IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA Nos.2326 of 2006 (O&M) &
other connected appeals
Reserved on: 02.11.2018
Pronounced on : 28.11.2018

Kanhaya Lal

... Appellant

Versus

State of Haryana and another

... Respondents

Filed by	Numbers
Claimant/Landowners	RFA Nos.2326, 3283 to 3286 & 3820 of 2006
State of Haryana	RFA Nos.2529, 2531, 2535 to 2538 of 2006

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

Present: Mr. Shoaib Khan, Advocate,
Mr. M.K. Chouhan, Advocate,
Mr. Alok Mittal, Advocate,
Mr. S.K. Sharma, Advocate for
Mr. M.L. Sharma, Advocate and
Mr. Brijender Kaushik, Advocate
for the landowners.

Mr. Sudeep Mahajan, Addl. AG, Haryana
Ms. Vibha Tewari, AAG, Haryana
Mr. Abhinash Jain, AAG, Haryana.

G.S. Sandhawalia, J.

The present order shall dispose of 12 appeals i.e RFA Nos.2326, 2529, 2531, 2535 to 2538, 3283 to 3286 & 3820 of 2006 filed both by the State and the landowners. The facts are being taken from **RFA No.2326 of 2006 'Kanhaya Lal Vs. State of Haryana and another'.**

2. The present set of appeals filed under Section 54 of the Land Acquisition Act, 1894 arise out of the Award passed by the Reference Court, Panchkula dated 28.02.2006, whereby the market value of the

acquired land was assessed @ Rs.440/- per square yard (Rs.21,29,600/- per acre) for the notification dated 23.08.2001 issued under Section 4 of Land Acquisition Act, 1894 (for short 'the Act'), for the land falling in Village Devi Nagar, Hadbast No.384, Panchkula. The acquisition was of 18.98 acres and was for the public purpose namely for the development and utilization of land as recreational and commercial area for Sector 3 Part in Urban Estate, Panchkula.

3. The enhancement was done from Rs.6 lakhs per acre awarded by the Land Acquisition Collector vide Award No.12 dated 10.12.2002. While enhancing the compensation, the Reference Court relied upon the **Land Acquisition Case No.366 'Purujit Singh Vs. State of Haryana'** decided on 16.09.2002 (Ex.P51) pertaining to the land of village Jhuriwala and Devi Nagar, wherein the market value had been assessed @ Rs.256/- per square yard (Rs.12,39,040/- per acre) for the notification dated 11.07.1995. The sale deeds Ex.P42 to P50 pertaining to the year 1997 to 1999 and year 2001 were not taken into consideration by the Reference Court as they did not pertain to village Devi Nagar and pertained to village Kundi and Nada and were also of smaller area. Ex.P51 was held to be a best piece of evidence for determining the market value of the acquired land, as it pertained to the same village, same area, same location and resultantly, 12% increase was given on it for a period of six years difference. Resultantly, market value was assessed @ Rs.440/- per square yard.

4. Application for additional evidence has been filed to place

on record judgments dated 16.04.2018, 21.04.2018 & 01.05.2017 as Annexures A-1 to A-3, passed in the appeals arising out of the award pertaining to the acquisition of the land in District Panchkula along with the site-plan (Annexure A-4).

5. Keeping in view the fact that the judgments pertain to similarly situated land in District Panchkula, this Court is of the opinion that the judgments passed by this Court would have relevance, as such and would be helpful to this Court to pronounce judgment in the present case and would come within the ambit of Order 41 Rule 27 CPC, especially more so, since they have been passed after the date of the award of the Reference Court which is impugned.

6. Resultantly, the application for additional evidence is allowed and the said judgments along with the site-plan are taken on record.

7. Counsel for the landowners have accordingly submitted that since in the case of **Purujit Singh (supra)**, the amount has now been further enhanced by the judgment passed in **RFA No.3788 of 2013** decided on 27.04.2018 for the notification dated 11.07.1995, which has now been placed on record by way of additional evidence as Annexure A-2 and, therefore, 12% enhancement should be on the basis of Rs.895/- with cumulative effect, which has not been granted. It has further been argued that development has already been taken place all around and this portion of the land has been left out and allotment letters were issued in the year 2000-2001 of plots around and, therefore, the enhancement

should also @ 15% instead of 12%.

8. State on the other hand in its set of appeal submitted that the judgment passed in Purujit Singh (supra) would not be applicable since it was pertaining to the acquisition for the construction of roads between Sectors 3 and 21. Therefore, this Court while deciding the set of cases pertaining to the said notification dated 11.07.1995 had granted 20% benefit from the earlier notification of 04.05.1995 in **RFA No.3506 of 2009 'Lokinder Singh and others Vs. State of Haryana and others'** which has now been placed on record as Annexure A-1 by way of additional evidence, wherein it had fixed compensation @ Rs.746/- per square yard for village Jhuriwala and Bana Madanpur. Thus, keeping in view the acquisition for the roads for the notification dated 11.07.1995, the additional 20% benefit had been granted to assess the market value @ Rs.895/- per square yard (Rs.43,31,800/- per acre). It is, accordingly, contended that the judgment passed in **RFA No.2350 of 2005 'State of Haryana Vs. Sucha Singh and others'** decided on 01.05.2018 (Annexure A-3) pertaining to the notification dated 02.05.1997 for the land falling in village Devi Nagar and which was acquired for development and utilization of land for recreational and commercial area of Sector 3, Panchkula would be more appropriate, wherein Rs.965/- per square yard (Rs.46,70,600/- per acre) had been awarded. The reasoning had also been given in the said judgment that the case of **Purujit Singh (supra)** would not be applicable on account of the difference for the purpose the land was notified. Since the said acquisition for **Sucha**

Singh's case (supra) was also for 52.01 acres of land for development and utilization of land for recreational and commercial area and the present acquisition for 18.98 acres is in addition to supplement the said purpose.

9. A perusal of the record would go on to show that as per the statement of PW-5 it would be clear that the land of village Devi Nagar had also been subject matter of acquisition by notification dated 30.01.1973 when an area of 510.98 acres was notified for acquisition. In between another acquisition took place in the year 1987. The acquisition of 11.07.1995 was also of 28.67 acres of land of village Devi Nagar for the link road of Sectors 3/21 & 24/25 and, thereafter, the present notification was issued on 23.08.2001.

10. As per the statement of RW-1 land of village Devi Nagar is abutting to National Highway No.22 which comes from Kalka to Zirakpur and leading to Ambala. For the land on the other side of the highway towards the developed portion of the Panchkula falling in Sector 2 opposite the village Abadi, the acquisition was done in the year 1973. As per Aks Shajara (Ex.P41) the acquired land was in Green colour which is away from the highway and towards the Ghaggar river. As per Ex.A4 the site plan which has been placed on record by way of additional evidence also would go on to show that the land in Blue colour and at point 'F' which was part of the land acquired has now been utilized for the purpose of recreational facilities of setting up a Golf Course at Panchkula. This aspect has tried to be highlighted by the counsel for the

landowners that the land was being used in the entirety and, therefore there should be no cut and therefore the judgment passed in the case of Purujit Singh (supra) should be followed without any deduction. The land was locked up on account of earlier acquisition taken place and, therefore, the landowners are entitled for additional amount.

11. The principle laid down in Purujit Singh's case (supra) wherein the land of village Devi Nagar was acquired cannot as such be applied blindly as contended by the counsel for the landowners. That acquisition was for the purpose of construction of the roads between the sectors and it was fully developed portion. It was on that account while following the principles laid down by the Apex Court in **'Nelson Fernandes and others Vs. Special Land Acquisition Office, South Goa and others' 2007 (9) SCC 447, 'C.R. Nagaraja Shetty Vs. Special Land Acquisition Officer and Estate Officer and another' 2009 (11) SCC 75** and **'Himmat Singh and others Vs. State of M.P. and others' 2013 (6) SCC 392**, wherein the land was acquired for Broad Gauge Rail Line by the Central Railways, the additional benefit of 20% was given on account of village being closer to the highway and for use of sector roads.

12. In the present case the acquisition is only in addition to the earlier acquisition made for the same purpose which was of 52.01 acres on 02.05.1997, wherein the Land Acquisition Collector had fixed the value @ Rs.3,30,000/- per acre. The Land Acquisition Collector 4 years later has awarded a sum of Rs.6 lakhs for the similarly situated land

which has now been acquired supplementing the earlier acquisition. The appreciation, thus, has to be noticed as almost double within the said period. While dealing with the said acquisition of 02.05.1997 in **Sucha Singh's case (supra)** it has been noticed that for earlier acquisition dated 31.03.1987 for village Devi Nagar the market value had been assessed @ Rs.250/- per square yard (Rs.12,10,000/-) in **Civil Appeal No.1074 of 2012 'Om Parkash Vs. State of Haryana'** by the Apex Court.

13. The peculiarity of the situation of the land and the way whereby the State has issued the successive notifications in the area and locking up sales has also been noticed in detail in the case of **Lokinder Singh (supra).** Resultantly 15% cumulative increase was given while placing reliance upon the judgment in **Purujit Singh's case (supra)** for the notification dated 11.07.1995 to fix the market value @ Rs.965/- per square yard, wherein Rs.746/- per square yard had been granted. The relevant portion of distinguishing the case from Purujit Singh noticed in the case of Sucha Singh (supra) is as under:-

> *"In view of the above, it can be safely recorded that the growth has to be assessed for this portion of land at 15% cumulative increase being closer to the National Highway No. 22 which is more important and secondly, since this portion of the land did not have the locational disadvantage as such of the land falling in village Jhuriwala which is across the river and whose potential could only be utilized after the second bridge had been built across the river Ghaggar in 1994.*
>
> *This Court is consciously not taking the market price as Rs.895/- per square yard as awarded for the other land*

owners falling in village Devi Nagar which was granted in Purujit Singh's case (supra) since enhancement in that case was on account of the fact that the land had been acquired for the purposes of road and the wastage would be minimal and, therefore, the enhancement is being given from the base of Rs.746/- per square yard. The location of the acquired land has also been noticed from the site plan (Ex.P-6/A) which would go on to show that the land was adjoining the river and away from the national highway and, therefore, similarly, land which was connecting to the national highway is also for the same village Devi Nagar has been granted enhancement on that basis."

14. The land now acquired, from examination of Ex.P41, the Aks Shajra is also situated away from the highway and it is similarly situated as the one which was acquired on 02.05.1997. It is settled principle that while awarding compensation, the Court has to examine the location of the land and similarity on the basis of which the exemplar is being taken into consideration. Previous judgment is a good piece of evidence as per the judgment of the Apex Court passed in **'Printers House Pvt. Ltd. Vs. Mst. Saiyadan (dead) by L.Rs. and others' (1994) 2 SCC 133**, wherein the Three Judge Bench has held as under:-

"16. If the comparable sales or previous awards are more than one, whether the average price fetched by all the comparable sales should form the 'price basis' for determination of the market value of the acquired land or the price fetched by the nearest or closest of the comparable sales should alone form the 'price basis' for determination of the market value of the acquired land, being the real point requiring our consideration here, we shall deal with it. When several sale-deeds or previous awards are produced in Court as evidence of comparable sales, Court has to necessarily examine every sale or award to find out

as to what is the land which is the subject of sale or award and as to what is the price fetched by its sale or by the award made therefor.

17. If the sale if found to be a genuine one or the award is an accepted one, and the sale or award pertains to land which was sold or acquired at about the time of publication of preliminary Notification under the Act in respect of the acquired ***land, the market value of which has to be determined, the Court, has to mark the location and the features (advantages and disadvantages) of the land covered by the sale or the award. This process involves the marking by Court of the size, shape, tenure, potentiality etc. of the land.*** *Keeping in view the various factors marked or noticed respecting the land covered by the sale or award, as the case may be, presence or absence of such factors, degree of presence or degree of absence of such factors in the acquired land the market value of which has to be determined, should be seen. When so seen, if it is found that the* ***land covered by the sale or award, as the case may be, is almost identical with the acquired land under consideration, the land under the sale of the market value determined for the land in the award could be taken by the Court as the 'price basis' for determining the market value of the acquired land under consideration.*** *If there are more comparable sales or awards of the same type, no difficulty arises since the 'price basis' to be got from them would be common. But, difficulty arises when the comparable sales or awards are not of the same kind and when each of them furnish a different 'price basis'. This difficulty cannot be overcome by averaging the prices fetched by all the comparable sales or awards for getting the 'price basis' on which the market value of the acquired land could be determined. It is so, for the obvious reason that such 'price basis' may very largely depending even no comparable sales or awards. Moreover, 'price basis' got by averaging comparable sales or awards which are not of the same kind, cannot be a correct reflection of the price which the willing seller would have got from the willing buyer, if the acquired land had been sold in the market. For instance, in the case on hand, there are three claimants. The plots of their*

> *acquired land, which are five in numbers, are not similar, in that, their location, size, shape greatly vary. One plot of land of one claimant and another plot of another claimant appear to be one type. Another plot of land of one of them appear to be of a different type. Yet another plot of the second of them appears to be different. If so far as third claimant's plot of land is concerned, it appears to be altogether different from the rest. Therefore, if each of claimants were to sell her/his respective plots of land in the open market, it is impossible to think that they would have got a uniform rate for their land. The position cannot be different if the comparable sales or awards when relate to different lands. Therefore, when there are several comparable sales or awards pertaining to* ***different lands, what is required of the Court is to choose that sale or award relating to a land which closely or nearly compares with the plot of land of market value of which it has to determine****, and to take the price of land of such sale or award as the basis for determining the market value of the land under consideration."*

15. Similarly, in **'Kasturi Vs. State of Haryana' 2003 (1) SCC 354** where acquisition was of 283.84 acres of land for development of residential and commercial area of sectors in Bhiwani, it was held that for undeveloped land even it was used for housing or commercial purposes, normally 1/3 amount would be deducted for development charges. The land may be situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches are important factors which are taken into consideration.

16. As discussed above the land is closer to the river bed and, therefore, the State would have to spend a considerable amount for development and recreational facilities of Golf Course and in such circumstances it would not be entitled for the same benefits of

compensation of the exemplar which has been contended by the counsel for the landowners in **Purujit Singh's case (supra)**.

17. Thus, keeping in view the location of the land as such and it is away from the highway and adjoining the land which was previously acquired, this Court is of the opinion that the case of Such Singh (supra) would be good exemplar and a relevant piece of evidence to rely upon. Keeping in view the difference of 4 years between the two notifications, the landowners would be entitled for 12% cumulative increase over and above which has already been assessed for the village Devi Nagar @ Rs.965/-. The relevant table reads as under:-

02.05.1997	1998	1999	2000	2001
Rs.965/- per square yard	+115.8= Rs.1080.8 per square yard	+129.69= Rs.1210.49 per square yard	+145.25= Rs.1355.74 per square yard	+162.68= Rs.1518.42 per square yard

18. Resultantly, the appeals filed by the State are dismissed and those of the landowners are allowed and the market value is assessed as Rs. 73,49,152.80 per acre alongwith statutory benefits.

(G.S. SANDHAWALIA)
JUDGE

NOVEMBER 28, 2018
Naveen

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