

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RFA-4236-2016 (O&M)
Date of Decision: November 15, 2017

Haryana State Industrial Development Corporation (now Haryana
State Industrial and Infrastructure Development Corporation Limited).

...Appellant

Versus

Ram Kanwar (Deceased) through LRs and others

...Respondents

and other connected matters, i.e.

Filed By	Case Nos.
Claimant/ Landowners	RFA Nos. 5814, 5817, 5820, 5823, 5828, 6022 to 6027, 6284 to 6298, 6792, 6793, 7304, 7333 & 7334 of 2015; 395, 492, 944 to 963, 1034, 1035, 1402, 1494 to 1506, 1663 to 1665, 1746 to 1763, 1806 to 1808, 1860, 1881, 2367 to 2369, 2409, 2582 to 2592, 3259, 3939, 4137, 4509 & 4514 of 2016; 55 to 61, 568, 806, 1134 & 2802 of 2017; and XOBJR No. 33-CI of 2017 in RFA No. 782 of 2017.
HSI IDC	RFA Nos. 6743 to 6785 of 2015; and 686 to 714, 723, 724, 755 to 785, 792 to 795, 828 to 864, 886 to 888, 895 to 896, 924 & 925 of 2017.

CORAM: HON’BLE MR. JUSTICE ARUN PALLI

Present: For the claimant/landowners

Mr. Aditya Singh Yadav, Advocate,
(in RFA Nos. 6761, 6765 & 6766 of **2015**; 1034, 1035 & 3259 of **2016**; and 698, 707, 768, 771, 793, 843 & 925 of **2017**)

Mr. Arun Yadav, Advocate,
(in RFA Nos. 6022 to 6027, 6745 to 6747, 6751, 6762 & 6784 of **2015**; 944 to 963 & 4514 of **2016**; and 55 to 61, 686 to 689, 692, 703 to 706, 710, 711, 714, 758, 765, 767, 774, 777, 779 to 781, 783, 784, 792, 794, 828, 829, 832, 833, 837, 841, 844, 848, 851, 853, 854, 856 & 886 to 888 of **2017**)

Mr. B.K. Bagri, Advocate,
(in RFA Nos. 5814, 5817, 5820, 5823, 5828, 6284 to 6298, 6743, 6744, 6748 to 6750, 6752 to 6760, 6763, 6764, 6767 to 6783, 6785, 6792, 6793, 7304, 7333 & 7334 of **2015**; 1402, 1494 to 1506, 1746 to 1763, 1806 to 1808, 1860, 1881, 2367 to 2369, 3939, 4137 & 4236 of **2016**; and 568, 693, 694, 699, 700, 708, 712, 713, 723, 755 to 757, 760 to 764, 769, 770, 772, 773, 776, 782, 785, 806, 831, 834, 838, 836, 842, 845, 847, 849, 850, 852, 855, 857, 860 to 863, 895 & 1134 of **2017**)

Mr. J.P. Jangu, Advocate,
(in RFA Nos. 2582 to 2592 of **2016**; and 690, 691, 696, 701, 702, 724, 759, 775, 778, 840, 859 & 864 of **2017**)
Mr. Jai Singh Yadav, Advocate,
(in RFA Nos. 395, 492 & 1860 of **2016**; and 695 & 896 of **2017**)
Mr. Rozer Kumar Aggarwal, Advocate,
for Mr. Gaurav Aggarwal, Advocate,
(in RFA No. 835 of **2017**)
Mr. Sandeep Kumar Yadav, Advocate,
(in RFA Nos. 795 & 846 of **2017**)
Mr. Sanjay Mittal, Advocate,
(in RFA No. 4509 of **2016**; and 858 of **2017**)
Mr. Sanjay Vashisth, Advocate,
(in RFA Nos. 1663 to 1665 & 2409 of **2016**; and 697, 709, 830, 839, 924 & 2802 of **2017**)
Mr. Sushil K. Sharma, Advocate,
for Mr. M.L. Sharma, Advocate,
(in RFA No. 766 of **2017**)

For State of Haryana

Ms. Safia Gupta, Assistant Advocate General, Haryana.

For HSIIDC

Mr. Pritam Singh Saini, Advocate.

ARUN PALLI, J. (ORAL)

Vide this order and judgment I shall decide a batch of 280 appeals, of which 126 appeals and one cross-objection have been filed by the claimant/landowners, and the rest 154 by the HSIIDC (the beneficiary of the acquisition). Although four separate awards rendered by the Reference Court on different dates, i.e. 30.05.2015, 16.07.2015 and two awards of an even date i.e. 28.07.2015, have been assailed in the present proceedings, but since the matter arises out of the same acquisition, these are being disposed of by a common judgment. However, by consensus, the facts are being culled out from **RFA No. 4236 of 2016, titled “HSIIDC v. Ram Kanwar (Deceased) through LRs and others”**.

Vide notification, dated 08.06.2007, issued under Section 4 of the Land Acquisition Act, 1894, a land situated in three different villages, i.e. Rudh, Chirahara and Bawal, Tehsil Bawal, District Rewari, was sought to be acquired for extension of Industrial Growth Centre, Bawal. Final declaration under Section 6 was published on 27.02.2008. The Land Acquisition Collector, vide three separate awards for each of the villages, i.e. Award No. 3-R, dated 29.08.2008, for village Rudh; Award No. 2-R, dated 29.08.2008, for village Chirahara; and Award No. 5-R, dated 25.09.2008, for village Bawal, assessed the market value of the acquired land at Rs.16,00,000/- per acre. 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. The Reference Court vide impugned award dated 30.05.2015, while relying upon a judicial precedent or its earlier award, dated 17.01.2015 (Ex.P-7), rendered in LA Case No. 161 of 2011, titled “Babu Lal and others v. State of Haryana and others”, enhanced the compensation awarded to the claimant/ landowners, as regards village Rudh, to Rs.22,00,000/- per acre. And subsequently, as regards the land situated in villages Chirahara and Bawal, the Reference Court, vide two separate awards, dated 16.07.2015 and 28.07.2015, awarded compensation to the claimant/landowners in terms of it's earlier award dated 30.05.2015. But in the present appeal i.e. RFA No. 4236 of 2016, the respondent/claimants, vide award dated 28.07.2015, were also awarded a sum of Rs.2,98,000/-, as compensation on account of superstructure. That is how, as indicated above, both the parties are in appeal

before this Court.

Learned counsel for the parties are *ad idem* that all what forms basis of the impugned award, dated 30.05.2015, rendered first in point of time, is a judicial precedent or an award, dated 17.01.2015, vide which the Reference Court had assessed value of the land, acquired vide notification, dated 31.10.2008, situated in the adjacent village i.e. Deodhai, at Rs.22,00,000/- per acre. It is not disputed either that vide three subsequent awards, dated 16.07.2015 and two separate awards of even date, dated 28.07.2015, the Reference Court awarded compensation at the same rate, i.e. Rs.22,00,000/- per acre. It is the common case of the parties that against the relied upon acquisition, i.e. award dated 17.01.2015, the claimant/landowners as also the beneficiary of the acquisition, i.e. HSIIDC, had preferred appeals to this Court. And, vide order and judgment, dated 25.10.2017, rendered in **RFA No. 3522 of 2015 (Babu Lal and others v. State of Haryana and others) and other connected matters**, this Court set aside the award, dated 17.01.2015, and remitted the matter to the Reference Court for re-decision. Thus, it is submitted that as the very basis of the impugned awards is non-existent, as a necessary consequence, even the awards assailed in these appeals are required to be set aside. And the matter shall have to be remanded for a decision afresh.

Rather, I am reminded to clarify at this juncture that out of the 280 appeals and one cross-objection, 170 appeals preferred by the parties were pending post admission, whereas the rest 110 appeals were still at the motion stage for want of service. But since the appeals preferred against the relied upon acquisition or award, dated 17.01.2015, were disposed of by this

Court, vide judgment rendered in the case of **Babu Lal and others (supra)**, a Civil Miscellaneous Application No. 12351-CI-2017 in RFA No. 6744 of 2015, was moved by the beneficiary of the acquisition, for passing appropriate orders in these appeals. Accordingly, vide order dated 10.11.2017, the Registry was directed to list these appeals and all other connected matters. But as either the un-served respondents are represented by their respective counsel in the cross-appeals or have now entered appearance, the service in these appeals is complete.

But as indicated above, there indeed is an additional issue that also requires determination by this Court. The Reference Court vide award dated 28.07.2015, under challenge in **RFA No. 4236 of 2016 [HSI IDC v. Ram Kanwar (Deceased) through LRs and others]**, had awarded Rs.2,98,000/- to the claimant/respondents on account of superstructure that existed upon their land holding. The grievance of the claimant/landowners is that although they had examined Shri Satya Pal, Building Valuer (PW-8), and proved the valuation report Ex.PW-8/2, which showed that the estimated cost of construction and the value of the trees that existed upon the land of the claimants, was Rs.31,58,000/-, the Reference Court merely awarded Rs.2,98,000/-, even though the State had failed to lead any evidence in rebuttal. Thus, it is urged that claimants be awarded compensation in terms of the valuation report Ex.PW-8/2.

Per contra, learned counsel for the beneficiary of the acquisition submits that the Land Acquisition Collector had awarded Rs.1,49,000/- to the claimants for the structure. And, as the claimants failed to lead any evidence to show that any trees ever existed upon the acquired land, they

were not awarded any compensation in this regard by the Collector. So much so, the Reference Court even found the testimony of the Building Expert, Shri Satya Pal (PW-8) being inconsistent. Further, he never served any notice upon the State/HSIIDC before conducting the spot inspection. No photographs of the site were taken before finalizing the site plan. Copy of the rates on the basis of which the valuation report was finalized, were not appended with the report either. The quality of material that was used in constructing the site and the place from where the material was procured, were not even mentioned in the report. Therefore, he rather asserts that the claim of the claimant/landowners, for further enhancement, ought to have been declined. Particularly, for the enhancement awarded by the Reference Court from Rs.1,49,000/- to Rs.2,98,000/-, is not preceded by any independent analysis of the report and the material it was based upon. But by just awarding double the amount awarded by the Collector. Thus, the finding recorded by the Reference Court is perverse.

Here is a case where both the parties are aggrieved by the finding rendered by the Reference Court evaluating the cost of structure. Faced with this, learned counsel for the parties submit that as regards compensation for the trees, that purport to have existed upon the acquired land, no exception can be taken to the finding recorded by the Reference Court. And, thus the same be maintained. But in so far as the value of the superstructure; the finding rendered in this regard be set aside, for, even this issue can also be re-determined by the Reference Court while re-evaluating the value of the acquired land.

In conspectus of the above, the impugned awards are set aside.

The matter is remanded to the Reference Court for re-decision. For, now the Reference Court shall re-determine the true value of the acquired land as also the value of the superstructure, as indicated above, it is deemed expedient to observe that the parties shall be granted two effective opportunities each, on the dates that shall be specified by the Reference Court in this regard, to lead any further evidence, if so advised. But in the event of default, no further opportunity shall be granted at any cost. It is the common case of the parties that pursuant to the impugned awards, the claimant/landowners have since realized the enhanced compensation qua the acquired land as also the amount awarded as regards superstructure (in RFA No. 4236 of 2016). Therefore, it is made clear that the amount that has already been released, shall not be recovered till the matter is re-decided. However, the Reference Court shall pass necessary and appropriate orders in this regard as the situation would so warrant while rendering a final judgment. The parties through their respective counsel shall appear before the District Judge, Rewari, on 27.11.2017. However, in the facts and circumstances of the case, the Reference Court is requested to decide the matter within a period of three months from the date the parties shall cause appearance. Needless to assert that this order shall not constitute any expression of opinion on the merits of the case of either party. And, the Reference Court shall decide the same on merits and strictly in accordance with law.

Before I part with the matter, I consider it appropriate to clarify that while passing the impugned awards, as indicated earlier, the Reference Court had relied upon an earlier acquisition or award, dated 17.01.2015. And

even though the said award was set aside by this Court in the case of Babu Lal and others (supra), and the matter was remitted for re-decision, these appeals could still be kept pending to be considered after the decision of the Reference Court. However, the fact that has necessitated this order is that the Reference Court had relied upon an acquisition in which the notification, dated 31.10.2008, under Section 4, was issued a year and four months later than the notification dated 08.06.2007, in the present proceedings. Suffice it to say that reliance upon the post notification sale instances or acquisition, to assess the true value of the acquired land, is ordinarily unsafe, and should, therefore, be avoided. Thus, in the given situation, it shall be appropriate and rather necessary if the land references arising out of this matter are decided alongwith the matter in the case of Babu Lal and others (supra), if not earlier. And by the same Court.

All these appeals as also the cross-objections are accordingly disposed of in the above terms. The Registry is directed to return the LCR to the Reference Court forthwith.

(ARUN PALLI)
JUDGE

November 15, 2017
P Kapoor

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