HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

RA-RF No.122-CI of 2017 (O&M) in
RFA No.978-2015 and other
connected cases
Date of Decision:26.9.2017

Siri Chand

...Applicant/appellant

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Ashwani Talwar, Advocate,
Mr.Akshay Jindal, Advocate,
Mr.Chiranshu Bansal, Advocate for
Mr.Vikram Singh, Advocate for the applicant(s)/appellants.
Mr.Sudeep Mahajan, Advocate, Addl.A.G., Haryana With
Mr.Abhinash Jain, AAG, Haryana.
Mr.Vishal Garg, Advocate and
Mr.Satish Singla, Advocate for HSIIDC.

RAMESHWAR SINGH MALIK, J. (Oral)

This bunch of 32 review applications bearing RA-RF Nos. 110-CI to 115-CI, 117-CI, 119-CI to 123-CI, 125-CI, 127-CI, 137-CI, 138-CI, 143-CI, 146-CI, 148-CI, 150-CI, 151-CI, 156-CI, 162-CI, 163-CI and 165-CI, 167-CI to 169-CI, 171-CI and 174-CI to 176-CI of 2017 in RFA Nos. 966, 1340, 974, 977, 970, 2516, 979, 969, 967, 973, 978, 1350, 975, 1339, 972, 1349, 1353, 1363, 1358, 1364, 1357, 1354, 654, 653, 652, 6403, 968, 981, 971, 980, 1351 and 976 of 2015, respectively, is being decided vide this common order, with the consent of learned counsel for the parties, as the issue involved in all these cases is one and the same. However, for the facility of reference, facts are being culled out from RA-RF No.122-CI of 2017 in RFA No.978 of 2015.

Delay applications

Notice of the review application(s) as well as application(s) for condonation of delay in filing the review applications was issued to the counsel opposite, vide order dated 18.5.2017 for 8.8.2017. However, in RA-RF-165-CI of 2017, RA-RF-163-CI and RA-RF-162-CI-2017 in RFA Nos. 652 to 654 of 2015, respectively, notice of the review application(s) as well as application(s) for condonation of delay of 408 days in filing the review applications was issued on 26.5.2017 for 8.8.2017.

Learned counsel for the State as well as learned counsel for HSIIDC sought and were granted time to file their respective replies, if any, before the next date of hearing with an advance copy to the learned counsel for the applicants-appellants, adjourning the case to 5.9.2017. Thereafter, one more opportunity was sought and granted to the learned counsel for the HSIIDC on 5.9.2017, adjourning the case for today.

Reply to review application as well as the reply to the application for condonation of delay, was filed on behalf of non-applicant-HSIIDC, only in one case of Siri Chand in the Court today and the same has been taken on record. Copies of the reply filed in the Court were supplied to the learned counsel for the review applicants.

Heard learned counsel for the parties.

Learned counsel for the applicants, while explaining the delay of 395 days in filing the review applications, places reliance on the averments taken in para 2 of the application bearing CM No.5095-CI-2017 of 2017 for condonation of delay. Averments taken in para 2 of the application for condonation of delay read as under:-

"That the impugned orders were passed by this Court on 03.03.2016. The applicant-appellant preferred an SLP and vide common orders dated 12.04.2017 passed in SLP (Civil) 30391 to 30411 along with a bunch of other SLPs, the Hon'ble Supreme Court dismissed the SLPs but granted liberty to the applicant-appellant to approach this Court by way of filing the present review petition. If the time period is considered from 12.04.2017, the review petition is within less than one month from the date of orders. However, since the limitation is to be computed from the date of passing of the impugned orders dated 03.03.2016, there is a delay of 395 days in filing of the review petition."

Para 2 of the reply filed on behalf of the non-applicant/HSIIDC reads as under:-

"That the present application for condonation of delay of 395 days in filing of the present review application is not maintainable as no plausible explanation for such delay has been given. In view of the facts and circumstances of the present case, the same is liable to be dismissed being no plausible explanation.

It is humbly submitted that applicants have already approached the Hon'ble Supreme Court and withdrawn their SLPs. Hence, the present application at this stage is not only abuse of process of law but also without any reasoning. Hence the same is liable to be dismissed."

Learned counsel for the applicant submits that in the cases where SLPs were withdrawn and no liberty was sought or granted by the Hon'ble Supreme Court, no review application has been filed. He further submits that in all these cases in hand, Hon'ble Supreme Court has specifically left this point open to be decided by this Court and that is how all these review applications have been filed. Learned counsel for the nonapplicants could not deny this factual aspect of the matter.

After hearing the learned counsel for the parties, applications for condonation of delay are allowed, for the reasons stated therein and delay of 395 days in some cases and 408 days in other cases filing the applications for review, is condoned because of the fact that the matter remained pending before the Hon'ble Supreme Court, as referred in the above-said para 2 of the application for condonation of delay.

Delay applications stand disposed of.

Review applications

Seeking review of the judgment dated 3.3.2016 (Annexure A-1) passed by this Court, applicant(s) have taken the grounds of review in para 8 of the review application and the same read as under:-

> *"That the impugned orders dated 03.03.2016 (A-1) are not sustainable in the eyes of law and the applicant-appellant is in fact entitled to a compensation @ Rs. 1,062/- per Sq. Yard in lieu of the acquired land inter alia on the following amongst other grounds: -*
>
> > *(i) That the basis of determination of the value of acquired land is the orders dated 01.03.2016 (A-3) passed in the case of Indian Oil Corporation Vs. State of Haryana & others and this Hon'ble Court, in respect of the land situated in Village Bohli and where Notification under Section 4 issued on 14.12.2006, assessed the market value @ Rs. 1,130/- per Sq. Yard. There are a large number of precedents where in respect of the land acquired in or around Panipat, the annual variation in the prices has been taken @ 12%. While determining the price of the land in the case of Tara Chand (A-4), where date of Notification*

was 30.06.2005, by taking into consideration the fact that the time gap between the land acquired in the orders Annexure A-3 (14.12.2006) was 18 months, this Hon'ble Court applied a reverse cut of 20% and determined the value of Rs.904/- per Sq. Yard. However, while determining the price in the instant case of appellant, where the date of Notification under Section 4 was 16.06.2006 and there was a time gap of only 6 months from the Annexure A-3 and reverse cut @ 6% should have been applied on the price of Rs. 1,130/- per Sq. Yard as determined in the orders (A-3), this Hon'ble Court took the base value of Rs. 904/- which was arrived at after making a reverse cut of 20% and thereafter, gave an increase of 12% on account of the fact that the Notification in the instant case was issued one year later than the orders (A-4) and in this manner the price of the acquired land in the case of the appellant was determined as Rs. 1,013/- per Sq. Yard.

That the factual position is tabulated below: -

Date of order & Annexure	***Land of revenue estate***	***Date of Notification under Section 4 of the Act***	***Price as determined***	***Methodology***
01.03.2016 (A-3)	*Sithana*	*14.12.2006*	*Rs. 1,130/-*	*Sale Deeds*
03.03.2016 (A-4)	*Bohli & Dadlana*	*30.06.2005*	*Rs. 904/-*	*Reverse cut of 20% taking into account the time gap of 18 months between the Notification of order Annexure A-3 and A-4*
Impugned Orders 03.03.2016 (A-1)	*Rajapur*	*16.06.2006*	*Rs. 1,013/-*	*Increase of 12% by taking into account the time gap between orders (A-4) & (A-1)*

Date of order & Annexure	***Land of revenue estate***	***Date of Notification under Section 4 of the Act***	***Price as determined***	***Methodology***
Submission in the present review petition				
	Rajapur	*16.06.2006*	*Rs. 1,062/-*	*Reverse cut of 6% by taking into account the time gap between the Notification of orders (A-3) and the present Notification*

It is the respectful submission of the applicant-appellant that the methodology of reverse cut as adopted by this Hon'ble Court while determining the market value of the acquired land in Tara Chand's case (A-3) has been duly approved by the Hon'ble Supreme Court. Once that is so, while determining the price of the acquired land of the appellant, the reverse cut method should have been adopted. Even otherwise, the time gap is only 6 months in the case of the Order (A-3) and in the instant case whereas between the orders (A-4) and the appellant's the time gap is one year.

That while passing the impugned orders, this Hon'ble Court has adopted a cumbersome methodology i.e. first a reverse cut of 20% has been adopted and thereafter, an enhancement of 12% has been given. Instead of above, only a reverse cut of 6% over the price determined vide the orders (A-3) should have been applied and as already been submitted, once that is done, the price of the acquired land shall work out to Rs. 1,062/- per Sq. Yard alongwith all other satutory benefits available to the appellant under the relevant provisions of the Act."

Preliminary objections taken on behalf of the non-applicant/HSIIDC and reply to the above-said para 8 of the review application read as under:-

Preliminary objections

1. That the answering respondents are filing the single reply in all the review applications in all 32 cases and the same be read as reply to all the review applications being the question involved in all the review applications is identical.

2 That the present Review Application is not maintainable in its present form as all the arguments raised in the present application were raised by the applicants at the time of final arguments which was discussed by this Hon'ble Court and after considering the same, the judgment was passed.

3 That otherwise also the judgment dated 3.3.2016 was passed with the consent of both the parties and there is no explanation whatsoever has been given by the petitioners to justify the withdrawal of their consent in the said order. The relevant portion of the order is reproduced herebelow:

> *"Learned counsel for the parties are ad idem that the instant set of appeals is squarely covered by the order passed today by this Court in RFA No.4694 of 2014 (Tara Chand and others Vs. State of Haryana and others). However, learned counsel for the land owners submit that since there is a time gap between two acquisitions, the land owners would be entitled for the benefit of annual increase. This contention raised by learned counsel for the land owners could not be refuted by learned counsel for the beneficiary department i.e. HSIIDC and rightly so, it being a matter of record.*
>
> *In view of what has been discussed hereinabove, it can be safely concluded that the land owners in the present set of appeals would be entitled for 12% annual increase on the market value assessed by this Court in Tara Chand's case (supra), for the time gap between these two acquisitions. It is a matter of record that date of notification under Section 4 of the Act in Tara Chand's*

(supra) was 30.06.2005, whereas in the present case, notification under Section 4 of the Act came to be issued on 16.06.2006, thus, there is a time gap of one year."

4. *That a perusal of the judgment dated 3.3.2016 clearly shows that applicants have never submitted that their case is liable to be covered by the judgment passed in the case of Indian Oil Corporation Vs. State of Haryana (RFA 1931/2013) whereas they themselves have relied upon the judgment passed in another case and this Hon'ble Court after considering their request has granted the award in their favour. Hence, the review application is liable to be dismissed on this ground only.*

5 That otherwise also once it is clearly established that the judgment dated 3.3.2016 was passed with the consent of both the parties i.e. present petitioner as well as the answering respondents, the same cannot be reviewed. The review application is totally misconceived and is liable to be dismissed."

Reply on merits

1 to 7 XXX XXX XXX XXX

XXX XXX XXX

8. *That the contents of para no.8 are wrong and denied. There is no ground to review made out by the applicants as the order dated 03.03.2016 was passed in their presence and with their consent. Hence all the alleged grounds are not tenable."*

Learned counsel for the applicants in all these identical matters place reliance on the order dated 12.4.2013 passed by the Hon'ble Supreme Court in SLP (C) Nos.30391-30411 of 2016 and other connected SLPs available at page 29 of the review application and the same reads as under:-

"The only point involved in these is whether the High

Court was correct in granting 12% increase on compensation awarded in Tara Chand's case in determining the quantum of compensation at Rs.1013/- per square yard or the High Court should have applied a reverse cut in the compensation assessed in Kashmir Singh's case in which event, according to the petitioner, the compensation would have been at Rs.1062/- per square yard. We decline to go into the said question. The same is, therefore, left to be determined by the High Court in the event the petitioners move the High Court by way of review etc., if so advised."

On maintainability of the instant bunch of review applications, learned counsel for the applicants, drawing support from the above-said orders passed by the Hon'ble Supreme Court, submits that these review applications are very much maintainable, because the Hon'ble Supreme Court left the point involved in these cases to be decided by this Court by way of review. He further submits that RFA No.4414 of 2013 (**Kashmir Singh Vs. State of Haryana and others)** decided on 1.3.2016 at Annexure A-3, pertaining to village Sithana, was followed by this Court in RFA No.4694 of 2014 (**Tara Chand and others Vs. State of Haryana and others)** decided on 3.3.2016 (Annexure A-4), which was pertaining to village Dadlana. Since there was a time gap of about 18 months, this Court rightly applied reverse cut of 20% which has been upheld by the Hon'ble Supreme Court.

He further submits that while deciding the present set of cases pertaining to village Rajapur vide order dated 3.3.2016 (Annexure A-1), this Court, instead of applying the reverse cut of 6% for the time gap of six months between the present set of cases and case of **Kashmir Singh's** case (supra), decided on 1.3.2016, vide Annexure A-3, granted annual increase of 12%, which has resulted in an error apparent on record. He next contended that in case the same principle of reverse cut is applied, which ought to have been applied in the cases in hand, then review applicants would be entitled for enhanced amount of compensation @ Rs.1062/- per square yard instead of Rs.1013 per square yard, which has been granted to the review applicants-appellants in all these cases, vide order dated 3.3.2016 (Annexure A-1), i.e. the order under review. He also submits that so far as **Tara Chand's** case (supra) is concerned, none sought any liberty nor it was granted by the Hon'ble Supreme Court because of which there was no scope of filing the review applications in any of the cases covered by **Tara Chand's** case (supra). He prays for allowing the review applications.

Per contra, learned counsel for HSIIDC, while vehemently opposing the above-said contentions raised by the learned counsel for the review applicants, submits that in spite of the above-said order passed by the Hon'ble Supreme Court the review applications are not maintainable. He further submits that the learned counsel for the parties were *ad idem* before this Court that the cases in hand, lead case bearing RFA No.2963 of 2015, including the instant case of Siri Chand, were covered by **Tara Chand's** case (supra) and in such a situation, the above-said orders passed by the Hon'ble Supreme Court would be of no help to the review applicants.

Learned counsel for the HSIIDC also submits that even if the reverse cut is to be applied in the present set of cases, it is not 6% as claimed by the review applicants, but it would be reverse cut of 7%, which is to be applied and by applying 7% reverse cut, the enhanced compensation would be Rs.1051/- per square yard and not Rs.1062/- per square yard, as claimed by the applicants, on the basis of reverse cut of 6%. Learned counsel for the non-applicant prays for dismissal of all these review applications.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that a bare perusal of the above-said orders passed by the Hon'ble Supreme Court would leave no scope for doubt that the Hon'ble Supreme Court specifically left this point to be determined at the hands of this Court, in the event the appellants before the Hon'ble Supreme Court, moved this Court by way of review. That is what being sought by the review applicants. Had this point not been raised by the review applicants and the above-said order would not have been passed by the Hon'ble Supreme Court, there would not have been any scope for entertaining the present bunch of review applications, at the hands of this Court. Having said that, this Court feels no hesitation to conclude that the above-said orders passed by the Hon'ble Supreme Court would certainly amount granting liberty to the review applicants to approach this Court by way of review applications, thus, all these review applicants are maintainable.

It is a matter of record that learned counsel for the parties were ad idem before this Court on 3.3.2016 when **Mangal Singh's** case (supra) was decided that these cases were covered by the judgment of this Court in **Tara Chand's** case(supra). However, it is equally true that the reverse cut of 20% for a time gap of 18 months applied by this Court in **Tara Chand's** case (supra) has been upheld by the Hon'ble Supreme Court and this fact has gone undisputed before this Court as well. In such a situation, instead of granting 12% annual increase for the time gap between the cases covered by **Tara Chand's** case (supra) and **Mangal Singh's** case (supra), same principle of reverse cut ought to have been applied by this Court.

It is so said because by applying the principle of annual increase instead of applying the principle of reverse cut in the cases in hand, a serious prejudice has been caused to the review applicants-land owners, putting them in a disadvantageous position. This was an error apparent on the record. Once the cases in hand were found squarely covered by **Tara Chand's** case (supra), wherein the principle of reverse cut was applied, the same principle of reverse cut ought to have been applied in the present cases as well, instead of applying the principle of annual increase. Under this undisputed fact situation obtaining on record, all these review applications deserve to be treated as fit cases for review of the order dated 3.3.2016.

The submission made by the learned counsel for the non-applicant-HSIIDC to apply reverse cut of 7% instead of 6%, as prayed on behalf of the review applicants, has been found to be well founded and deserves to be accepted. When the reverse cut of 20% was applied in **Tara Chand's** case (supra) for a time gap of 18 months, applying the same analogy, it would be reverse cut of 7%, which would be applicable in the cases in hand. Other facts are based on record and have gone undisputed before this Court.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that all these review applications deserve to be partly allowed. Instead of applying reverse cut of 6%, as prayed on behalf of the review applicants, reverse cut of 7% is being applied, accepting the contention raised by learned counsel for non-applicant/HSIIDC. Accordingly, the judgment dated 3.3.2016 (Annexure A-1) passed in **Mangal Singh's** case (supra) and the orders passed in other connected cases in terms thereof, would stand modified to the extent that instead of applying the principle of annual increase at the rate of 12%, principle of reverse cut of 7% would be applied.

Consequently, the review applicants-land owners, whose cases were decided in terms of the order dated 3.3.2016 passed in **Mangal Singh's** case (supra), would be entitled for enhanced amount of compensation @Rs.1051/- per square yard instead of Rs.1013/- per square yard. Other directions passed in **Mangal Singh's** case (supra) would remain intact.

Resultantly, with the above-said observations made and directions issued, these review applications stand disposed of, in the above-said terms, however, with no order as to costs. Pending applications for exemption as well as placing on record the documents are also disposed of.

26.9.2017 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No