

REPORTABLE

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No. 2074 of 2010 (O&M)
Date of Decision: March 24, 2017

State of Haryana and others

...Appellants

Versus

Jai Pal and others

...Respondents

and other connected matters:

Filed By	Numbers
Claimant/Landowners	RFA Nos. 2522 & 2523 of 2010; 401 & 402 of 2011; 6305, 7276 & 7277 of 2012
State of Haryana	RFA Nos. 2075 to 2077 of 2010; and 5099 to 5101 of 2014

CORAM: HON’BLE MR. JUSTICE ARUN PALLI

Present: For the Claimants/Landowners

Mr. Sandeep Parkash Chahar, Advocate
(in RFA No. 6305 of 2012)
Mr. B.K. Bagri, Advocate,
(in RFA Nos. 2074 to 2077, 2522 and 2523 of 2010; and 401 & 402 of 2011)
Mr. Pawan Kumar Hooda, Advocate
(in RFA Nos. 7276 & 7277 of 2012; 5100 & 5101 of 2014)

For the State of Haryana

Mr. Shivendra Swaroop, Asstt. Advocate General, Haryana.

ARUN PALLI, J. (ORAL)

Vide this order and judgment, I shall decide a batch of 14 appeals, of which seven have been filed by the State of Haryana, and the rest are preferred by the claimant/landowners. For, the matter arises out of the same acquisition and the issues that require determination are common, the

same are being decided by a common judgement. However, by consensus, the facts are being culled out from **RFA No. 2074 of 2010**, titled “**State of Haryana and others v. Jai Pal and others**”.

1. Vide notification, dated 17.06.2002, issued under Section 4 of the Land Acquisition Act, 1894 (for short, ‘the Act’), a land measuring 376 kanals and 6 marlas, situated in the revenue estate of village Siwah, Tehsil and District Panipat, was sought to be acquired for construction of the building of District Jail, Panipat. A final declaration under Section 6 of the Act was published on 24.01.2003. And, vide award No. 1, dated 27.09.2004, the Land Acquisition Collector assessed the market value of the acquired land at Rs.4,00,000/- per acre. Being dissatisfied with the assessment and the compensation awarded by the Collector, the claimant/landowners filed objections under Section 18 of the Act, and consequently the dispute was referred to the Civil Court. On a consideration of the matter in issue and the evidence on record, the Reference Court reached a conclusion that the claimant/landowners failed to produce any contemporaneous sale instance on record, for, the sale deeds, dated 05.06.1995 (Ex. P-2) and 26.09.1995 (Ex. P-3), were executed seven years prior to the issuance of notification dated 17.06.2002, under Section 4. And the State too did not produce any sale deeds/sale instances to show as to what indeed was the true value of the acquired land. In the given situation, the Reference Court referred to an award No. 1, dated 05.10.1995 (Ex. P-5), vide which a land, that too was situated in village Siwah, was acquired for construction of Sewerage Treatment Plan by the State Government. And in the appeals preferred against the said award, this Court vide judgment dated **23.03.2010**, rendered in **RFA No. 3147 of 2002**, titled “**Dharam Pal v. State of Haryana and**

others”, had enhanced the compensation to Rs. 12,22,550/- per acre. Resultantly, the Reference Court relied upon the decision of this Court, but as the notification, dated 11.05.1994, under Section 4, in the case of Dharam Pal (supra), was issued eight years prior to the issuance of notification in the present proceedings, the Reference Court also awarded annual increase @ 12% to work out the value of the acquired land. Accordingly, the claimant/landowners were held entitled to the compensation at Rs. 23,96,198/- per acre i.e. Rs.12,22,550/- + Rs.11,73,648/-. That is how, as indicated above, both the parties are in appeal before this Court. Of course, the State prays that the award rendered by the Reference Court be set aside, whereas the claimant/landowners seek further enhancement. A fact that also needs to be referred to here itself is that these appeals are directed against two separate awards, dated 15.12.2009 and 31.07.2012. Albeit vide award dated 31.07.2012, the Reference Court assessed the compensation at Rs. 23,96,198/- per acre, but vide the other, the compensation was granted only @ Rs. 5,00,000/- per acre.

2. Learned State counsel submits that the Reference Court seriously erred while relying upon an award, dated 05.10.1995 (Ex. P-5), as also the decision of this Court in the case of Dharam Pal (supra), for, once, the sale deeds qua a land, that too was situated in village Siwah, were brought on record, the Reference Court ought to have assessed the compensation on the basis of those sale instances only. Particularly, when the sale deeds, dated 05.06.1995 (Ex. P-2) and 26.09.1995 (Ex. P-3), were executed subsequent to the notification dated 11.05.1994, under Section 4 in the case of Dharam Pal, which formed basis of the assessment. Further, he submits that notification under Section 4, in the present proceedings, was

issued on 17.06.2002, whereas the acquisition proceedings in the case of Dharam Pal (supra), were initiated eight years earlier, vide notification, dated 11.05.1994, thus, it was wholly unsafe to rely upon the assessment in those proceedings. In support of his submissions, he placed reliance upon the decision of 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**. It is also urged that in any case, the Reference Court could never award any annual increase, least @ 12%, in the absence of any evidence to indicate that the property prices in the area had actually appreciated post acquisition in the case of Dharam Pal. Rather, he asserts that the sale deeds, dated 05.06.1995 (Ex. P-2) and 26.09.1995 (Ex. P-3), that were executed post issuance of notification, under Section 4, in the case of Dharam Pal (supra), were executed at a lesser rate, which showed that prices had actually depreciated. Lastly, in reference to a decision of this Court, dated 22.11.2006, rendered in **RFA No. 301 of 2005**, titled “**Jitender Singh v. State of Haryana and another**”, he submits that in yet another acquisition, as regards the land situated in village Siwah itself, this Court in reference to a notification, dated 12.09.2001, issued under Section 4, had assessed the market value of the land at Rs. 16,08,000/- per acre, therefore, the claimant/landowners could never be awarded compensation more than what was granted by this Court.

3. Per contra, learned counsel for the claimant/landowners submit in unison, that reliance placed by the Reference Court upon the decision in the case of Dharam Pal (supra), was wholly justified, in the absence of any cogent evidence, and for, the land under acquisition in both the proceedings was situated in the same revenue estate, i.e. village Siwah. And, the decision

rendered by this Court had since attained finality. Rather, in reference to the impugned award, it is submitted that Reference Court itself reached a conclusion that the land under acquisition in the case of Dharam Pal (supra), was located at a distance of 12 – 12 ½ acres from the G.T. Road, whereas the acquired land was situated merely at a distance of about 4 acres. Taking the argument forward, it is submitted that although the Reference Court rightly placed reliance upon the judgment of this Court in the case of Dharam Pal (supra), and for the time difference between the two notifications, issued under Section 4, awarded annual increase @ 12%, but still that only worked out the value of the land that involved in the earlier proceedings as on 17.06.2002. Whereas, the acquired land was far better located and, therefore, more valuable. Thus, the claimant/landowners ought to have been awarded higher compensation. Further, he asserts that a reference to the decision of this Court in the case of Jitender Singh (supra) by the learned State counsel, is hardly of any consequence for neither any such evidence was brought on record before the Reference Court or even this Court.

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

5. Undoubtedly, the claimant/landowners had produced the sale deeds, dated 05.06.1995 (Ex. P-2) and 26.09.1995 (Ex. P-3), vide which the land situated in village Siwah itself was sold at Rs.6,24,999/- and Rs. 4,75,000/-, per acre, respectively. But, it is equally true that in relation to a notification dated 11.05.1994, issued under Section 4, a land measuring 195 kanals and 8 marlas, that too formed part of the revenue estate of village Siwah, was evaluated by this Court, in the case of Dharam Pal (supra), at Rs.12,22,550/- per acre. And, the said assessment had since attained finality

and was conclusive, for the appeals i.e. SLP Appeal (Civil) CC 17847-17864/2011, filed by the State against the decision of this Court were dismissed by the Supreme Court on 14.11.2011. Significantly, this was never the case of the State, either before the Reference Court or even this Court, that acquired land was any different from the land under acquisition in the case of Dharam Pal (supra), in terms of value or quality. Thus, *ex facie*, the sale deeds, dated 05.06.1995 (Ex. P-2) and 26.09.1995 (Ex. P-3), that were executed @ Rs. 6,24,999/- and Rs. 4,75,000/- per acre, for almost half the value of the land in the case of Dharam Pal (supra), were grossly undervalued. And, thus could never be termed as *bona fide* transactions. Notwithstanding, that these documents were brought on record by the claimant-land owners, themselves, for they were entitled to the fair and just compensation. Undoubtedly, if contemporaneous sale deeds/sale instances are on record, which are germane to the acquisition, past precedents or judicial pronouncements shall not be the preferred mode to evaluate the acquired land. But such was/is not the position in the matter at hands, for, no contemporaneous sale instances were brought on record. In fact, the State led no evidence. Thus, in the given situation, the decision rendered in the case of Dharam Pal (supra), was the safest and most suitable evidence that could be the basis of assessment.

6 Of course, the time difference between two notifications, issued under Section 4, in the case of Dharam Pal and the present proceedings was 8 years. But, the only concern that needs to be addressed is: was it still safe to rely upon the assessment in the case of Dharam Pal? For the reasons assigned earlier the answer is 'YES'.

7. Likewise, the grievance of the State that the

claimant/landowners ought not to have been awarded any annual increase, for no evidence was led to show that there indeed was any appreciation in the value of real estate in the area, also lacks conviction and, thus, cannot be countenanced. The evidence on record shows that village Siwah formed part of the Municipal Limits of Panipat even at the time of issue of notification under Section 4 in the present proceedings. The acquired land was surrounded by many industrial and commercial establishments including National Fertilizers Limited, a public sector undertaking. Panipat is called the city of weavers, as it produces textiles and carpets, and has a hand loom weaving industry. The land situated in village Siwah, abuts the Grand Trunk Road (G.T. Road), leading from Panipat to Delhi. Concededly, the subject acquisition was preceded by successive acquisitions in village Siwah itself, for construction of Sewerage Treatment Plant and Police Lines, Panipat respectively. It is a matter of common observation that acquisition of land in the vicinity or adjoining areas, more often than not, bring along basic facilities such as transport, communications, power supplies and other infrastructure. Which, inevitably leads to sudden spurts or escalation in the value of the real estate. Thus, absent any evidence to the contrary, the increase awarded by the Reference Court @ 12% per annum, was wholly justified and does not warrant any interference.

8. As regards the argument of the learned State counsel that in the case of Jitender Singh (*supra*), this Court in relation to a notification, dated 12.09.2001, issued under Section 4, had assessed the value of the land, which too was situated in village Siwah, at Rs. 16,08,000/- per acre and, therefore, the claimant/landowners could never be awarded compensation higher than that, is not sustainable either. The claimant/landowners, in

support of their claim for enhancement, had proved on record Award No. 1, dated 05.10.1995 (Ex. P-5), in the case of Dharam Pal (supra), as also the decision of this Court, dated 23.03.2010, in appeal against the said award. Concededly, the decision of this Court in the case of Jitender Singh (supra) was rendered on 22.11.2006, when the Reference Court was still in seisin of the dispute. The impugned awards were rendered by the Reference Court on 15.12.2009 and 31.07.2012, respectively, i.e. years after the decision in the case of Jitender Singh (supra). Thus, despite due knowledge and opportunity the State did not choose to lead any such evidence. Not just that, no such evidence was brought on record of this Court either by way of additional evidence or even otherwise. For, learned State counsel sought to refer to these document(s), only during the course of hearing of these appeals. Needless to assert that had the State tendered in evidence the decision in the case of Jitender Singh, and the requisite material, such as site plans etc. to show that it indeed had a decisive bearing on the matter, the claimant/landowners would have had a chance to rebut that. Need I say that no such material could be taken cognizance of.

9. Having said that, I may now advert to the claim of the landowners for further enhancement. *Ex facie*, the conclusion arrived at by the Reference Court reveals that the land that was a subject matter of acquisition in the case of Dharam Pal (supra) was located at a distance of 12 – 12½ acres from the G.T. Road, whereas the acquired land was located merely at a distance of 4 acres. So much so, in reference to the site plan (Ex. P-1), the Reference Court recorded in no uncertain terms; “**...It has been convincingly shown by the petitioners that the land, the subject matter of the notification dated 11.5.1994, which was acquired for the purpose of**

sewerage treatment plant, is located at a distance of 12 – 12½ acre from G.T. Road, whereas the acquired land, in the present case, is located at a distance of about 4 acres from the G.T. Road, as is also evident from site plan Ex. P1. In these circumstances, the land, the subject matter of the present petition, is at preferential location to that of the previous notification qua which the Award Ex. P5 and RFA No. 3147 of 2002 have been decided.”. No doubt, the decision in the case of Dharam Pal (supra) formed basis of the assessment in the present proceedings and was rightly relied upon by the Reference Court. But having concluded that acquired land was located at a preferential location, in comparison to the land in the case of Dharam Pal (supra), the Reference Court ought to have assessed the acquired land a shade better. Learned State counsel could not justify as to how and why the acquired land could still be evaluated at par with the land in the case of Dharam Pal (supra). Therefore, in my considered view, the value of the acquired land, owing to its preferential location or proximity to the G.T.Road, would at least be 5% more than the land that was a subject matter of acquisition in the case of Dharam Pal (supra), i.e. Rs. 12,22,550/- + Rs.61,127.50p. (5%) = Rs.12,83,677.50p, which is rounded off to Rs.12,83,678/- per acre.

10. There is yet another issue that needs to be addressed. The Reference Court had awarded 'annual increase' at a 'flat rate' of 12% to the claimant/landowners. Whereas, the Supreme Court while considering a similar issue in the case of ONGC (supra), had held that *as the percentage of increase is always with reference to the previous year's market value, the appropriate method is to calculate the increase cumulatively and not applying a flat rate*. Thus, the claimant/landowners shall be entitled to a

cumulative increase @ 12% per annum, for the time difference between the two notifications, from 1994 to 2002, issued under Section 4 in the case of Dharam Pal and these proceedings:

Year	Base rate (in Rs. per acre)	Cumulative increase @ 12% annual	Total (Col. 2+3) Rs. per acre (rounded)
(1)	(2)	(3)	(4)
1994	12,83,678/-	Nil (being Base Year)	12,83,678/-
1995	12,83,678/-	1,54,041/-	14,37,719/-
1996	14,37,719/-	1,72,526/-	16,10,245/-
1997	16,10,245/-	1,93,229/-	18,03,474/-
1998	18,03,474/-	2,16,417/-	20,19,891/-
1999	20,19,891/-	2,42,387/-	22,62,278/-
2000	22,62,278/-	2,71,473/-	25,33,751/-
2001	25,33,751/-	3,04,050/-	28,37,801/-
2002	28,37,801/-	3,40,536/-	31,78,337/-

11. Thus, the market value of the acquired land is assessed as Rs.31,78,337/- per acre, on the date of notification, dated 17.06.2002, issued under Section 4 of the Act. The claimant/landowners shall also be entitled to all the statutory benefits admissible in law.

In conspectus of the above, the appeals preferred by the claimant/landowners are disposed of in the above terms and the award(s) rendered by the Reference Court are modified accordingly. And, as a necessary consequence, the appeals filed by the State are dismissed.

(ARUN PALLI)
JUDGE

March 24, 2017
P Kapoor

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