

**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

**RFA No.1785 of 2004 & other  
connected cases  
Decided on: 23.03.2018**

Brijeshwar

....Appellant

Versus

Haryana State & others

...Respondents

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

Present: Mr. Jagdish Manchanda, Advocate, for the landowners.

Mr. Sudeep Mahajan, Addl.A.G. Haryana.

Ms. Safia Gupta, AAG, Haryana.

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**G.S. SANDHAWALIA, J. (Oral)**

The present judgment shall dispose of 10 appeals, bearing RFA-1781 to 1785 of 2004, filed by the landowners and RFA-1592 to 1596 of 2004, filed by the State, under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') against the order of the Reference Court, Karnal dated 23.03.2004, wherein for land measuring 62 kanals 7 marlas in Kasba Gharaunda, for public purpose, for the sewerage treatment plant, for treating the sewerage water, the market value of which was assessed @ Rs.62 per square yard (Rs.3,00,080/- per acre).

Vide the award dated 08.03.2001 for the Section 4 notification dated 20.07.1999, the market value of the land was assessed at Rs.2,20,000/- per acre by the Land Acquisition Collector and aggrieved against the same, the landowners preferred reference petitions under Section 18 of the Act. Keeping in view the sale deeds (Ext.P-9 & P-10) dated 02.06.1994 for land measuring 17 kanals 18 marlas, which were 5 years prior to the acquisition process, which was sold for Rs.2 lacs per acre (Rs.41.32/- per sq.yards), the enhancement was granted at Rs.62/- per

sq.yard.

Counsel for the State has submitted that the enhancement of 10% which has been granted for calculating the market value was on the excessive side and the rate should have been 7.5% and therefore, prayed for reduction.

Counsel for the landowners, on the other hand, submitted that firstly, the increase should be at least 15%, keeping in view the potentiality of the land and secondly, it should be cumulative which has not been granted by the Court. He, accordingly, submits that the value, as such, even if the benefit of 12% enhancement is granted, it would come to Rs.3,52,467/-. Though he has also half-heartedly placed reliance upon the five sale deeds dated 13.03.2000 Ex.P1 to Ex.P4 and Ex.P7, which are post notification of Section 4 of the Act, which are for 2 kanals 18 marlas each whereby the rate per acre was Rs.11 lacs. The potentiality of the land, as such, which can be used for the residential purposes cannot be denied, keeping in view the location, as such, which is a factual aspect which has been recorded by the Reference Court.

Counsel for the State also could not dispute the fact that the land fell within the municipal limits as per the notification dated 09.08.1995 four years prior to the acquisition process and that it was part of Ward-1 of the Municipal Committee, Gharaunda and as shown in the site-plan (Ext.P-5).

In such circumstances, the value which has been assessed per sq.yards is well justified, keeping in view the observations of this Court

in **Gurvinder Singh & others Vs. Haryana State 2005 (1) PLR 804**, wherein it has been held that land which falls within the Municipal limits would have all facilities available for infrastructure and development and there would be road, water, electricity etc. rarely available. The land, thus, cannot be classified as agricultural land, as contended by counsel for the State. Reference can be made to the observation therein:-

“10. It is also worthwhile to notice that the land has come within the municipal limits of Sirsa town since 1976 i.e. many years before the notice under Section 4 of the Act was issued. In this regard, statement made by PW-2 Om Parkash, Encroachment Clerk is significant which shows that the site plan of the shops proposed to be constructed by the appellants Exs. P8 and P11 were sanctioned by the municipal committee in the year 1977. Reliance could also be placed on Exs.P13 and P14 where the municipal limits have been delineated by yellow and black lines and the land acquired has been indicated by pink colour. Therefore, the learned Additional District Judge has committed an error in law by proceeding on the assumption that the land is agricultural in character and the rates have been awarded on the basis of classification given by the revenue record. A Division Bench of this Court in the case of Lakhmi Dass (supra) has taken the view that once the land is covered by the municipal limits, then the classification of the acquired land according to old revenue record is held to be unwarranted. In fact the extension of the municipal limits would show the potentials of the land to be developed as a residential or commercial area. On that account also the view taken by the learned Additional District Judge is liable to be modified.”

A perusal of the site-plan, however, would go on to show that there are certain disadvantages of the location of the land, though it might be falling within the Municipal limits, since it is close to the railway line and situated between the same and the sewerage drain which

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is passing by and thus, is 1 km away from the abadi of Village Gharaunda. The witnesses also stated that there are no factories nearby though there is a colony namely Shiv Colony and there is also a cremation ground situated at a distance of 2 acres. Nothing as such could be brought on record by the State regarding as to whether the land was low lying and could not be used for the development of a housing colony. However, PW-4, Jasbir Singh himself admitted that the land was across the railway line. The location of the land which are subject matter of sale deeds, as such, have further been depicted on the site-plan (Ext.P-5).

A perusal of Exts.P-9 & P-10, the sale deeds and the location of the land would go on to show that they are situated close by where the land is located and also upto the drain, as such, on one side and are quite similar in location, as such, as to the land acquired. The sale deed which has been relied upon by the State are farther away from the land acquired. Even otherwise, the Reference Court has rightly discarded the sale deeds as the amount is lower than the amount assessed by the Land Acquisition Collector and secondly, the sale deeds are also of the year 2001, which are post notification (Exts.R-2 to R-4) and the value is less than what the Land Acquisition Collector has awarded. Resultantly, reliance upon Exts.P-9 & P-10, which was of a comparably large chunk of land and which has been sold in the year 1994, has rightly been relied upon. However, the increase which has been granted is only to the extent of 10% and without any cumulative benefit. The judgment of the Apex Court in **ONGC Vs. Ramesh Jivanbhai Patel 2008 (14) SCC 745**,

accordingly, can be taken into consideration as to whether if the increase in the market value has to be granted with cumulative effect and at what rate, since the increase is to be assessed on the situation of the land, nature of land, surrounding area, availability of land in the area and the demand of the land in the area. Relevant portion read as under:

“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. In rural areas unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during the nineties. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. 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.

12. Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by

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sale transactions or acquisition), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on-sale transactions/acquisitions precedes the subject acquisition by only a few years, that is upto four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the 'rate' of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase.

13. Much more unsafe is the recent trend to determine the market value of acquired lands with reference to future sale transactions or acquisitions. To illustrate, if the market value of a land acquired in 1992 has to be determined and if there are no sale transactions/acquisitions of 1991 or 1992 (prior to the date of preliminary notification), the statistics relating to sales/acquisitions in future, say of the years 1994-95 or 1995-96 are taken as the base price and the market value in 1992 is worked back by making deductions at the rate of 10% to 15% per annum. How far is this safe? One of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices. Let us illustrate. Let us assume there was no development activity in a particular area. The appreciation in market price in such area would be slow and minimal. But if some lands in that area are acquired for a residential/commercial/industrial layout, there will be all round development and improvement in the infrastructure/amenities/facilities in the next one or two years, as a result of

which the surrounding lands will become more valuable. Even if there is no actual improvement in infrastructure, the potential and possibility of improvement on account of the proposed residential/commercial/ industrial layout will result in a higher rate of escalation in prices. As a result, if the annual increase in market value was around 10% per annum before the acquisition, the annual increase of market value of lands in the areas neighbouring the acquired land, will become much more, say 20% to 30%, or even more on account of the development/proposed development. Therefore, if the percentage to be added with reference to previous acquisitions/sale transactions is 10% per annum, the percentage to be deducted to arrive at a market value with reference to future acquisitions/sale transactions should not be 10% per annum, but much more. The percentage of standard increase becomes unreliable. Courts should therefore avoid determination of market value with reference to subsequent/future transactions. Even if it becomes inevitable, there should be greater caution in applying the prices fetched for transactions in future. Be that as it may.

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15. The increase in market value is calculated with reference to the market value during the immediate preceding year. When market value is sought to be ascertained with reference to a transaction which took place some years before the acquisition, the method adopted is to calculate the year to year increase. 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. The difference between the two methods is shown by the following illustration (with reference to a 10% increase over a basic price of Rs. 10/- per sq.m):

| Year             | By flat rate increase method | By cumulative increase method |
|------------------|------------------------------|-------------------------------|
| 1987 (Base Year) | 10.00                        | 10.00                         |
| 1988             | 10 + 1= 11.00                | 10.00 + 1.00 = 11.00          |
| 1989             | 11 + 1= 12.00                | 11.00 + 1.10= 12.10           |
| 1990             | 12 + 1= 13.00                | 12.10 + 1.21= 13.31           |
| 1991             | 13 + 1= 14.00                | 13.31 + 1.33 = 14.64          |
| 1992             | 14 + 1= 15.00                | 14.64 + 1.46 = 16.10          |

Keeping in view the same, the exemplars (Exts.P-1 to P-13) the chart of which has been reproduced below, can be taken into consideration. The said exemplars would show that from 1989 onwards, when land was valued at Rs.2,40,000/- per acre, the price was going up steadily in 1993, when a small chunk of land was sold for Rs.4,96,000/- and thereafter, for the year 1998 (Ext.P-6), the price had jumped to Rs.6,03,045/- per acre and even if a cut is applied, as such, to the extent of 50% also, it could be safely said that there was a steady increase in the price of the land and resultantly, this Court is of the opinion that the benefit of cumulative enhancement should be @ 12% from 1994. The chart of exemplars read as under:

| S.No. | Sale deeds  | Date of Sale Deed | Area sold          | Sale consideration | Rate per acre |
|-------|-------------|-------------------|--------------------|--------------------|---------------|
| 1.    | Ex.P1/P12   | 30.3.2000         | 2K-18M             | 3,98,750/-         | 11,00,000/-   |
| 2     | Ex.P2       | 30.3.2000         | 2K-18M             | 3,98,750/-         | 11,00,000/-   |
| 3     | Ex.P3       | 30.3.2000         | 2K-18M             | 3,98,750/-         | 11,00,000/-   |
| 4     | Ex.P4       | 30.3.2000         | 2K-18M             | 3,98,750/-         | 11,00,000/-   |
| 6     | Ex.P6       | 9.3.1998          | 166 Sq.yd.         | 20,730/-           | 6,03,045/-    |
| 7.    | Ex.P7       | 30.3.2000         | 2K-18M             | 3,98,750/-         | 11,00,000/-   |
| 8     | Ex.P8/14    | 1.6.1989          | 2K-0M              | 60,000/-           | 2,40,000/-    |
| 9     | Ex.P9 & P10 | 2.6.1994          | 17K-18M<br>42K-17M | 15,18,750/-        | 2,00,000/-    |
| 10.   | Ex.P11      | 26.6.1992         | 0K-18M             | 3,00,000/-         | 2,66,666/-    |
| 11    | Ex.P13      | 2.2.1993          | 1K-0M              | 62,000/-           | 4,96,000/-    |

The sale deeds dated 30.03.2000 cannot be taken into consideration as they are post notification and even otherwise, as depicted in the site-plan show their exact location on the highway and their value is much higher. A perusal of the same would go on to show that 5 sale deeds were executed on the same day, i.e., on 30.03.2000, for



land measuring 2 kanals 18 marlas each and the vendor is Radha Swami Registered Society Village Baba Bakala, District Amritsar Punjab. Counsel for the landowners could not deny the said fact that these sale deeds are land abutting to the GT Road and therefore, would command higher price and therefore, could not be valid exemplars to claim enhancement as the land adjoining the Grand Trunk Road commands far more premium. The land in question is situated 2 kms away from the highway and therefore, the same set of land cannot be taken into consideration for enhancement.

Accordingly, keeping in view the 12% cumulative increase of Exts.P-9 & P-10, this Court is of the opinion that the benefit can be granted to the landowners by assessing the market price to Rs.3,52,467/- per acre (Rs.72.82 per square yard). Resultantly, the State appeals are found to be without any merit and the same are dismissed, whereas the appeals filed by the landowners are allowed, to that extent, along with statutory benefits.

23.03.2018  
*Sailesh/Naveen*

**(G.S. SANDHAWALIA)**  
**JUDGE**

*Whether speaking/reasoned:*                      *Yes/No*

*Whether Reportable:*                              *Yes/No*