

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**RFA No.3263 of 2010 & other
connected cases
Decided on: 04.04.2018**

Lal Chand & another
State of Haryana

Versus

....Appellants
...Respondent

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

Present: Mr.Rajiv Sharma, Advocate, for the landowners.

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

G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 5 appeals and one X-objection, bearing RFA-3263 & 1542-2010 and XOBJ-41-CI-2014 in RFA-5060-2012, filed by the landowners, and RFA-5273 & 5274-2009 and RFA-1542-2010, filed by the State, under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') against the orders of the Reference Court, Faridabad 01.06.2009 and 24.07.2010, whereby the market value of the land was assessed @ Rs.222 per sq.yards (Rs.10,74,480/- per acre) for Village Akbarpur. The second award dated 24.07.2010 has merely followed the earlier award dated 01.06.2010 and on the same principle, the market value has been assessed.

The basis of enhancement from Rs.1.80 lacs per acre, as per the Land Acquisition Collector's award was Ext.P-2, a sale deed dated 20.08.2001, pertaining to one marla of land which was sold for Rs.13,000/- and the value would work out to Rs.429.75 per sq.yard and which was located at Village Chhaju Nagar. While assessing the market value, the location of the land was seen and as per evidence on record, it was at a

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distance of over 5 kms from Palwal and was adjoining Akbarpur-Palwal-Dakora road. The site-plan was brought on record as Ext.P-1 by S.P.Mittal, Draftsman, from where it would be clear that the acquired land was at a distance of 5.5 kms of the eastern side of the National Highway and the distance from Palwal was 7.5 kms. The abadi of the Village Palwal also extended upto Village Lohagarh. Reliance was rightly not placed upon the judgment dated 07.10.1999 passed in RFA-473-1998 titled *State of Haryana Vs. Pohap Singh* (Ext.P-3), since it pertained to the notification dated 10.12.1992, which was 10 years prior in time, whereas the Section 4 notification in the present case was dated 28.03.2002. The land of that acquisition was located within 100 mts. from the National Highway and the value was assessed at Rs.206/- per sq.yard.

The reasoning given by the Reference Court is justified to this extent, especially keeping in view the judgments of the Apex Court that awards cannot be followed blindly, especially when there is 10 years gap period between the two. 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. Relevant portion of the judgment read 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.

A perusal of the site-plan would also go on to show that the land is situated across the canal and as noticed, is at a distance from the national Highway and therefore, the percentage of cumulative increase is also not likely to take place, as observed by the Apex Court in **General Manager ONGC Vs. Rameshbhai Jiwanbhai Patel & another (2008) 14 SCC 745.**

Resultantly, the sale deed (Ext.P-2) has been taken into consideration, though it also belongs to Village Chhaju Nagar and a finding has been recorded that both the villages are adjoining to each other but in evidence, it has come that the Collector rate is different. The cut, as such, which has been imposed of 50% has rightly been opposed by

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the State Counsel in as much as the land measures only one marla and therefore, the assessment of the amount at Rs.215 per sq.yard is not justifiable. The State had produced on record 2 sale deeds (Exts. R-1 & R-2) dated 29.05.2001 and 30.04.2002, wherein land measuring 3 kanals 4 marlas and 2 kanals 13 marlas had been sold for approximately Rs.1,80,000/- per acre, for Village Akbarpur, which is the amount which has been paid also by the Land Acquisition Collector. However, keeping in view the fact that the registration, as such, would be only for the purpose to avoid the impounding of the sale deeds and just as per the Collector's rate, complete reliance upon the same cannot be placed, as such.

In the facts and circumstances, this Court is of the opinion that the percentage of cut, as such, is liable to be increased, keeping in view the size of the plot in exemplar (Ext.P2), as per the principles laid down in the judgment of the Apex Court in **Chandrashekar (D) by LR's & others Vs. Land Acquisition Officer & another 2012 (1) SCC 390**. Resultantly, keeping in view the miniscule sale deed which has been brought on record, a cut of 75% is imposed, which would bring down the market value to Rs.108/- per sq.yard, to take the value at Rs.527720/- per acre. Accordingly, the appeals filed by the State are allowed, to that extent and the appeals and X-objections filed by the landowners, are dismissed.

04.04.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>