IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.1976 of 2004 & other connected cases
Decided on: 23.03.2018

State of Haryana ....Appellant

Versus

Mohinder Sain ...Respondent

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

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

Mr. Jagdish Manchanda, Advocate, for the landowners.

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G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 42 appeals, bearing RFA-1976 to 1998 of 2004, RFA-2506 to 2519 of 2004, RFA-2595 to 2597 of 2004, RFA-2684 of 2004 & RFA-2454 of 2005, filed by the landowners and the State, under Section 54 of the Land Acquisition Act, 1894, against the order of the Reference Court, Karnal dated 01.06.2004, wherein a sum of Rs.3,00,080/- has been assessed as the market value of the land in question (Rs.62/- per sq.yards).

The assessment of the market value is on the basis of an earlier award passed by the same reference Court dated 23.03.2004 qua notification dated 20.07.1999 for land measuring 62 kanals 7 marlas in Kasba Gharaunda, for public purpose, for the sewerage treatment plant, for treating the sewerage water, whereas the notification in the present case was almost 2 years thereafter, i.e., on 15.05.2001 and qua the land adjoining the earlier acquisition. The present acquisition is for 153 kanals 15 marlas for the same purpose of treating the sewerage water and setting up a sewerage plant at Gharaunda.

The Land Acquisition Collector, vide award dated 20.12.2002, had assessed the market value @ Rs.2,50,000/- per acre against which reference petitions under Section 18 under the Act had been filed on the ground that the land was within the Municipal limits of Gharaunda and surrounded by Wards No.11 & 14 and was close to the railway station as well as the Shiv Colony and the value of the acquired land was claimed to be Rs.1200/- per sq.yards.

Vide order of even date, this Court has enhanced compensation qua the award dated 23.03.2004 from Rs.3,00,080/- to Rs.3,52,467/- and resultantly, similar benefit has to be granted to the landowners, keeping in view the fact that the land was acquired almost 2 years later. The sale exemplars are, as such, which are exhibited in the award were also similar and were the same as has been exhibited in the earlier acquisition. The highest sale exemplars were of 5 sale deeds Exts. P-3 to P-7 of 2 kanals 18 marlas of land each registered in favour of the Radha Swami Registered Society Village Baba Bakala, District Amritsar Punjab. From the perusal of the site-plan, it would be clear that the said land is located on the National Highway (the Grand Trunk Road) leading from Delhi to Chandigarh and therefore, the value, as such, would be far more than the value of the land which is subject matter of acquisition which is situated 2 kms away from the highway. The abadi of Gharaunda intervenes the 2 portions of land.

As noticed earlier also, the land is close to a nala which drains out from Gharaunda and is sandwiched between the same and the railway track and though close to the railway station, but the sale exemplars of 2000 and as such, cannot be blindly followed as contended by the counsel for the landowners. In the earlier set of acquisition, the same was rightly ignored for taking into consideration to fix the market value being post notification. The law is well settled that the land falling on the National Highway always commands higher value. Reliance can be placed upon the judgment of the Apex Court in **'Haridwar Development Authority, Haridwar Vs. Raghubir Singh and others' 2010 (11) SCC 581** and '**Ashok Kumar and another Vs. State of Haryana' 2016 (2) RCR (Civil) 351.** Resultantly, even if they are to be taken into consideration to assess the market value, minimum 60% cut would thus be required to be made. Applying the same, the value would come to Rs.4,40,000/- per acre. The cut would also be necessary in as much as the land in question being acquired was a large chunk of acquisition such as 153 kanals 15 marlas whereas the said sale deeds in total would be around 11 kanals 6 marlas and therefore, keeping in mind the location of the land and the development cut and in view of the judgment of the Apex Court in **Chandershekhar (dead) by LRs and others v. Land Acquisition Collector and another, (2012) 1 SCC 390**, this Court is of the opinion that 60% cut is liable to be applied to assess the market value @ Rs.4,40,000/-.

Keeping in view another method of calculating, reliance, as such, upon the Award Ext.P-5, as duly modified by this Court, by making cumulative enhancement for a period of almost 2 years, the same would also bring the market value to Rs.4,42,134/- per acre since the Apex Court has also held that cumulative method of applying 12% increase blindly is not to be followed, as held in **CA-13132-13141-2017 titled *Manoj Kumar & others Vs. State of Haryana & others*,** decided on 13.09.2017. The Apex Court set aside the judgment of this Court pertaining to Jagadhri and has held that though awards are relevant piece of evidence but sale deeds had far more evidentiary value and the comparable sale deeds are more reliable and binding upon the Courts to determine the value of the property. The relevant portion of the said judgment reads as under:-

> "14. In our opinion, the High Court could not have placed an outright reliance on the decision of Swaran Singh's case, without considering the nature of transaction relied upon in the said decision. The decision could not have been applied ipso facto to the facts of the instant case. In such cases, where such judgments/awards are relied on as evidence, though they are relevant, but cannot be said to be binding with respect to the determination of the price, that has to depend on the evidence adduced in the case. However, in the instant case, it appears that the land in Swaran Singh's case was situated just across the road as observed by the High Court as such it is relevant evidence but not binding. As such it could have been taken into consideration due to the nearness of the area, but at the same time what was the nature of the transaction relied upon in the said case was also required to be looked into in an objective manner. Such decisions in other cases cannot be adopted without examining the basis for determining compensation whether sale transaction referred to therein can be relied upon or not and what was the distance, size and also bonafide nature of transaction before such

judgments/awards are relied on for deciding the subsequent cases. It is not open to accepting determination in a mechanical manner without considering the merit. Such determination cannot be said to be binding. We have come across several decisions where the High Court is adopting the previous decisions as binding. The determination of compensation in each case depends upon the nature of land and what is the evidence adduced in each case, may be that better evidence has been adduced in later case regarding the actual value of property and subsequent sale deeds after the award and before preliminary notification under section 4 are also to be considered, if filed. It is not proper to ignore the evidence adduced in the case at hand. The compensation cannot be determined by blindly following the previous award/judgment. It has to be considered only a piece of evidence not beyond that. Court has to apply the judicial mind and is supposed not to follow the previous awards without due consideration of the facts and circumstances and evidence adduced in the case in question. The current value reflected by comparable sale deeds is more reliable and binding for determination of compensation in such cases award/judgment relating to an acquisition made before 5 to 10 years cannot form the safe basis for determining compensation.

15. The awards and judgment in the cases of others not being inter parties are not binding as precedents. Recently, we have seen the trend of the courts to follow them blindly probably under the misconception of the concept of equality and fair treatment. The courts are being swayed away and this approach in the absence of and similar nature and situation of land is causing more injustice and tantamount to giving equal treatment in the case of unequal's. As per situation of a village, nature of land its value differ from the distance to distance even two to three-kilometer distance may also make the material difference in value. Land abutting Highway may fetch higher value but not land situated in interior villages.

16. The previous awards/judgments are the only piece of evidence at par with comparative sale transactions. The similarity of the land covered by previous judgment/award is required to be proved like any other comparative exemplar. In case previous award/judgment is based on exemplar, which is not similar or acceptable, previous

award/judgment of court cannot be said to be binding. Such determination has to be out rightly rejected. In case some mistake has been done in awarding compensation, it cannot be followed on the ground of parity an illegality cannot be perpetuated. Such award/judgment would be wholly irrelevant.

17. There is yet another serious infirmity seen in following the judgment or award passed in acquisition made before 10 to 12 years and price is being determined on that basis by giving either flat increase or cumulative increase as per the choice of individual Judge without going into the factual scenario. The said method of determining compensation is available only when there is absence of sale transaction before issuance of notification under section 4 of the Act and for giving annual increase, evidence should reflect that price of land had appreciated regularly and did not remain static. The Recent trend for last several years indicates that price of land is more or less static if it has not gone down. At present, there is no appreciation of value. Thus, in our opinion, it is not a very safe method of determining compensation.

18. To base determination of compensation on a previous award/ judgment, the evidence considered in the previous judgment/ award and its acceptability on judicial parameters has to be necessarily gone into, otherwise, /gross injustice may be caused to any of the parties. In case some gross mistake or illegality has been committed in previous award/judgment of not making deduction etc. and/or sufficient evidence had not been adduced and better evidence is adduced in case at hand, previous award/judgment being not inter-parties cannot be followed and if land is not similar in nature in all aspects it has to be out-rightly rejected as done in the case of comparative exemplars. Sale deeds are at par for evidentiary value with such awards of the court as court bases its conclusions on such transaction only, to ultimately determine the value of the property."

In similar circumstances, in **CA-17790-17801-2017 titled *State of Haryana Vs. Chetin Kaur,*** decided on 26.09.2017, a similar view was taken and the enhancement on the basis of 12% cumulative increase, was set aside, on the ground that the facts and evidence have to be seen and accordingly, the market value has to be determined. The notification in the said case was also of the year 2002 and the enhancement was on the basis of award of 1994, by following the said principle, which was not approved.

In the earlier award, the sale deeds of 02.06.1994, which were subject matter of consideration and therefore, it would be for a longer period of time beyond 5 years which has now not been appreciated by the Apex Court. It is in such circumstances, both methods have been applied to assess the market value, keeping in view the settled principle that the assessment of market value has hazards and guess work is always involved and there can be no fixed formula to arrive at the prevalent market rate with precision.

The argument of the State Counsel that sale deeds (Ext.R-1 to R-4) should be kept in mind are liable to be rejected, only on the ground that the fact that the Collector himself was of the opinion that the market value was Rs.2,50,000/-, while awarding compensation whereas the rates between Ext.R-1 to R-4 varied between Rs.2 lacs to Rs.2,25,882/- and are, thus, less than the market value assessed by the Collector and would be hit by the provisions of Section 25, which provides that market value less than what has been awarded by the Collector is not liable to be awarded. The location of the 2 lands acquired which are also for the same purpose has been depicted clearly on the site-plan Ext.P-5 and the sale deeds Exts. P-9 & P-10, as noticed in the earlier appeals are rather, much closer to the land now acquired. The Reference Court has also noticed the proximity of the 2 colonies i.e. Shiv Colony and Rajeev Colony and the fact that the land falls within the Municipal limits and therefore, assessment has to be done as per sq.yards and by treating the land having potential for residential growth.

The fact that the sale deeds of the adjoining area (Exts. P-7 & P-10) are available even though it may be pertaining to about 7 years back, but the factum of rise in prices would be apparent between 1989 to the year 2000 whereby value has gone up from Rs.2,40,000/- per acre to Rs.11 lacs per acre. The relevant chart, as such, showing the value of the sale deeds read as under:

S.No.	Sale deeds	Date of Sale Deed	Area sold	Sale considera-tion	Rate per acre
1	Ex.P8	1.6.1989	2K-0M	60,000/-	2,40,000/-
2	Ex.P11	26.6.1992	0K-18M	3,00,000/-	2,66,666/-
3	Ex.P13	2.2.1993	1K-0M	62,000/-	4,96,000/-
4	Ex.P9	2.6.1994	17K-18M	4,47,500/-	2,00,000/-
5	Ex.P10	2.6.1994	42K-17M	10,71,250/-	2,00,000/-
6	Ex.P3	30.3.2000	2K-18M	3,98,750/-	11,00,000/-
7	Ex.P4	30.3.2000	2K-18M	3,98,750/-	11,00,000/-
8	Ex.P6	30.3.2000	2K-18M	3,98,750/-	11,00,000/-
9	Ex.P7	30.3.2000	2K-18M	3,98,750/-	11,00,000/-

In such circumstances, percentage of 12% cumulative increase would also be one of the safe methods to arrive at the finding that the landowners would be entitled to, which can be safely assessed at Rs.4,40,000/- per acre along with all statutory benefits. Resultantly, also by applying 60% cut on the sale deeds Ex.P3 to Ex.P7 which were relied upon by the landowners, the present appeals, filed by the landowners are allowed and the appeals filed by the State are dismissed.

23.03.2018 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No