IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RA-RF-3-CI-2018 (O&M) in/and
RFA No.5872 of 2013

Dharambir and another

... Review applicants/appellants

Versus

State of Haryana and another

... Respondents

(2)

RA-RF-1-CI-2018 (O&M) in/and
RFA No.5873 of 2013

Karambir

... Review applicant/appellant

Versus

State of Haryana and another

... Respondents

(3)

RA-RF-2-CI-2018 (O&M) in/and
RFA No.3380 of 2014

Karambir and others

... Review applicants/appellants

Versus

State of Haryana and another

... Respondents

(4)

RA-RF-39-CI-2018 (O&M) in/and
RFA No.2170 of 2015

Dhanpati and another

... Review applicants/appellants

Versus

State of Haryana and another

... Respondents

Decided on : 17.12.2018

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

Present : Mr. Rajesh Lamba, Advocate
for the review applicant/appellant (s).

Ms. Vibha Tewari, AAG, Haryana.

G.S. Sandhawalia, J. (Oral)

Delay applications in filing the review applications

Applications for condoning the delay of 578/631 days in filing the review applications have been filed.

In view of the averments made in the applications, duly supported by the affidavit, and the fact that there was no mention of the village Dhankot in the judgment, sufficient cause has been made out to condone the delay.

Accordingly, the applications are allowed and delay of 578/631 days in filing the review applications is condoned.

CMs stand disposed of.

Review applications

Review applications of the order dated 20.05.2016 passed in the present 4 appeals have been filed. The appeals were disposed of alongwith bunch of appeals, lead case of which was **RFA No.4475 of 2012 'Ram Chander and another Vs. State of Haryana and others'** decided on even date.

It is not disputed that the Apex Court has further modified the judgment in **Civil Appeal Nos.11814-11864 of 2017 'State of Haryana and others Vs. Ram Chander and another'** decided on 05.09.2017, whereby the market value has been reduced by 15% on account of the development cut. Since, the land was acquired vide notification dated 25.01.2008 under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') for linking Dawarka Township Delhi from Gurgaon, out of the revenue estates of 11 villages, the Coordinate Bench who had decided the main case **Ram Chander (supra)** had referred to the sale deeds of all other villages to fix the market value, which has been proportionately reduced by the Apex Court.

It is apparent that for the land which pertains to the present set of appeals and which falls in village Dhankot Hadbast No.149 and which had been acquired vide Award No.14 by the Land Acquisition Collector, no discussion had taken place and resultantly the market value was not fixed for the said village. The lacuna as such had been disclosed only when the payment was not made to the landowners and, therefore, the applications for delay and review have been filed.

In the reply filed to the review applications, there is no contest by the State to this factual aspect and, therefore, qua the judgment for village Dhankot, the order necessarily will have to be reviewed, as there is an error apparent on the face of the record.

Resultantly, the review applications are allowed. The order dated 20.05.2016 is recalled, in the present set of cases only pertaining to village Dhankot.

CMs stand disposed of.

Main appeals

With the consent of the parties, the record of the

LA Case No.944 of 2010 'Mahender Singh Vs. State of Haryana' had been summoned and, therefore, the appeals are being heard today itself.

The notification in question is dated 25.01.2008, whereby land measuring 23.94 acres of village Dhankot, Hadbast No.49 was sought to be acquired for the development and utilization of land for 150 meters wide periphery road linking Dwarka Township Delhi from Haryana boundary to National Highway No.8 near village Kherki Daula at Gurgaon. The Land Acquisition Collector had awarded a sum of ₹60 lakhs per acre. The Reference Court further granted enhancement and fixed the market value @ ₹1,75,00,000/- per acre alongwith all statutory benefits by placing reliance upon the Award dated 29.09.2012 passed in LA Case No.579 of 2010 'Birbal and others Vs. State of Haryana and another' (Ex.P10), which pertained to village Basai and land of which village had also been acquired vide the same notification. The sale deeds produced by the landowners were discarded on the ground that the prices in the year 2006 were more than the prices in the year 2008 and, therefore, the Award was relied upon and the sale instances were ignored.

It is not disputed that for Village Basai, the Land Acquisition Collector had awarded the same amount i.e. ₹60 lakhs per acre and the amount was enhanced by this Court from ₹1,75,00,000/- per acre to ₹2,50,00,000/- per acre and has further been reduced by the Apex Court by 15%, to ₹2,12,00,000/- per acre. In such circumstances, counsel for the appellants submits that the minimum which the landowners are entitled would be on the same parity, i.e., at least Rs.2,12,00,000/- per acre, though it is submitted that Village Kherki Majra Dhankot, Hadbast No.52 had been granted Rs.1,26,00,000/- per acre by the Reference Court and ₹2,80,00,000/- by this Court, which was reduced to ₹2,38,00,000/- per acre by the Apex Court, vide the same judgment.

State Counsel, on the other hand, has submitted that reliance should have been placed upon Ex.R-1 to R-3 and the amount of compensation as awarded by the Reference Court is not likely to be enhanced. However, she could not dispute the fact that the land was acquired for the same purpose and was in close vicinity.

The argument of the counsel for the appellants is well justified, to the extent that if the sale deeds are available, then blind reliance upon the award of the neighbouring village should not have been made. Reliance can be placed upon the judgment of the Apex Court in **'Manoj Kumar & others Vs. State of Haryana & others' 2018 (2) RCR (Civil) 815.** Relevant portion of the judgment reads as under:

> *"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 the present case, the Reference Court had the benefit of a large number of sale deeds which were prior to the date of the Section 4 notification. The relevant tables reads as under:

Sr. No.	Exh	Vasika No.	Date	Land Area			Total sale consideration Rs.	Rate per Acre Rs.	Revenue estate
				K	M	Sarsai			
1.	Ex.P4	15130	24.10.2006	1	5		73,00,000/-	4,67,20,000/-	Dhankot
2.	Ex.P5	17315	21.11.2007	9	1	2	3,41,25,000/-	3,00,00,000/-	Dhankot
3.	Ex.P6	17137	21.11.2007	20		18	7,83,75,000/-	3,00,00,000/-	Dhankot
4.	Ex.P7	24377	24.01.2008	30	-	-	10,50,00,000/-	3,00,00,000/-	Dhankot
5.	Ex.P8	24379	24.01.2008	39		18-1/2	13,97,37,500/-	2,80,00,000/-	Dhankot
6.	Ex.P9	24380	24.01.2008	9		18-1/2	3,47,37,500/-	2,80,00,000/-	Dhankot

Sr. No.	Exh	Vasika No.	Date	Land Area		Total sale consideration Rs.	Rate per Acre Rs.	Revenue estate
				K	M			
1.	Ex.R1	17201	16.11.2006	0	15	4,50,000/-	48,40,000/-	Dhankot
2.	Ex.R2	23317	15.1.2008	1	6	3,59,500/-	22,12,308/-	Dhankot
3.	Ex.R3	13007	19.05.2008	7	6	54,56,250/-	59,79,452/-	Dhankot

A perusal of the above chart would go on to show that Ex.P-4 is comparatively smaller sale exemplar of 1 kanal 5 marlas only, though the sale consideration is Rs.4,67,20,000/-. This Court has the benefit of a larger chunk of land which is in the form of Ex.P-5 to P-8 and therefore, it would be safer to rely upon the larger chunk of land to get the correct picture of the market value. Ex.P-7 to P-9 are liable to be ignored also as they were executed on 24.01.2008 just one day prior to the date of Section 4 notification in question. If, this Court takes into consideration Ex.P-5 & P-6, it is apparent that on 21.11.2007, the sale deeds were executed. A perusal of the same would go on to show that the same had been executed by Mr.Vijay Shines Pvt. Ltd. and M/s Namarta Marketting Pvt. Ltd., both having its office at 726/727, Guru Ram Das Nagar Extn., Laxmi Nagar, New Delhi and the vendor is also Shri Arun Kumar who was duly authorized by the Board of Directors. The vendee of both the sale deeds is also common, namely, M/s Agrim Realtech Pvt. Ltd., whose address is S39-A, Panchsheel Park, New Delhi. Thus, the purchaser, by virtue of the two sale deeds, was purchasing a large chunk of land which would measure 29 kanals 1 marla (approximately 3.6 acres), which reasonably cannot be said to be a small chunk of land, as such, and therefore, no cut is liable to be imposed on the sale deed, as such, on account of the smallness of the exemplar. Therefore, the argument of the State Counsel that a cut on account of the smallness of the size of the sale deeds, is liable to be rejected.

A perusal of the said sale deed would go on to show that consistent market value works out to ₹3 crores per acre, which would be clear from the table. Even if on account of Ex.P-4, a cut is put on account of the smallness, the market value would come down to a sum of Rs.3,11,00,000/- per acre and is of the same range whereas even if Exts.P-8 & P-9 are considered, it is to be noticed an average of ₹3 crores would work out on the same and the market value would hover around the same.

In such circumstances, this Court is of the opinion that the said sale exemplars were wrongly ignored by the Reference Court and can be taken as a safe guideline for assessing the market value. The Reference Court also noticed that Village Basai is on the southern side of the road and near to the old city. But it has come in evidence that the land of Dhankot is falling in the developed Sector 99 & 102 which are adjoining. A perusal of the site-plan would go on to show that the Metro route runs next to the sectors which is coming from Delhi into Gurugram and therefore, the potentiality of the land of the said village cannot, but be doubted. Village Kerki Majra Dhankot having Hadbast No.52, in comparison from the perusal of the site-plan, is situated a little away from the Highway and, therefore, the land of Dhankot is apparently better situated than its immediate neighbour and namesake.

The Apex Court has already granted a 15% development cut on the amount assessed in **Ram Chander's case (supra).** Relevant para of the judgment reads as under:

> *"10. In our opinion, the deduction of 15% towards development would have been sufficient, which ought to*

have been made in the instant cases, in the peculiar facts of the case, considering the potentiality of the area in question and the development which has taken place all around. This order not to be treated as a precedent in any other case. Thus, we modify the determination made by the High Court to the above extent only. Let deduction be made accordingly.

Resultantly, this Court is of the opinion that if the same principle is applied to the present set of cases also, the market value would work out to ₹2,55,00,000/- per acre along with all statutory benefits, by granting 15% cut on account of development cut, as admittedly, for a large chunk of land, there would be wastage also, which this Court has not applied in the earlier round of litigation qua the adjoining villages.

The appeals are allowed, accordingly.

(G.S. SANDHAWALIA)
DECEMBER 17, 2018 **JUDGE**
Naveen

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*