharam Chand and others Vs. Haryana State through Collector, Hisar and others).

Briefly put, facts necessary for disposal of present set of appeals are that State of Haryana sought to acquire land measuring 67 acres, 01 kanal, 03 marla, out of the revenue estates of village Surewala as well as Budha Khera, Tehsil Barwala, District Hisar, at public expenses for public purpose; namely for setting up New Grain Market, vegetable market and fruit market at Uklana. Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') was issued on 12.06.1997, which was followed by notification dated 08.06.1998 under Section 6 of the Act. Land Acquisition Collector (for short 'LAC'), vide his award No.2 dated 07.06.2000 assessed the market value of the acquired land @ Rs.2,00,000/- per acre for the land which was abutting the road and upto the depth of one acre. Rs.1,75,000/- per acre was assessed for the land situated beyond one acre.

Dissatisfied with the award passed by the LAC, the land owners filed their objections under Section 18 of the Act and as a consequence thereof, very many land references were forwarded. The learned reference Court, vide its award dated 31.01.2005, assessed the market value @ Rs.2,40,000/- per acre for the land abutting the road and upto depth of one acre, whereas Rs.2,05,000/- per acre was assessed for the land beyond one acre. Said award passed by the learned reference Court was challenged by the land owners as well as by the Market Committee, Uklana before this Court. As many as 50 Regular First

Appeals came to be decided by this Court vide order dated 05.11.2008 passed in RFA No.1930 of 2005 (Smt. Sukhdei and others Vs. Haryana State and others). The appeals filed by the Market Committee, Uklana were dismissed, whereas the appeals filed by the land owners were partly allowed.

Both the parties approached the Hon'ble Supreme Court against the abovesaid order dated 05.11.2008 passed by this Court and the Hon'ble Supreme Court, vide its order dated 27.09.2011, remanded the matter back to the learned reference Court, for deciding the land references afresh, after reconsidering the evidence available on record. In compliance of the remand order passed by the Hon'ble Supreme Court, the learned reference Court vide its impugned award dated 28.02.2014 assessed the market value @ Rs.2,55,000/- per acre for the land abutting the road and upto the depth of one acre and Rs.2,21,500/- per acre was assessed for the land beyond one acre. Market Committee, Uklana did not file any appeal against the abovesaid award dated 28.02.2014 passed by the learned reference Court. However, 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 instant set of appeals filed by the land owners deserve to be partly allowed, suitably enhancing the amount of compensation for their acquired land. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the impugned award dated 28.02.2014 would show that the learned reference Court fell in serious error of law, while not properly appreciating the potentiality of the acquired land, assessing its market value on much lower side. With the able assistance of learned counsel for the parties, this Court has carefully examined the relevant evidence available on record, including the site plans and sale deeds relied upon by both the parties. So far as the potentiality of the acquired land is concerned, the total length of the acquired land was situated on a State Highway, which goes from Sirsa to Narwana, through Uklana. The acquired land has been found situated at a distance of 17 acres from the municipal limits of Uklana town. About 60% of the acquired land is situated on the right side of metalled road, which goes from the abovesaid State Highway to village Prabhuwala and remaining 40% of the acquired land is situated on the left side of this road which goes to village Surewala. Another metalled road goes in front of the acquired land.

As per the site plans Ex.P1 and Ex.P2, there were numerous establishments, including commercial establishments, existing in close proximity of the acquired land and also in front of the acquired land. As per the aksh-sajra Ex.P2, shops have been shown existing upto length of four acres of land, just across the road, in front of the acquired land. Besides the abovesaid commercial establishments, some industrial units and institutions like factories and schools were also situated very close to the acquired land. National Highway No.65, which goes from Ambala Cantt to Jodhpur and crosses the abovesaid State Highway at Surewala Chowk, was at a distance of only 14 acres from the acquired land. Having said that, this Court feels no hesitation to conclude that the acquired land was situated at a prime location and it was having immense potentiality, because the acquired land could have been easily put to residential, industrial as well as commercial use. However, since the learned reference Court has miserably failed to appreciate all the abovesaid relevant and positive determinative factors, the impugned award is liable to be modified.

Coming to the sale instances relied upon by both the parties and discussed by the learned reference Court in paras 17 and 18 of the impugned award, Ex.P4 was a sale deed dated 09.05.1995, whereby a very small piece of land measuring ½ marla (15 square yards) was sold. Although this piece of land was claimed to be very close to the acquired land itself, yet it was too small a piece of land to be taken into consideration. On the other hand, another very relevant piece of evidence was available on record in the form of Ex.P3, which was sale deed dated 20.07.1995, whereby land measuring 01 kanal was sold for the Rs.1,95,000/- @ Rs.15,60,000/- per acre. Land sold by way of Ex.P3 was also from the revenue estate of village Surewala, whose land measuring 60.02 acres was acquired out of the total acquired land of 67 acres, 01 kanal, 03 marla.

Under the abovesaid peculiar facts and circumstances of the case, it can be safely concluded that sale deed Ex.P3 is the best piece of evidence, which can be made the basis for assessing the market value of the acquired land. So far as the sale exemplars relied upon by the beneficiary department i.e. Market Committee, Uklana are concerned, most of them were post-acquisition. However, there were some sale deeds which were pre-acquisition. Learned counsel for the Market Committee, Uklana has placed strong reliance on sale deed Ex.R56, whereby land measuring 09 kanal, 14 marla was sold @

Rs.2,15,000/- per acre. This piece of land was out of village Budha Khera and land measuring 06 acres, 06 kanal was acquired out of the revenue estate of village Budha Khera.

In view of the law laid down by the Hon'ble Supreme Court in **Lal Chand Vs. Union of India and another, 2009 (15) SCC 769,** the sale deeds relied upon by the beneficiary department including Ex.R56 cannot be outrightly rejected simply because some of them were hit by the provisions of Section 25 of the Act. However, it is equally true that if the said sale deeds have been found either undervalued or distress sale, the same can be excluded from consideration in view of the ratio of law laid down by the Hon'ble Supreme Court in para 32 of its judgment in **Lal Chand**'s case (supra).

The relevant observations made by the Hon'ble Supreme Court in para 32 of its judgment in **Lal Chand**'s case (supra), which can be gainfully followed in the present case, read 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."*

Keeping in view the topography of the area and potentiality of the acquired land discussed hereinabove, it is unhesitatingly held that the sale deeds relied upon by the beneficiary department including Ex.R56 were either undervalued or distress sales. In either of the situations, these sale deeds are liable to be excluded from consideration for the purpose of assessing the market value of the acquired land.

There is yet another important question of law that falls for consideration of this Court and it is whether the belting system adopted by the LAC and upheld by the learned reference Court is liable to be upheld or set aside. As noticed hereinabove, front of 14 acres of the acquired land was abutting the State Highway. Again, the acquired land was situated on both sides of another metalled road, which goes from State Highway to village Prabhuwala. This crucial aspect of the matter has neither been discussed nor discarded but altogether illegally ignored by the learned reference Court. This illegal approach adopted by the learned reference Court cannot be upheld. Further, once the purpose of acquisition was same and every inch of the acquired land was going to be utilized for one and the same purpose, belting system was not at all warranted in the present case. Ordered accordingly.

The abovesaid view taken by this Court on the belting system also finds support from the following judgments: -

1. ***Udho Dass Vs. State of Hayana, 2010 (2) SCC 51.***
2. ***Ashrafi and others Vs. State of Haryana, 2013 (5) SCC 527.***
3. ***Kehar Singh Vs. Punjab State, 1992 (1) RRR 81.***
4. ***Harinderpal Singh Vs. Punjab State through the Collector, Amritsar, 1997 (3) RCR (Civil) 431.***
5. ***Union of India Vs. Dr. Balbir Singh, 1999 (2) RCR (Civil) 546.***
6. ***Pawan Kumar and another Vs. Land Acquisition Collector and others, 2001 (1) RCR (Civil) 598.***
7. ***Harjit Singh @ Kaka Singh Vs. State of Punjab and another, 2004 (1) RCR (Civil) 484.***

8. ***Smt. Mahabiri Devi and others Vs. State of Haryana and another, 2005 (4) RCR (Civil) 142.***
9. ***Gulzar Singh Vs. State of Haryana, 2006 (3) RCR (Civil) 174.***
10. ***Kashmir Singh and others Vs. Land Acquisition Tribunal Ludhiana Improvement Trust through its President and others, 2006 (2) LAR 59.***
11. ***Gursher Singh and others Vs. President, Improvement Trust Tribunal, Jalandhar and others, 2007 (1) RCR (Civil) 429.***
12. ***Baru Ram and others Vs. State of Haryana and another, 2010 (3) RCR (Civil) 754.***

It is a matter of record that the land measuring 01 kanal was sold by way of sale deed Ex.P3 dated 20.07.1995 @ Rs.15,60,000/- per acre. Although this piece of land was situated within the same revenue estate of village Surewala, yet oweing to the smaller piece of land sold vide this sale deed Ex.P3 and also keeping in view the fact that the beneficiary department will have to incur expenses for development of the acquired land, as well as some part of the acquired land will have to be kept open, a reasonable percentage of cut deserves to be applied on the market value disclosed vide sale deed Ex.P3.

Keeping in view the totality of facts and circumstances of the case, while proceeding on a holistic, pragmatic and positive approach, with a view to do complete and substantial justice between the parties, this Court is of the considered view that imposition of 30% cut on the market value disclosed in the sale deed Ex.P3, would meet the ends of justice. After applying 30% cut, the market value comes to Rs.10,92,000/- per acre.

Since there was a time gap of 02 years between this sale deed Ex.P3 dated 20.07.1995 and the date of notification under Section 4 of the Act i.e. 12.06.1997, the land owners would be entitled for annual increase @12%, on cumulative basis, as held by the Hon'ble Supreme Court in **The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and another, 2008 (14) SCC 745** and **Ashok Kumar and others Vs. State of Haryana and others, 2015 (3) Scale 242.** Granting the benefit of 12% annual increase, on cumulative basis, amount comes to Rs.1369804.80, which is rounded off to Rs.13,69,805/- per acre. These figures have been counter-checked by learned counsel for the parties and factual aspect thereof has gone undisputed and rightly so, it being a matter of record. Accordingly, the land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.13,69,805/- per acre, from the date of notification under Section 4 of the Act.

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. Again, in the case of **Udho Dass Vs. State of Haryana, 2010 (12) SCC 51,** the Hon'ble Supreme Court in paras 17 and 18 of the judgment, held 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?"

So far as the negligible distance between the location of land sold vide sale deed Ex.P3 and the acquired land is concerned, the law laid down by the Hon'ble Supreme Court in **Ashrafi and others Vs. State of Haryana and**

others, 2013 (5) SCC 527, Kashmir Singh Vs. State of Haryana and others, 2014(2) SCC 165 and **Thakarsibhai Devjibhai and others Vs. Executive Engineer, Gujarat and another, 2001 (9) SCC 584** can be referred. It has also been held by the Hon'ble Supreme Court that the sale deed disclosing best price is to be taken into consideration for assessing the market value of the acquired land.

Let it be specifically recorded here that neither any 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. The land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.13,69,805/- 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 appeals stand disposed of, in the abovesaid terms, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
12.04.2016 **JUDGE**
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