

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**CM-1060-CI-2018 in/and
RFA No.2629 of 2001
Decided on: 14.02.2018**

Mandir Kaushal Kishore Shivji Maharaj

....Appellant

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.V.K.Jain, Sr.Advocate
with Mr.J.L.Malhotra, Advocate
and Mr.Ravi Kadian, Advocate,
Mr.Aditya Singh Yadav, Advocate, for the land-owners.

Mr.Sudeep Mahajan, Addl.A.G., Haryana
and Ms.Safia Gupta, AAG, Haryana.

G.S. SANDHAWALIA, J. (Oral)

Mr.Aditya Singh Yadav has filed power of attorney on behalf of the appellant.

The present judgment shall dispose of 6 appeals bearing RFA-2629, 2630, 2791, 3220, 3221 & 4579-2001, under Section 54 of the Land Acquisition Act, 1894 (for short, the 'Act'), directed against the Reference Court award dated 07.05.2001, passed by the Addl.District Judge, Rewari, under Section 18 of the Act. Vide the same, the market value of the land has been assessed @ Rs.540/- per sq.yard (Rs.26,13,600/- per acre) upto the depth of 100 meters located on Circular Road as well as on Bawal Road/Chowk, Rewari and @ Rs.450/- per sq.yard (Rs.21,78,000/- per acre) beyond that depth.

The acquisition in question was initiated by Section 4 notification dated 17.05.1990 and Section 6 notification dated 03.05.1991, whereby land measuring 29 kanals 2 marlas was sought to be acquired for developing a

commercial area. The Land Acquisition Collector, vide award dated 30.04.1993, granted a sum of Rs.3 lakhs per acre as compensation, for the acquired land. The Reference Court, thereafter, enhanced the said amount on the basis of a sale deed (Ext.P-7), which was for 30 sq.yards and executed on 25.10.1990, whereby the sale consideration was being Rs.741/- per sq.yard. It is to be noticed that a 25% cut was applied to bring out the sale price to Rs.540/-, as noticed above. The exemplars which were exhibited before the Reference Court were as under:

	Sr.No.	Sale Deed No.	Date of Registration	Area Sq.y.	Price Per sq.yd.
1.	398		31.5.89	120 sq.yard	565/-
2.	3905		10.11.89	30 "	741/-
3.	1921		21.9.81	21 "	952/-
4.	1666		25.10.90	330 "	591/-
5.	2698		2.11.88	30 "	3000/-

Keeping in view the above, Senior Counsel has, accordingly, argued while placing reliance upon Ext.P-12, the site-plan, to submit that the average of said sale deeds had been taken into consideration for the acquisition for the development of Sector 5 HUDA at Rewari in RFA-3353-2001, titled *Bhawani Sahai Vs. State of Haryana*, on 05.05.2008 whereby the notification under Section 4 was of 15.02.1990, for 8.31 acres of land. It was, accordingly, submitted that an average, as such, was taken of the above-said sale deeds to assess the market value @ Rs.993/- and he accordingly, prayed for grant of the same market value.

In alternative, the argument raised was that the sale consideration of Ext.P-9 dated 02.11.1988 should be taken into consideration, for another 30 sq.yards plot, for the price of Rs.3000/- per sq.yard. He has placed reliance upon the judgment of the Apex Court in **Bhagwathula Samanna & others Vs. Special Tehsildar & Land Acquisition Officer, Visakhapatnam Municipality, Visakhapatnam (1991) 4 SCC 506**, to further submit that no cut should be granted.

The third argument raised was that the average of the sale deeds of above Sr.No.1, 3 & 5 should be taken and again the market price be worked out at Rs.1500/- and thus, it was submitted that the amount awarded was on the lower side.

Lastly, it was argued that belting system should not be adopted.

The State Counsel, on the other hand, submitted that Ext.P-9, sale deed dated 02.11.1988 was for a built-up shop and therefore, the same could not be taken into consideration and had rightly been ignored by the Reference Court.

This Court has gone through the record and examined the site-plan and the location, as such of the acquired portion. It is not disputed that the same was within the Municipal limits and close to the bus-stand. The land-owners had examined PW12, Ram Avtar, Draftsman, who was also an Advocate and had depicted the above-mentioned sale exemplars on the site plan (Ext.P-12).

Counsel for the State is well justified in holding out that the sale deed dated 25.10.1990 is a post notification and after a period of more

than 5 months and therefore, cannot be taken into account. Even otherwise, a perusal of the above site-plan would also go on to show that it is situated across the Circular Road in the old city Rewari and away from the acquired land.

The Reference Court has taken into consideration the sale deed dated 10.11.1989, which is falling on the same side of the Circular Road and granted an appropriate cut, which is as per the settled principles laid down in **Trishala Jain and another Vs. State of Uttaranchal and another' 2011 (6) SCC 47**. It is to be noticed that the acquisition in question is for 29 kanals 2 marlas and therefore, keeping in view the principles laid down by the Apex Court, development cut has to be there. The Apex Court has held recently in **Chandrashekar (D) by LRs & others Vs. Land Acquisition Officer & another 2012 (1) SCC 390**, that development cut can go upto 75% and therefore, reference to **Bhagwathula Samanna** (supra) would be of not much help to the land-owners.

The sale deed (Ext.P-9) dated 02.11.1988 was also gone through to show that it was a shop which was constructed and was in possession of a tenant. The said sale deed, though was subject matter of consideration in RFA-3353-2001, but it is apparent that the said factum had not been brought to the notice of the said Bench, regarding the construction which had been raised, which has led to the hike in the market value, whereas, for the other 3 sale deeds, at Sr.Nos.1 to 3, its average market value would work out to Rs.752/-.

Similarly, as noticed, sale deed at Sr.No.4 is post acquisition

and therefore, in view of the settled principles, the said sale deed had to be ignored. The sale deed at Sr.No.1 is of a 120 sq.yard land and the value works out to Rs.565/- whereas the Court has taken into consideration the sale deed whereby the compensation granted was Rs.741/- and then applied a cut to determine the land price @ Rs.540/-. The sale deed of a larger chunk of land if taken into consideration is of 120 sq.yards and if a nominal cut is put on the same, then also, the amount would reduce and would be less than what has been awarded by the Reference Court.

The sale deed at Sr.No.3 is of the year 1981, eight years from date of Section 4 notification and which is much prior to the date of acquisition and it is only qua 21 sq.yards and therefore, the same could not be taken as valid exemplar for taking the market value into consideration. Resultantly, as noticed, if the average of the first 3 sale deeds is also taken into consideration it would work out to Rs.752 and by applying 25% cut, the amount would come to Rs.564/-.

It is settled principle that when market value is assessed always a little bit of guess work is involved and there can be no mathematical precision, as such. Therefore, the amount which has been arrived at by the Reference Court, in such circumstances, does not warrant any interference.

The argument which has been raised lastly that since the property is in the middle of the town, therefore, the principle of belting should not have been applied is worth consideration. Once the land was acquired for a common purpose for developing a commercial area and it was a large contiguous plot which is right in the heart of the town, 200 yards

RFA-2629-2001 & other connected cases

away from the bus-stand, this Court is of the opinion that the appeals of the land-owners to the extent of belting method which has been adopted, is not justified. Accordingly, a uniform amount of compensation of Rs.540/- per sq.yard instead of 450/-, is granted to the land-owners and their appeals are allowed, to that extent. The land-owners will be entitled for all statutory benefits including interest.

Appeals stand disposed of, accordingly.

14.02.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*