

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.1243 of 2014
Decided on: 19.03.2018

Desraj & others		Appellants
	Versus	
Haryana State & others		...Respondents

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

Present: Mr.Shailendra Jain, Sr.Advocate
with Mr.Satyendra Chauhan, Advocate,
Mr.R.A.Yadav, Advocate
Mr.Pradeep Chokhar, Advocate, for
Mr.P.R.Yadav, Advocate,
Mr.Aditya Jain, Advocate, for the landowners.

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

Mr.Pritam Singh Saini, Advocate, for HSIIDC.

G.S. SANDHAWALIA, J. (Oral)

The present set of appeals, bearing RFA-1243, 2230 to 2234, 9746-2014 & RFA-7275-2013, have been filed by the appellant/landowners, HSIIDC and State, under Section 54 of the Land Acquisition Act, 1894, against the order of the Reference Court dated 15.05.2013, whereby the market value of the land falling in the 4 villages, i.e., Bas Kusla, Kasan, Khoh and Manesar, has been assessed @ Rs.48,83,403/-, for the notification dated 28.06.2004 under Section 4 of the Act.

The basis for awarding the compensation is on the principle of cumulative enhancement granted as per the award (Ext.P-7) dated 28.01.2011, of the earlier notification under Section 4 of the Act dated 07.03.2002. The notification in the present cases pertain to 28.06.2004 and the acquisition vide award No.30 is dated 27.07.2006 for the integration and completing infrastructure facilities and other public utilities such as roads,

water supply, sewerage, electrification and drainage in the said 4 villages. It is further mentioned that they comprised of left out pockets of vacant agricultural land within the industrial sectors of Chaudhary Devi Lal Industrial Model Township, Manesar. The details of the notification of the land which was acquired in the 4 villages under Section 6 is as under:

“The total area of Land given in notification u/s 6 dated 24-06-05 is not found correct in two villages Khoh and Manesar. The land under acquisition as per Revenue record is specified below:

S. No	Name of Village	Area excusing to notification u/s 6		Area as per actual measurement		Distance	
		K	M	K	M	K	M
1.	Baskusla	26	7	26	7	0	0
2.	Kasan	10	4	10	4	0	0
3.	Khoh	22	13	22	14	0	1 Plus
4.	Manesar	3	9	3	8	0	1 Minus

The Collector had awarded Rs.12,50,000/- per acre, for all kind of land and the Reference Court, while keeping into account the award (Ext.P-7), which was for the notification dated 07.03.2002, whereby market value had been fixed @ Rs.37,54,465/-, by granting 12% cumulative increase on the compensation. Even in that case, the Reference Court had relied upon LAC-263-2008 titled as *Hari Singh & others Vs. Haryana State & others* (Ext.P-8) wherein uniform compensation of Rs.20 lacs per acre had been awarded by the Apex Court. Therefore, it would be apparent that 12% cumulative increase is being granted on the acquisition of 15.11.1994, when acquisition was made for the 1st Phase of IMT and which was finally decided on 17.08.2010 in **HSIDC Vs. Pran Sukh 2010(11) SCC 165**, wherein Rs.20 lacs had been granted.

The cumulative effect, as such, is that 12% is being carrying on for almost 10 years as the notification presently is of 28.06.2004. The onus of establishing the market value is upon the landowners.

In similar circumstances, 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. It is also a matter of record that in the first acquisition on 1994, the villages not acquired were Manesar, Naharpur Kasan, Khoh and Kasan and Bas Kusla was not involved, though it might be an adjoining village. This Court, while dealing with acquisition dated 07.03.2002, has fixed the market value of the 5 villages, Naharpur Kasan, Bas Kusla, Bas Haria, Manesar and Kasan @ Rs.41.40 lacs per acre and for Manesar @ Rs.62.10 lacs. In the said case, the base was taken as sale deed of Village Naharpur Kasan, apart from taking the value assessed of the 1994 and to work out an average, as such, to arrive at such finding which was for the acquisition of 26.02.2002, 06.03.2002 and 07.03.2002, respectively.

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 present case, more than 10 years from 1994 have now gone by and in such circumstances, to continue following the same principle would not be safe, as has been held in Manoj Kumar (supra).

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.”

A perusal of the record would also go on to show that no such effort was made to bring on record sale deeds apart from some allotment letters and the sale deeds which were post notification and of the year 2006. In such circumstances, this Court is of the opinion that the appeals filed by the HSIIDC would have to be allowed and the appeals are liable to be remanded for a fresh decision, keeping in view the fact that the litigation, as such, is not between the adversarial parties and since

the land has been compulsorily acquired. The landowners are entitled to bring on record appropriate evidence in the form of sale deeds for the relevant period. The facts to be noticed in the background to the extent that the acquisition of Manesar has seen litigation commencing from 1994 and which is still continuing till now and there were 2 remand earlier by the Apex Court in Madan Pal's case pertaining to the same area. The compensation of the market value was fluid and therefore, it was in such circumstances, the landowners were not diligent enough to bring on record the relevant sale deeds only on the basis of which the market value had already been assessed for similarly situated land as the land comprises of the left out pockets. Keeping in view the same, the impression, as such, of illiterate farmers would be that they would be entitled for the same amount of compensation which the others had got of the surrounding area. The necessary benefit of the subsequent 2 years would, thus, be their entitlement, as such and the land having been left out of whatever amount whether for the lapse of the State or for other reasons, the benefits, as such, cannot be taken away by not giving them an opportunity to adduce appropriate additional evidence, regarding market rate on the date of the Section 4 notification. In the absence of such contemporary evidence available on record, even otherwise, this Court would also be handicapped to assess the correct market value and it would cause serious prejudice to the landowners if the appropriate market value is not assessed.

In such circumstances, this Court is of the opinion that the

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matter would necessarily have to be remanded and therefore, not only the appeals of the HSIIDC but the appeals of the landowners also deserve to be allowed to that extent. Resultantly, the present set of matter are remanded to the Reference Court at Gurgaon. The Reference Court shall grant 3 effective opportunities to the landowners to bring on record additional evidence. Similarly, the State and the Corporation shall be given a chance to place on record similar evidence before the Reference Court to decide afresh as to what was the market value on the date of Section 4 notification. Needless to say that if any amount has been received by the landowners, in pursuance of the impugned award, the same shall not be recovered till the reference petitions are finally decided.

Appeals stand disposed of in the above-said terms.

19.03.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*