

REPORTABLE

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of Decision: July 26, 2017

1. RFA-1660-1990 (O&M)

Bansi Lal

...Appellant

Versus

State of Haryana

...Respondent

2. RFA-1810-1990 (O&M)

Bajrang Lal (deceased) through LR's and others

...Appellants

Versus

State of Haryana

...Respondent

3. RFA-1654-1991 (O&M)

Bajrang Lal (deceased) through LR's and others

...Appellants

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Jagdish Manchanda, Advocate,
for the appellant(s).

Mr. Shivendra Swaroop, Assistant Advocate General, Haryana.

ARUN PALLI, J. (ORAL)

Vide this order and judgment, I shall decide a batch of three appeals, filed by the claimant/landowners. RFA Nos. 1660 and 1810 of 1990 arise out of the same acquisition and a common award, dated 11.04.1990. And, although RFA No. 1654 of 1991 arises out of a separate acquisition, but the land under acquisition even in these proceedings formed part of the same revenue estate, i.e. village Bhiwani Jonpal, as in the other two appeals. For, the issues that arise for consideration in all the appeals are similar, these, are being decided by a common judgment.

As in RFA Nos. 1660 and 1810 of 1990, vide notification dated 25.07.1986, issued under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act'), a land measuring 2 acres, 2 kanals and 12 marlas, was sought to be acquired for construction of a link road from Bhiwani – Tosham Road to New Grain Market, Bhiwani. The final declaration under Section 6 of the Act was published on 06.11.1986. The Land Acquisition Collector vide an award, dated 22.12.1986, assessed the acquired land at Rs. 40,000/- per acre, i.e. Rs.8.26p. per square yard. Being dis-satisfied with the assessment as also the compensation awarded by the Collector, the claimant/landowners filed objections under Section 18 of the Act. Resultantly, the dispute was referred to the Civil Court for determination of the true value of the acquired land. On a consideration of the matter in issue and the material on record, the Reference Court discarded the two sale deeds, dated 29.08.1988 (Mark 'A') and 07.03.1989 (Mark 'B'), that were produced by the claimant/landowners, for, both these sale deeds were

executed post issuance of notification, dated 25.07.1986, under Section 4 of the Act. Likewise, even a copy of the previous award rendered by the Reference Court (Ex. P-1), in Ratipal etc. v. State, was also ignored. And, as the Reference Court on a consideration of the sale deeds Exs. R-1 to R-4, brought on record by the State, was of the view that value of the acquired land indeed was not more than Rs.40,000/- per acre, as assessed by the Collector, dismissed the claims of the landowners.

As regards, RFA No. 1654 of 1991, vide notification under Section 4 of the Act, dated 24.11.1987, a land measuring 3.31 acres, situated in village Bhiwani Jonpal, was sought to be acquired for connecting Tosham Road with Loharu-Dadri Road through Food Grain Market, Bhiwani. The final declaration under Section 6 of the Act was published on 08.12.1987. The Land Acquisition Collector vide Award No. 7, dated 26.05.1989, assessed the value of the acquired land at Rs. 50,080/- per acre, ie. Rs.10.33p. per square yard. And, the Reference Court while deciding the claims of the landowners, under Section 18 of the Act, rejected the sale instance, dated 24.07.1987 (Ex. P-2) [Depicted as 05.12.1986 in the impugned award], for, it pertained to an extremely small area measuring 3 marlas only. Likewise, a copy of the award, dated 12.08.1989 (Ex. P-1), relied upon by the claimant/landowners was also ignored, for, it pertained to a different acquisition and area. Accordingly, the claims of the landowners were dismissed vide an award, dated 04.05.1991. That is how, as indicated above, the claimant/landowners are in appeal seeking further enhancement.

Mr. Jagdish Manchanda, learned counsel for the appellants submits that the Reference Court erred to ignore its previous judicial pronouncement/award, dated 12.08.1989 (Ex. P-1), vide which a land

situated in village Bhiwani Lohar, Tehsil and District Bhiwani, was acquired pursuant to a notification, dated 01.08.1986, issued under Section 4 of the Act. He submits that the land under acquisition in those proceedings was acquired for construction of Hansi-Tosham Bye-pass, and was assessed at Rs.35/- per square yard. And in the appeals preferred by the claimants, i.e. RFA No. 2657 of 1989, titled “Dilbag Singh v. State of Haryana”, and other connected matters, against the said award, this Court vide order and judgment, dated 18.03.2008 (Annexure A-1 with RFA No. 1654 of 1991), further enhanced the compensation to Rs.80/- per square yard. Therefore, he submits that as the land under acquisition in those proceedings as also in the present case is similar, the claimant/landowners are entitled to compensation in terms of the decision of this Court. Further, in reference to the sale deed, dated 24.07.1987 (Ex. P-2), part of the record in RFA No. 1654 of 1991, he submits that a land measuring three marlas situated in the same revenue estate, i.e. village Bhiwani Jonpal, was alienated at Rs.55.09p. per square yard, therefore, the claimant/landowners are entitled to compensation at the same rate. For, the reasons assigned by the Reference Court to discard the said sale deed are wholly erroneous. Still further, he urged that the sale deeds, dated 17.06.1983 Annexure A-4 and 16.07.1984 Annexures A-5 (appended with RFA No. 1810 of 1990), are of an area immediately adjacent to the acquired land, vide which a land measuring 8½ marlas was sold at Rs.18.66p. per square yard and Rs.23.61p. Per square yard, respectively. He submits that as both these sale deeds were executed much earlier to the issuance of notification under Section 4, dated 25.07.1986, the claimant/landowners were rather entitled to an appropriate increase upon value of the land as on 17.06.1983 or 16.07.1984. In a nutshell, the case of

the claimant/landowners is that they are entitled to compensation in terms of the decision of this Court rendered in the case of Dilbag Singh (supra) or in the alternative value of the acquired land in all the three appeals be determined in terms of the sale deed (Ex. P-2), dated 24.07.1987. And, in any case, the claimant/landowners are entitled to enhancement in terms of the sale deeds, dated 17.06.1983 and 16.07.1984 (Annexures A-4 and A-5 with RFA No. 1810 of 1990).

As opposed to this, learned State counsel submits that the award, dated 12.08.1989 (Ex. P-1), was rightly ignored by the Reference Court, for, the land under acquisition in those proceedings was far more valuable and situated in a different area. Likewise, he submits that the sale deed, dated 24.07.1987 (Ex. P-2), could never be the basis to assess the true value of the acquired land in RFA Nos. 1660 and 1810 of 1990, for the same was executed post issuance of notification, dated 25.07.1986, under Section 4 of the Act. Whereas, it could also not be relied upon to assess the value of the land in RFA No. 1654 of 1991, as the bona fide of the said sale transaction were doubted by the Reference Court. Insofar as the sale deeds, dated 17.06.1983 and 16.07.1984 (Annexures A-4 and A-5 with RFA No. 1810 of 1990), it is not disputed that the land that was sold vide these two sale instances, was located near the acquired land, but all what has been urged by learned State counsel is that as the area that was alienated vide these sale deeds was extremely small, in the event these are relied upon, an appropriate or suitable cut in the value thereof shall have to be applied.

I have heard learned counsel for the parties and perused the records.

Undoubtedly, vide award, dated 12.08.1989 (Ex. P-1), the

Reference Court had assessed the value of the land at Rs.35/- per square yard, which was further enhanced by this Court in the case of Dilbag Singh (supra), to Rs.80/- per square yard. It is not disputed either, that the notification under Section 4 of the Act in the said case was issued on 01.08.1986, i.e. six days later than the notification dated 25.07.1986, issued in the present proceedings. But still the question that is required to be determined is; **whether the value of the acquired land can be assessed in terms of the decision of this Court in the case of Dilbag Singh (supra)?**

The answer is no. In the said case, the land was acquired for construction of Hansi-Tosham Bye-pass. And the land under acquisition formed part of the revenue estate of village Bhiwani Loharu. An analysis of the site plans (Annexures A-2 and A-3) on record further reveals that the land that was utilised for construction of Hansi-Tosham Bye-pass was situated on one side of the Bhiwani-Tosham Road and the said Bye-pass would connect the Bhiwani-Tosham Road with Bhiwani-Hansi Road. Whereas, the land under acquisition in all these appeals was located on the opposite side, i.e. on the other side of Bhiwani-Tosham Road. And the Reference Court on an analysis of the evidence on record had concluded that the point from where the Hansi-Tosham Bye-pass starts, i.e. from Bhiwani-Hansi Road, right till it joins the Bhiwani-Tosham Road, the entire area is thickly inhabited. For, there existed a Heera Bread Factory, milk plant, residence of Superintendent of Police, police lines, District Jail Quarters and many plush houses. Whereas, the statement of Shri A.K. Kataria (RW-2), SDO, Tosham, revealed that the acquired land was located in a low lying area on the opposite side of Bhiwani-Tosham Road and during rains would get water logged. That being so, it was neither suitable nor safe to assess the value of

the acquired land on the basis of the award Ex. P-1. For, the land that was acquired for construction of Hansi-Tosham Bye-pass was dis-similar in nature, quality and was far more valuable.

Likewise, the sale deed, dated 24.07.1987 (Ex. P-2), vide which an area measuring three marlas was alienated for a sale consideration of Rs. 5,000/-, i.e. Rs.55.09p. per square yard, could not be relied upon to assess the value of the land in RFA Nos. 1660 and 1810 of 1990. For, these sale deeds were executed post notification, dated 25.07.1986, issued under Section 4 in those appeals. Although, the notification under Section 4 in RFA No. 1654 of 1991 was issued on 24.11.1987, but the sale deed, dated 24.07.1987 (Ex. P-2), could still not be the basis to assess the value of the land under acquisition even in the said proceedings either. For the site that was sold vide sale deed, dated 24.07.1987 (Ex. P-2), though situated in village Bhiwani Jonpal, was located at a fairly considerable distance from the acquired land in RFA Nos. 1660 and 1810 of 1990 and RFA No. 1654 of 1991. Not just that, the area that was alienated vide the said sale deed was extremely small and negligible. For sure, the said site was sold for a purpose other than agricultural, i.e. residential or commercial. The possibility of the said site being equipped with certain other special features or latest advantages cannot be ruled out either. Further, the claimant/landowners failed to produce another sale deed/sale instance vide which a land situated in the same revenue estate, was sold at the same rate or for the same sale consideration.

It would be expedient to refer to the observations recorded by the Reference Court in context of the sale deed Ex.P-2; “.....***This copy of sale-deed is of a very small portion i.e. of three marlas and vide this sale-***

deed, three marla land was sold for a sum of Rs.8000/- and it is dated 5-12-1986. It is a matter of common experience that when the land owner comes to know the intention of the State Government that certain piece of land is to be acquired or certain road is to be constructed or certain bridge, bypass or railway lines are to be constructed or laid, then he goes to the department where such plans are going on and before notification under Section 4, he manages some sale-deeds, of small portion of land at higher price as 'benami', so that when land is acquired, he can claim exaggerated and higher amount than the actual market value and this is one of the example in the case in hand. It appears to be a 'benami' transaction.”

Having said that, I am left with the sale deeds, dated 17.06.1983 (Annexure A-4 with RFA No. 1810 of 1990), vide which a land measuring 8½ marlas, situated in the same revenue estate, i.e. village Bhiwani Jonpal, comprised in Killa Nos. 12//2 (5-7), 9(8-0) and 12/1(2-9), was alienated for Rs.4,800/-, i.e. at Rs.18.66p. per square yard. And, dated 16.07.1984 (Annexure A-5 with RFA No. 1810 of 1990), vide which a land measuring 7 marlas, situated in the same revenue estate, i.e. village Bhiwani Jonpal, comprised in Khasra No. 16/16 (7-12), was sold for Rs.5,000/-, i.e. at Rs.23.61p. per square yard. A bare analysis of the site plans (Annexures A-2 and A-3 with RFA Nos. 1810 of 1990 and RFA No. 1654 of 1991, respectively) reveal that the land that was alienated vide these two sale deeds (Annexures A-4 and A-5 with RFA No. 1810 of 1990) is just adjacent, adjoining or almost abutting the acquired land. The *bona fides* and veracity of these two sale instances are not in question. The fact that the land that was a subject matter of these two sale deeds and the acquired land are

similar in nature and quality, is not disputed by the learned State counsel either. Thus, in the given situation, to assess the value of the acquired land on the basis of these sale instances, would be the most suitable and the safest mode.

The argument of learned State counsel that the sale deeds, dated 17.06.1983 and 16.07.1984 (Annexures A-4 and A-5 with RFA No. 1810 of 1990), could only be relied upon by applying an appropriate cut or a deduction, lacks conviction and cannot be countenanced. The total land under acquisition in RFA Nos. 1660 and 1810 of 1990 was barely 2 acres 2 kanals and 12 marlas. The land under acquisition was under a rapid development. Thus, in the given situation it indeed was hard and rare to come by sale instances of a larger or a bigger area. And if indeed there were any, the State could always produce those sale deeds to substantiate its plea. Therefore, causing any further deduction in the sale consideration reflected in the sale deeds (Annexures A-4 and A-5 with RFA No. 1810 of 1990) would be unjust.

Needless to assert that since the sale deed, dated 16.07.1984 Annexure A-5, was executed later in point of time than the sale instance, dated 17.06.1983 Annexure A-4, and comparatively at a higher rate, the claimant/landowners are indeed entitled to the best value for their land-holding. Thus, the value of the acquired land as on 16.07.1984 was Rs.23.61p. per square yard. And, for the notification under Section 4 of the Act, in RFA Nos. 1660 and 1810 of 1990, was issued more than two years later, i.e. on 25.07.1986, the claimant/landowners in these appeals shall also be entitled to a suitable/appropriate increase. Evidence on record shows that the acquired land was indeed strategically located, for, the Food Grain

Market, Bhiwani, was situated at a distance of 50/60 yards from the acquired land. And, one road from the acquired land would lead to Hansi and another towards Tosham. And, although the land that was acquired for construction of Hansi-Tosham Bye-pass, was more valuable than the acquired land, but the fact remains that was located just across the Bhiwani-Tosham Road, i.e. opposite to the acquired land. That being so, the irresistible presumption that permeates the record is that the area under acquisition even in these proceedings was under a rapid transformation from agricultural to semi-urban/urban.

The Supreme Court in the case of **The General Manager, Oil and Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel and another**, (2008) 14 SCC 745, observed “.....*Therefore if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same.*”.

Thus, in the facts and circumstances of the matter in hand, it would be just and fair to award 12% cumulative increase to the claimant/landowners for the time difference between the sale deed, dated 16.07.1984 Annexure A-5 and the notification, dated 25.07.1986, under Section 4 of the Act, in RFA Nos. 1660 and 1810 of 1990. Likewise, the claimant/landowners in RFA No. 1654 of 1991, shall also be entitled to 12%

annual increase on cumulative basis for a period of three years. Meaning thereby, the claimant/landowners in RFA Nos. 1660 and 1810 of 1990 shall be entitled to compensation at Rs.29.61p. per square yard and in RFA No. 1654 of 1991 at Rs.33.16p. per square yard. Needless to assert that they shall also be entitled to all the statutory benefits as are admissible in law.

Accordingly, the appeals preferred by the claimant/landowners are disposed of in the above terms.

(ARUN PALLI)
JUDGE

July 26, 2017
Pkapoor

Whether Speaking/Reasoned:	YES / NO
Whether Reportable:	YES / NO