

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RFA No.2067 of 2014 & other connected cases
Decided on : 02.05.2018**

HSIDC now HSIIDC & another

... Appellants

Versus

Bijay Singh and others

... Respondents

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

Cases filed by the HSIIDC
RFA-2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078 & 2079-2014

Cases filed by the landowners
RFA-1508, 1817, 1818, 1819, 2276, 2277, 245 & 8186-2014

Present : Mr.Pritam Singh Saini, Advocate, for the appellant-HSIIDC.

Mr.Sudeep Mahajan, Addl.A.G., Haryana,
for the State as well as for HSIIDC.
Ms.Safia Gupta, AAG, Haryana.

Mr.Shailendra Jain, Sr.Advocate
with Mr.S.S.Chauhan, Advocate
and Mr.H.J.Singh, Advocate, for the landowners.

G.S. Sandhawalia, J. (Oral)

The present set of 21 appeals, out of which, 13 appeals, are filed by the HSIIDC and 8 appeals are filed by the landowners, as mentioned above, under Section 54 of the Land Acquisition Act, 1894 and are directed against the 2 awards passed by the Reference Court, Gurgaon dated 17.08.2013 and 20.02.2014, whereby the market value of the acquired

RFA-2067-2014 & other connected cases

land measuring 41 kanals 1 marla of Village Bas Khusla was assessed @ Rs.58,34,400/- per acre.

The reasoning adopted by the Reference Court was primarily on the ground that for the same Village Bas Khusla for the earlier acquisition of 06.03.2002, this Court in RFA-2373-2010, vide decision dated 11.02.2011 (Ext.P-40) had assessed the value @ Rs.37.40 lacs per acre. Resultantly, keeping in view the fact that 12% increase, without cumulative effect, was to be granted on the said assessment, a sum of Rs.20,94,400/-, was allowed, to arrive at the said figure. Another way of reasoning adopted was that there was a sale deed dated 18.10.2006 (Ext.P-42) of 1 kanal of land of the said village which had been sold for Rs.15 lacs and the market value per acre was, accordingly, calculated @ Rs.1,20,00,000/-. Applying the 50% cut on the same also, the Reference Court came to the conclusion that almost the same value would be arrived at as per the assessment made by the 12% increase method.

Vide notification dated 24.11.2006, issued under Section 4 of the Act, followed by notification under Section 6 dated 09.04.2007, land measuring 41 kanals 1 marla, situated within the revenue estate of Village Bas Khusla, Tehsil & District Gurgaon, was acquired for public purpose, namely, for the construction of 60 meters wide road for the development of Industrial Model Township, Manesar by the Haryana State Industrial & Infrastructure Development Corporation Ltd.

Counsel for the landowners has argued that firstly, cumulative increase should have been granted @ 12% and thus, the value

RFA-2067-2014 & other connected cases

would come to Rs.70,35,518/- for the intervening period between the 2 notifications dated 06.03.2002 and 24.11.2006 in this case. It is further argued that the 50% cut, in such circumstances, was on the excessive side and if a 40% cut is applied, it would come to Rs.48 lacs and the value would come to Rs.72 lacs.

Mr.Mahajan, appearing for the State, on the other hand, has submitted that the development cut should be higher and the percentage of increase, as such, should be lessor than 12% cumulative increase and has challenged the award on the ground that the amount granted was excessive and is liable to be reduced.

After hearing arguments on both sides, this Court is of the opinion that the appeals filed by the landowners are liable to be allowed, for the reasons mentioned below.

Firstly, the order dated 11.02.2011, passed by this Court, was taken in appeal by the landowners and the Corporation and the Apex Court had remanded the matters on 02.07.2013 in **HSI IDC Ltd. Vs. Udal & others 2013 (14) SCC 506**. This aspect had already been noticed by the Apex Court that at that point of time and the Apex Court was tentatively of the view that the amount awarded was less. In deference to the remand orders, the matter was decided again on 06.10.2015 whereby it was remanded on the ground that the allottees including Maruti Suzuki India Ltd. (MSIL) were to be given a chance of leading additional evidence and they were to be impleaded as necessary parties.

The said order was, thereafter, challenged in **Satish Kumar**

Gupta and others Vs. State of Haryana and others AIR 2017 SC 1072, whereby the said order of remand was set aside and it was held that post-notification allottees are not necessary parties and secondly, that it was not a case where additional evidence was liable to be allowed, since it could not be demonstrated that the case fall within the parameters of Order 41 Rule 27 CPC.

In pursuance of the second remand, this Court had already decided the appeal again numbering RFA-2373-2010 titled *Madan Pal (III) Vs. State of Haryana and another* on 09.03.2018, by assessing the market value of the villages. Relevant portion reads as under:

“(i) The market value of the land falling in five village i.e. Naharpur Kasan, Kasan, Bas Huria, Bas Khusla and Dhana is assessed @ Rs.41.40 lakhs per acre alongwith all statutory benefits.

(ii) The market value of land in village Manesar is assessed @ Rs.62.10 lakhs per acre alongwith all statutory benefits.

(iii) The appellant-M/s Kohli Holdings Private Limited in RFA No.4646 of 2010 would be entitled for compensation Rs.62.10 lakhs per acre, on account of it being given benefit of 50% of locational advantage being situated on the highway and in village Manesar apart from that it would be entitled for 30% more compensation on account of severance charges on the abovesaid market value alongwith all statutory benefits.

(iv) The directions of the Apex Court in the case of Pran Sukh will also be adhered to while disbursing the balance amount of compensation.

(v) Where appeals have been filed by the land owners which were beyond period of limitation and applications have been filed for condoning the delay with a condition that the land owners will not be entitled for the interest during the said

period, the Executing Court shall ensure that the amounts are calculated and disbursed, keeping in the view the said condition which has been passed in the case of each and individual land owner.

(vi) The appeals filed by the MSIL are dismissed on account of non-maintainability and in view of the observations of the Apex Court in the case of **Satish Kumar Gupta (supra)** being a post notification allottee.”

Thus, it would be clear that the base which was taken by the Reference Court has been varied from Rs.37.40 lacs to Rs.41.40 lacs for the notifications dated 26.02.2002(Phase IV), 06.03.2002(Phase II) and 07.03.2002(Phase III), which pertained to the development of Phase-II, III & IV and therefore, the increase to be granted is to be on the basis of the base year calculation which has now gone upto Rs.41.40 lacs.

The second ground which has been taken is that cumulative increase was liable to be granted rather than simple increase, as awarded by the Reference Court, in view of the law laid down by the Apex Court in **Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another’ 2008 (14) SCC 745.**

While deciding **Madan Pal III (supra)**, the location of the acquired land in that case, which included land of Village Bas Khusla, was discussed in detail and accordingly, a finding was recorded that Bas Khusla, Kasan, Bas Haria, Naharpur Kasan, Dhana and Manesar were having same potentiality, as such and Village Manesar was placed at a higher pedestal being situated on the Highway. The location of the land which is sandwiched between the 2 roads was, accordingly, highlighted

and it was held that it could be safely concluded that it was urbanisable land situated near developed villages with close access to infrastructural facilities. The evaluation was fixed on the basis of the sale deed dated 20.09.1996 in favour of M/s Times Master Pvt. Ltd., keeping in view the cumulative increase further and calculating it both at 12% and 15% and also keeping in view the fact that on an earlier occasion, the land had been acquired at a sum, of Rs.20 lacs in 1994.

In the present case, it is to be noticed that the purpose of development is for 60 meters wide road of the Industrial Model Township, Manesar which has been developed by the appellant-Corporation. The land which was acquired was for widening of the road, which has been admitted by PW-3, Kuldeep, Patwari, in his statement before the Reference Court. The Reference Court had also kept in kind the increasing trend of prices as per the sale deeds which were exhibited, pertaining to the adjoining Village Naharpur Kasan and a copy of the chart is reproduced as under:

Sr. No.	Exh	Vasika No.	Date	Land Area	Total Consieration Rs.	Rate Per Acre Rs.	Rate Per Sq.yard
1	P34	21507	09.01.2009	7875 Sq.meter	1,46,69500	75,38,459	IMT Manesar
2	P35	2180	28.04.2004	9K 13 M	13,62,00,000	1,12,73,668	Naharpur Kasan
3	P36	18105	27.11.2006	14K 16M	2,98,00,000	1,61,08,108	Naharpur Kasan
4	P37	18135	28.11.2006	22K 16M	4,56,00,000	1,60,00,000	Naharpur Kasan
5	P38	18628	04.12.2006	12K 16.5M	2,56,50,000	1,60,00,000	Naharpur Kasan
6	P39	18742	05.12.2006	5K 13M	1,13,00,000	1,60,00,000	Naharpur Kasan
7	P42	14881	18.10.2006	1K	15,00,000	1,20,00,000	Naharpur Kasan

The contiguous portion, as such, of the land which was earlier acquired was also kept in mind for giving uniform compensation in **Madan Pal III** (supra). Therefore, keeping in view the principle that the land of the adjoining villages can be taken into consideration for assessing the market value, the Reference Court was justified, as such, to notice the rising trend of the prices in the area. It is, in such circumstances, it has rightly been held that the Collector had only awarded Rs.20 lacs which was not commensurate with the market value.

If Ext.P-42 is also taken into consideration and a 40% cut is applied on the market price of Rs.1,20,00,000/-, the market value would come to Rs.72,00,000/- per acre. The principle of cumulative enhancement, as suggested by Mr.Jain, however, cannot be accepted, keeping in view the enhancement which has been made in **Madan Pal III** (supra) on 09.03.2018, for the notifications dated 26.02.2002, 06.03.2002 and 07.03.2002. The same were based on sale deeds of the year 1996 and also if the principle of cumulative enhancement is applied, it would amount to follow the principle for 10 years as the notification in question is dated 24.11.2006. This aspect of blindly applying cumulative enhancement by the Courts has been frowned upon by the Apex Court in CA-13132-13141-2017 titled *Manoj Kumar & others Vs. State of Haryana & others*, decided on 13.09.2017, wherein the Apex Court set aside the judgment of this Court pertaining to Jagadhri. It 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 difference of the 2 notifications in the case in question was 6 years as the earlier award was pertaining to the year 1999 whereas subsequent award was passed in May, 2005. 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.

Keeping in view the fact that the land is being acquired for expansion of road in an industrial estate, the aspect of development cut

may not arise since no specific evidence, as such, has been led to this aspect. The percentage of cut on the sale deed as such which has not been applied was justified by the Reference Court keeping in view the principle that the land was acquired for a link road and there was no development cut to be imposed and reliance was placed upon **Nelson Fernandes Vs. Special Land Acquisition Officer, South Goa, 2007 (2) RCR (Civil) 508**. The said view has also been followed in cases of land having acquired for purposes of a railway line in **Himmat Singh and others Vs. State of M.P. and others, 2013 (6) SCC 392** and the same principle would apply. In **C.R. Nagaraja Shetty Vs. Special Land Acquisition Officer and Estate Officer and another, 2009 (11) SCC 75**, the Apex Court has also followed the same principle where land was acquired for the purpose of road to hold that in the absence of any evidence, no development cut can be put. The relevant observations read thus:-

“7. That leaves us with the other question of deduction ordered by the High Court. 8. The High Court has directed the deduction of Rs. 25/- per square feet. Unfortunately, the High Court has not discussed the reason for this deduction of Rs. 25/- per square feet nor has the High Court relied on any piece of evidence for that purpose. It is true that where the lands are acquired for public purpose like setting up of industries or setting up of housing colonies or other such allied purposes, the acquiring body would be entitled to deduct some amount from the payable compensation on account of development charges, however, it has to be established by positive evidence that such development charges are justified. The evidence must come for the need of

development contemplated and the possible expenditure for such development. We do not find any such discussion in the order of the High Court. As if this is not sufficient, when we see the judgment of the Principal Civil Judge (Sr. Division), Bangalore, Rural District, Bangalore in Reference proceedings, we find that there is no deduction ordered for the so-called development charges. We are, therefore, not in a position to understand as to from where such development charges sprang up. The Learned Counsel appearing on behalf of the respondents was also unable to point out any such evidence regarding the proposed development. We cannot ignore the fact that the land is acquired only for widening of the National Highway. There would, therefore, be no question of any such development or any costs therefor. In the reported judgment in *Nelson Fernandes and Others v. Special Land Acquisition Officer, South Goa and Others* in 2007(2) RCR (Civil) 508 : 2007(2) RAJ 463 : 2007(9) SCC 447, this Court has discussed the question of development charges. That was a case, where, the acquisition was for laying a Railway line. This Court found that the land under acquisition was situated in an area, which was adjacent to the land already acquired for the same purpose, i.e., for laying Railway line. In paragraph 29, the Court observed that the Land Acquisition Officer, the District Judge and the High Court had failed to notice that the purpose of acquisition was for Railways and that the purpose is a relevant factor to be taken into consideration for fixing the compensation. The Court relied on judgment in *Viluben Jhalejar Contractor v. State of Gujarat*, reported in 2005(2) RCR(Civil) 492 : 2005(4) SCC 789, where it was held that the purpose for which the land is acquired, must also be taken into consideration in fixing the market value and the deduction of development charges. Further, in paragraph 30, the Court specifically referred to the deduction for the development charges and observed :-

"30. We are not, however, oblivious of the fact that normally $\frac{1}{3}$ rd deduction of further amount of $\frac{1}{3}$ compensation has been directed in some cases. However, the purpose for which the land is acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways.....

In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise."

The Court made a reference to two other cases, viz., Hasanali Khanbhai & Sons v. State of Gujarat, 1995(3) RRR 283 : 1995(5) SCC 422 and Land Acquisition Officer v. Nookala Rajamallu, reported in 2004(1) RCR(Civil) 293 : 2003(12) SCC 334 respectively, where, the deduction by way development charges, was held permissible. The situation is no different in the present case. All that the acquiring body has to achieve is to widen the National Highway. There is no further question of any development. We again, even at the cost of repetition, reiterate that no evidence was shown before us in support of the plea of the proposed development. We, therefore, hold that the High Court has erred in directing the deduction on account of the developmental charges at the rate of Rs. 25/- per square feet out of the ordered compensation at the rate of Rs. 75/- per square feet. We set aside the judgment to that extent. The claimant would, therefore, be entitled to the compensation at the rate of Rs. 75/- per square feet with all the statutory benefits like solatium under Section 23(2), 12% interest under Section 23 (1- A) on the enhanced market value and interest at 9% and 15% as provided under Section 34 of the Act for one year and the rest of the period from the date of taking possession till the date of payment of the compensation awarded in favour of the claimant. With this, we partly allow the appeal and modify the order of the High Court. Appeal partly allowed."

However, one cannot lose sight of the fact that the sale deed (Ext.P-42) which is the sale exemplar, is only of 1 kanal of land in comparison to 41 kanals 1 marla, which is being acquired and therefore, the 50% cut which has been applied under the head of the smallness of the plot, the judgment of the Reference Court is, accordingly, modified to the extent of the cut applied, which is reduced to 40%. It is also to be noticed that the same is in commensurate with the fact that for the earlier notification, wayback in March 2002, the value for the said village had been assessed at Rs.41.40 lacs due to the massive development which has taken place in the area and large scale acquisition which has been done for the development of the industry from 1994 onwards. The potentiality of the land cannot be lost sight of, which fact has already been noticed in **Madan Pal III** (supra) and the prices are, thus, bound to surge in 4 ½ years.

Accordingly, this Court is of the opinion that the market value of the land is assessed @ Rs.72,00,000/- per acre along with statutory benefits. The appeals filed by the landowners are allowed by holding that the market value on 24.11.2006 for the land falling in Village Bas Khusla is @ Rs.72,00,000/- per acre along with all statutory benefits. However, the appeals filed by the HSIIDC are held to be without any merit and the same are, accordingly, dismissed.

MAY 02, 2018

sailesh

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

(G.S. SANDHAWALIA)
JUDGE