

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RFA No.633 of 2005
Date of Decision : 18.09.2017

Jagdish Chand (now deceased) through his LR's and others

.....Appellants

Versus

State of Haryana and another

..... Respondents

and other connected matters, i.e.

Filed By:	Case No.	Total
Claimant/Landowners	RFA Nos.632, 166 and 169 of 2005	3
State of Haryana	RFA Nos.2661 to 2664 of 2004	4

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: For the Claimant/Landowners

Mr. Shoaib Khan, Advocate for the appellants.

For the respondents

Mr. Sudeep Mahajan, Addl. A.G. Haryana with
Mr. Shivendra Swaroop, AAG, Haryana.

ARUN PALLI, J. (Oral)

Vide this order and judgment, I shall decide a batch of 08 appeals of which 04 have been filed by the claimant/landowners and the rest by the State of Haryana. For, all these appeals arise out of the same acquisition and have been filed against a common award, these are being disposed of by a common judgment. However, by consensus the facts are being culled from RFA No.633 of 2005 (Jagdish Chand (now deceased))

through his Lrs and others Vs. State of Haryana and another).

Vide notification, dated 15.07.1994, issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') a land measuring 2.73 acres, situated in village Ramgarh (Hadbast No.232) and 0.39 acres, situated in Village Bana Madanpur (Hadbast No. 231), Tehsil and District Panchkula was sought to be acquired for the development and utilization of the land as residential, commercial and institutional area in Urban Estate, Panchkula under the Haryana Urban Development Authority Act, 1977. Final declaration under Section 6 was published on 12.07.1995. And, vide award No.2, dated 28.01.1997, the Land Acquisition Collector assessed the market value of the acquired land at Rs.2,50,000/-per acre. As regards super structure, claimants (appellants in RFA No.633 of 2005) were awarded Rs.3,560/-. Being aggrieved by the assessment as also the compensation awarded, the claimant/landowners filed objections under Section 18 to the award rendered by the Collector. Resultantly, the dispute was referred to the Civil Court for determination of the true value of the acquired land. On an analysis of the matter in issue and the evidence on record, the reference Court discarded the sale deeds/sale instances proved on record by the landowners, for, these pertained to an extremely small area. The letter of allotments, vide which fully developed residential or commercial sites, in the vicinity of the acquired land, were allotted by HUDA, were also ignored. Likewise, even the award dated 5.8.2004 (Ex.P-43), whereby a land situated in a different village was acquired, was also ruled out of consideration. Even the sale instances Exhibits R-1 to R-6, proved on record by the State, were also discarded, for, these were executed between

1991 to 1993, whereas the market value of the acquired land was to be assessed as on 15.7.1994. Thus, in the given situation, the reference Court relied upon its previous award (Ex-P-5), dated 29.10.2001 (**Smt. Kreshni Vs. State of Haryana**), vide which the land that also formed part of the same revenue estate i.e. Ramgarh and Bana Madanpur, acquired pursuant to a notification, dated 26.06.1989, under Section 4, was assessed at Rs.3,50,000/- per acre. But, even though there was a time difference of 5 years between the two notifications issued under Section 4, i.e. in the relied upon acquisition and the present proceedings, the reference Court declined to award any annual increase. For, the land under acquisition was situated within the notified sale prohibited area and, except with the permission of the Government, the landowners were prohibited to carve out any residential or commercial plots/sites out of their lands, for the purposes of sale. Accordingly, it was concluded that possibility of any increase or appreciation in the market value of the acquired land even in the year 1994 was minimal. As a result, the acquired land was assessed at the same rate as in Smt. Kreshni (supra) and the claimant/landowners were awarded compensation @ Rs.3,50,000/- per acre. As regards superstructure/construction, the compensation awarded to the claimants (appellants in RFA No.633 of 2005) was enhanced from Rs.3,560/- to Rs.46,000/-. That is how, as indicated above, both the parties are in appeal before this Court. Of course, the landowners seek further enhancement in the compensation. Whereas, the State has appealed to set aside the award rendered by the reference Court.

Mr. Shoaib Khan, learned counsel for the claimants submits

that all what forms basis of the impugned award dated 17.09.2004, is an award (Ex.P5) dated 29.10.2001, vide which, land situated in the same villages i.e. Ramgarh and Banna Madanpur was assessed at Rs.3,50,000/- per acre. However, he submits that in the appeals arising out of the relied upon acquisition, this Court vide order and judgment dated 27.10.2006, in **RFA No.1281 of 1999(Gurdev Singh and others vs. State of Haryana)** had set aside the said award dated 29.10.2001 and the matter was remitted to the reference Court for re-decision. And, the reference Court, post remand, vide award dated 5.9.2009, redetermined the value of the acquired land at Rs.250/- per square yard. And, in the appeals preferred against the subsequent award, dated 5.9.2009, this Court vide order and judgement dated 8.4.2016, in **RFA No.1956 of 2010 (State of Haryana through Land Acquisition Collector, Urban Estate, Panchkula and another Vs. Hans Raj and others)**, had further enhanced the compensation to Rs.380/- per square yard. Thus, as a necessary consequence, the claimant/landowners were entitled to the compensation at the same rate. Further, he asserts, for, there was a time gap of 5 years between the two notifications, issued under Section 4, in the case of **Hans Raj and others (supra)** and in the present acquisition, the claimants were/are also entitled to a suitable or an appropriate increase. And, even if, the acquired land was agricultural in nature, still it possessed enormous potential, to be utilized for residential, commercial and institutional purpose. Thus, he asserts that reasons assigned by the reference Court to deny even an appropriate increase in the value of the acquired land were wholly erroneous. As regards compensation awarded for superstructure, he submits that the claimants (in RFA No. 633

of 2005), had examined the valuer Amar Singh (PW-7), who proved his report Ex.P40, vide which, the construction that existed upon their land was evaluated at Rs.86,100/-. And, even though the respondents led no evidence in this regard, the reference Court awarded Rs.46,000/- only, whereas it ought to have granted compensation in terms of the valuation report.

The factual position as sketched out above is not disputed by learned State counsel. However, he submits that the compensation assessed and awarded by the Collector was just and appropriate, and therefore, no further enhancement was feasible. In the alternative, he submits that even if it is assumed that the reference Court had rightly relied upon an award Ex.P5, vide which, the land situated in the same revenue estate and adjacent villages was assessed at Rs.3,50,000/- per acre, which was subsequently enhanced to Rs.380/- per square yard, by this Court, in the case of **Hans Raj and others (supra)**, the claimant/landowners were not entitled to any annual increase for the time gap between the two acquisitions. At any rate, he asserts, for, the acquired land formed part of a rural area and was merely agriculture in nature, in terms of the decision of the Supreme Court in **The General Manager, Oil & Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and another**, the landowners could not be awarded increase beyond 7.5% per annum. Rather, he submits that even in the case of **Hans Raj and others (supra)**, this Court had erred in awarding 12% increase to evaluate the value of the land, for, the nature of land under acquisition in both the proceedings was similar. No other argument was advanced.

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

Ex facie, the sale instances Ex.P6 to Ex.P13, brought on record by the claimant/landowners, were ruled out of consideration owing to the smallness of the area that was alienated vide these sale deeds. The documents Exhibits P-29 to P-38 were also ignored as these were letter of allotments, vide which fully developed residential or commercial sites, which formed part of an urban estate, were allotted by HUDA. Even the award, dated 5.8.2004 (Ex.P-43), relied upon by the claimants was also discarded, for, in those proceedings, a land situated in another village i.e. Maheshpur, which formed part of Panchkula, was acquired. Whereas the acquired land was located across the Ghaggar river. Likewise, even the sale instances Exhibits R-1 to R-6 proved on record by the State were also rejected, for, these were executed between 1991 to 1993, whereas the value of the acquired land was to be assessed as on 15.7.1994. Although, per se, the reasons assigned by the reference Court, to discard these sale instances, may not be sustainable, but the fact remains that these sale deeds were executed for a consideration of Rs. 43,009.60/- to Rs. 95,294.11/- per acre, which was abysmally low or far less than the rate at which the Collector had assessed the acquired land i.e. Rs.2,50,000/-per acre. Nothing is brought on record to show as to why these sale deeds (Ex.R1 to R6) were not taken into consideration by the Collector himself. Therefore, the presumption that permeates the record is; these sale deeds were undervalued to evade payment of stamp duty. Thus, were unsafe to be the basis of assessment. In the given situation, the reference Court relied upon a judicial precedent or

it's previous award (Ex.P5), dated 29.10.2001. Concededly, even the land under the relied upon acquisition (Ex.P5), formed part of the same revenue estate i.e. Village Ramgarh and Bana Mandanpur and other adjacent villages. Not just that, it was acquired for the same purpose i.e. for the development and utilization of land as residential, commercial and institutional area in Urban Estate, Panchkula. This was never the case of the State at any stage, either before the reference Court or in the present proceedings, that the land under acquisition in the relied upon award (Ex.P5) was dis-similar to the acquired land in nature, quality and value. Rather, the evidence on record shows that the acquired land was not only surrounded by the land under acquisition in the previous proceedings, but indeed was an integral part thereof. In fact, the observations recorded by the reference Court itself are; that a major chunk of land, situated in village Ramgarh (655.93 acres) and Bana Madanpur (485.97 acres) had already been acquired for development of sectors 26 to 28 in the earlier acquisition and the acquired land, which was a fragment thereof, was acquired later in the year 1994. Thus, in the absence of any other cogent or credible evidence, reliance placed by the reference Court, upon a judicial precedent (Ex.P5) was not only the most suitable but also the safest mode to determine the true value of the acquired land. Having said that, it also needs to be noticed that in the appeals arising out of the relied upon acquisition, this Court in the case of **Hans Raj and others (supra)** had enhanced the compensation to Rs.380/- per square yard. Meaning thereby, value of the acquired land as on 26.06.1989 i.e. date of notification under Section 4 in the case of **Hans Raj and others (supra)**, was Rs.380/- per

square yard.

This brings me to a short but a significant question; whether the claimant/landowners are entitled to any annual increase for the time difference between the two notifications, and if yes at what rate? Before I proceed further, it would be apposite to refer to the reasons assigned by the reference Court declining to factor in any increase to evaluate the acquired land **“as the present acquired land falls within the notified sale prohibited area and the petitioner could not develop it by selling in form of the plots without the permission of the Government and even for utilization of this acquired land, the roads developed by HUDA are to be used with the permission of the respondent and HUDA and hence, potentiality of this acquired land is appreciated in the light of these facts and circumstances, then there was no possibility of much increase in the market value of the acquired land even in the year 1994”.**

An analysis of the observations recorded by the reference Court reveals that all what it meant was; since the acquired land was agricultural in nature, the claimant/landowners, except with the permission of the Govt. or obtaining a change of land use (CLU), were prohibited to carve out residential or commercial plots/sites, out of their holdings, for, the purposes of sale. Thus, even though the acquired land was surrounded by fully developed residential and commercial sites, the possibility of any substantial increase/or appreciation in the value of the acquired land as such was minimal. Apparently, the reasons assigned by the reference Court are erroneous. For, prohibition, if any, was only as regards usage of the acquired land for residential or commercial purposes, which under no

circumstances could cease or curtail the natural process of appreciation or escalation in the value of the acquired land, even though it was agricultural in nature. Therefore, if with flux of time and owing to the rapid development all round the acquired land it acquired the potentiality of being used for residential, commercial and industrial purposes, it was/is inevitable to factor in those features to evaluate at its true value. As indicated earlier, the notifications under Section 4 in **Hans Raj and others (supra)**, was issued on 26.06.1989 and in the matter at hands on 15.07.1994 i.e. 5 years later. The Supreme Court in the case of **The General Manager, Oil & Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel & another 2009(1) L.A.R.206** had observed that there are four factors to be taken into account for the purposes of awarding annual increase;

“11. Primarily, the increase in land prices depends on four factors- situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area.

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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”.

What is the position in the matter at hands? In the case of **Hans Raj and others (supra)** a land measuring 655.93 acres, situated in village Ramgarh, and 485.97 acres, situated in village Bana Madanpur was acquired by the State Government for sectors 24 to 28 in urban estate Panchkula. The site plans on record show that the acquired land, which is merely 2.73 acres, situated in village Ramgarh and 0.39 acres, situated in village Bana Madanpur was located in the center of the land under acquisition in the case of **Hans Raj and others (supra)**. In fact Rajbir Singh Patwari (PW4) testified in his deposition that the acquired land lay in the shape of plots in the developed sectors of HUDA in 1994 itself. Likewise, Harbans Lal Patwari, Halqa Majri (PW6) deposed that from Majri Chowk to Panchkula on the National Highway No.73 towards Sector 28, Panchkula, HUDA had developed sectors 3, 21-II, 22, 23, 24, 25, 26, 27 and 28. And, these sectors were developed by acquiring the land since 1971 onwards. He testified that he had seen the land situated in village Bana Mandanpur and Ramgarh, which was acquired for sectors 25 to 28, Urban estate Panchkula, in the year 1989, and was developed into urban sectors. Further, the acquired land was levelled and left out of earlier acquisition in the year 1989. Harnek Singh Patwari, Halqa Moja Ramgarh (PW8), stated in his testimony that at the time of acquisition of the acquired land, HUDA had already developed the entire area abutting the acquired

land. And works as regards laying of roads sewerage and electrification had already been completed. So much so, HUDA had already carved out plots/sites on all the four sides of the acquired land.

In fact, this Court while while evaluating the value of the land in the case of **Hans Raj and others (supra)** observed:-

“Further, keeping in view the location of the acquired land and the fact that it was situated on both sides of National Highway No.75 going from Chandigarh to Dehradun, the acquired land was having immense potentiality for its use as residential, commercial as well as institutional purposes. Very many commercial and residential establishments were already existing on this very road, including ITBP residential colony, Tribune Colony, ITBP Office Complex and 200 KV sub-station of HSEB. Some other commercial shops, Govt. School, Private Hospital etc. were also situated near the acquired land. Famous Nadda Sahib Gurudwara, situated in the revenue estate of village Nadda, is also not far away from the acquired land, Nadda being the adjoining revenue estate.

In view of what has been discussed hereinabove, it can be safely concluded that the acquired land was highly potential and could have been easily put to residential as well as commercial use. Other sectors of Panchkula situated between Ghaggar river and National Highway No.22, which goes from Ambala to Shimla, have

also been connected with the acquired land with a 60 meter wide road. It is known as M2 road leading from Sector 3-21 to Sector 23-24, being part of the above-said development plan. Recreational zone of the area, including Panchkula Golf Course, HUDA Sports Complex and IT Park are also not far away from the acquired land. All the above-said peculiar facts and circumstances of the case would show that the acquired land was a part of most happening area at the relevant point of time, having been situated in close proximity of Panchkula”.

Thus, *ex facie*, the acquired land was a fragment and an integral part of the land that was under acquisition in the case of **Hans Raj and others (supra)**. And, 5 years later when the notification under Section 4, dated 15.07.1994, was issued in the present proceedings the entire area surrounding the acquired land was fully developed and well equipped with all the amenities and modern days facilities. Therefore, without a doubt, the land under acquisition, had transitioned into an urban area and could indeed be used as such.

The matter can be viewed from yet another perspective. Vide award, dated 17.06.1998, rendered by the Collector, in the case of **Hans Raj and others (supra)**, value of the land, categorized as *chahi*, was assessed @ Rs.1,10,000/- per acre as on 26.06.1989. Whereas, in the present proceedings the Collector had assessed the acquired land, as on 15.07.1994, @ Rs.2,50,000/- per acre. Thus, difference in the rate or value of the land assessed by the Collector himself, within a period of 5 years,

works out to 18% cumulative increase.

Thus, in conspectus of the above, the only and the inevitable conclusion that could be reached is; that the claimant/landowners are entitled to, at least, 15% annual increase, on cumulative basis, for a period of five years, upon the value of the land assessed by this Court in the case of **Hans Raj and others (supra)** i.e. 380 per square yard.

As regards the argument that the enhancement awarded by the reference Court qua superstructure was highly inadequate and rather the claimants ought to have been awarded compensation in terms of the valuation report Ex.P40, lacks conviction and cannot be countenanced. Undoubtedly, the respondents had not led any evidence in rebuttal in this regard. However, Amar Singh (PW-7), admitted in his cross-examination; that in his valuation report he had shown the construction at site or the superstructure to be in existence since 1991. Meaning thereby, it was merely 3 years old at the time of issuance of notification under Section 4. But, he conceded that it was on the instructions of the landowners and mere visual observation of the structure he had mentioned the year of construction to be 1991. Which is why the reference Court concluded that report Ex.P40 was on the higher side. Thus, the enhancement awarded by the reference Court from Rs.3,560/-, awarded by the Collector, to Rs.46,000/- does not warrant any interference.

Thus, the claimant/landowners shall be entitled to compensation @ Rs.764.31/- per square yard, as is being depicted, here-in-after.

Year	Original Value	Cumulative Increase @ 15%	Value in rupees (per square yard)
1989	380 Base Year	Nil	380/-
1990	380	57	437/-
1991	437	65.55	502.55
1992	502.55	75.38	577.93
1993	577.93	86.69	664.62
1994	664.62	99.69	764.31

Accordingly, appeals filed by the claimant/landowners are disposed of in the above terms. Needless to assert, the claimants shall also be entitled to all the statutory benefits as admissible in law. Whereas, as a necessary consequence, the State appeals are dismissed.

18.09.2017

(ARUN PALLI)
JUDGE

Manoj Bhutani

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No