

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

**RFA No.4945 of 2014
Reserved on: 16.03.2108
Decided on : 27.04.2018**

Sandeep Somani
... Appellant

Versus

The State of Haryana and others
... Respondents

and other connected appeals

Filed by	Numbers
Claimant/Landowners	RFA Nos.4325, 4945 & 4946 of 2014 & RFA No.584 of 2017
State of Haryana	RFA Nos.3384 & 3742 to 3744 of 2014

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

Present : Mr. Manav Gupta, Advocate for the appellant (s)
in RFA Nos.4945 and 4946 of 2014 and
for the respondents in RFA Nos.3743 and 3744 of 2014.

Mr. Shailendra Jain, Senior Advocate with
Mr. Satyendra Chauhan, Advocate for the appellant (s)
in RFA No.584 of 2017 and for the respondents in
RFA No.3742 of 2014.

Mr. Rakesh Sharma, Advocate for
Mr. Vikram Singh, Advocate for the appellant (s)
in RFA No.4325 of 2014 and for the respondents
in RFA No.3384 of 2014.

Mr. Sudeep Mahajan, Addl. AG, Haryana with
Ms. Safia Gupta, AAG, Haryana.

G.S. Sandhawalia, J.

The present order shall dispose of 8 appeals i.e.

(RFA Nos.4945, 3384, 3742, 3743, 3744, 4325 and 4946 of 2014 & RFA No.584 of 2017) filed both by the land owners and the State under Section 54 of the Land Acquisition Act, 1894, which are directed against the orders of the Reference Court, Karnal dated 11.12.2013. The Court has assessed the market value of the land @ Rs.33,51,813.76 per acre for the land which was situated on the G.T. Road upto 2 acres on the date of notification under Section 4 of the Act dated 07.05.2007, while placing reliance upon Ex.P1 to Ex.P5, the sale deeds by taking out an average of Rs.83,79,534/-. A cut was imposed to the extent of 60% on account of the fact that the land had been developed and, therefore, the market value was, accordingly, assessed. For the other land beyond 2 acres, the value was fixed @ Rs.26,81,451/- per acre alongwith all statutory benefits.

The acquisition which was initiated on 07.05.2007 under Section 4 was followed by the notification under Section 6 dated 09.01.2008 by the State for expansion and systematic development of Tourist Complex, OASIS at Uchana, Karnal. The Land Acquisition Collector vide Award dated 14.07.2009 awarded compensation for 10 Acres 4 Kanal 7 Marlas by adopting the belting system @ Rs.15 lakhs per acre upto depth of 2 acres and 12 lakhs for the remaining land alongwith solatium and statutory benefits, which has accordingly been enhanced. In the reference petition compensation was sought at the rate of market value of Rs.2 crores per acre by taking the plea that the land was situated on the national highway and it had a great potential value and there were industrial and residential establishments in the vicinity.

Reference was made to the Chandigarh City which was developed into a Modern City having residential and commercial activities and the Haveli Tourist Complex and Dhingra Mall situated nearby. It was claimed that the sale deeds of the adjoining land were being executed @ Rs.85 lakhs per acre.

The defence of the State was that the land under acquisition was part of the controlled area in terms of the provisions of the Punjab Act, 1963 and it was agricultural land and could not be utilized for any other purpose unless CLU is obtained. The award was stated to be adequate and legal.

The following sale deeds were produced by the appellants on record:-

Sr.No.	Ex.	Date of sale deed	Amount of sale	In favour of	Rate of per acre	Rate per square yard	Area sold
1	P1	17.05.2006	1,16,87,500/-	Radha Mittal	85,00,000/-	1756/-	11k
2	P3	17.05.2006	2,06,65,625/-	Radha Mittal	85,00,000/-	1756/-	19k-9m
3	P5	25.04.2006	1,72,12,500/-	Radha Mittal	85,00,000/-	1756/-	16k-4m
4	P2	14.08.2006	55,00,000/-	Grandier Real Estate Pvt. Ltd.	65,67,164/-	1356.85	6k-14m
5	P4	08.12.2006	1,45,00,000/-	M/s Baru Tax Fashion Pvt. Ltd.	98,30,508/-	2031/-	11k-16m

The Reference Court while noticing that the best mode for assessing the market value is what the willing purchaser of the land would pay to the owner of the land by way of sale deeds was unnecessarily biased by the fact that acquisition was of over 10 acres of land. Though while discarding the sale exemplar of the State which was between Rs.6 lakhs to 8 lakhs on the valid ground that the LAC had

awarded even more compensation and, therefore, keeping in view the provisions of Section 25 rightly discarded the sale instances. It was also further noticed that the sale instance Ex.R2 to Ex.R10 were not proved on any site plan as to how far they were from the land which was acquired. While placing reliance upon the judgment in '**Dr. Jagdevinder Singh Vs. The President, Land Acquisition Tribunal, Amritsar Improvement Trust, Amritsar and others 2011 (suppl.) Civil Court Cases 726** , the average of the sale deeds was taken into consideration and a cut of 60% was, thereafter, imposed keeping in view the judgment in '**A.P. Housing Board Vs. K. Manohar Reddy and others 2011 (2) Civil Court Cases 107 (SC)**. It was noticed that the land was abutting the main highway, but there was no evidence that potential value of the land is such that it could be used for developing a housing project or to exploit it for commercial purposes. It was further held that if one portion is on one side abutting main G.T. Road, the remaining large area where planned development is required needs laying of internal roads, drainage, sewer, providing civil amenities etc. It was also noticed that Ex.P1 to Ex.P5 pertained to the area, which was across the G.T. Road of the acquired land and only at a distance of 2 acres from the acquired land. The Chandigarh City which had been developed by the private colonizers was across the G.T. Road. Therefore, the market value was assessed which in the opinion of this Court is not sustainable and which is of a much lower amount which would be clear from the evidence and facts and the land

owners have been short changed and require to be compensated by granting adequate market value. The percentage of cut which has been levied is on a far higher side and the error has apparently occurred on account of the fact that the statement of the witnesses and the record has not been properly scrutinized in a manner which should have been done while deciding the reference petition.

It is pertinent to notice that in the reference petition specific pleas were taken regarding the potentiality of the land and the location of the land on the G.T. Road. The further location of the Haveli Tourist Complex and the presence of Dhingra Mall, which was under construction opposite is also referred to. The registered sale deeds Ex.P1, Ex.P3 and Ex.P5 were specifically mentioned in the reference application and the fact that the land had been registered for more than Rs.85 lakhs per acre and the location of the land which was just near to the acquired land. The land was situated near the municipal limits of Karnal City and, therefore, had potential of building sites.

As noticed the only defence was that the land is situated within the controlled area and the acquired area is to be used only for the public purpose for expansion and systematic development of Tourist Complex, OASIS at Uchana, Karnal. The plea was that as per the Haryana Government Policy, the petitioner was also entitled to get the royalty amount of the acquired land every year upto 33 years. The factum of the potential location of the land as such or the in the neighbourhood the Haveli Tourist Complex was situated and there was a

Mall constructed opposite was never denied.

A perusal of the statement of Paramvir Singh Patwari- PW-9 would go on to show that he proved the Akshazra (Ex.P7) to show the location of the khasra number mentioned in the sale deed Ex.P1, which was on the western side of the G.T. Road and the acquired land was situated on the eastern side of the G.T. Road. He, accordingly, stated that the acquired land was situated at a distance of 2/2½ acres from the sale deed Ex.P1 dated 17.05.2006 for 11 kanals. He had, accordingly, stated that the acquired land as well as land mentioned in sale deed Ex.P1 was of same nature and same quality situated near the Karnal City. The distance between the acquired land and the Chandigarh City which had been developed by the builders was about 2/2½ acres and he stated that there is no other business center near the acquired land.

Similarly, PW-1 Sunder Lal in his cross-examination denied that the Haveli Tourist Complex is at a considerable distance from the acquired land and stated it is half an acre from the acquired land. Similar was the deposition of PW-9 Ram Niwas in the cross-examination that the acquired land is at a distance of only half acre from the National Highway and on the western side there was a Chandigarh City near the acquired land. He also in his cross-examination stated that Haveli Tourist Complex is at a distance of half kilometer from the acquired land.

The Draftsman-Harminder Singh, who had appeared as PW-8 proved the site plan Ex.PW8/A of the acquired land and the site is shown in green colour. The land shown in yellow colour is the land sold

prior to the acquisition and the site shown in red colour were commercial sites.

The statement of the RW-1 Dilbag Rai- Project Officer, of the Tourist Department would go on to show that though after the acquisition no construction was raised over the acquired land, but a project was being prepared. He admitted that just opposite the acquired land there was Chandigarh City and Haveli Tourist Complex was situated after some distance. He denied the suggestion that adjoining the Karna Lake there was Delhi Public School, Savoy Green and MC. Donald Resort.

A perusal of the Ex.PW-8/A the site plan itself would go on to show that portion of the land was abutting the highway whereas the balance portion was situated separately and away from the highway. Right across the highway was the land subject matter of the three sale deeds which have been executed in favour of Radha Mittal for Rs.85 lakhs on 17.05.2006 and 25.04.2006 (Ex.P1, P3 and P5), a year earlier from the date of initiation of acquisition, which was dated 07.05.2007.

The land sold through Ex.P1, Ex.P3 and Ex.P5 is situated on the G.T. Road itself and is a contiguous block and having been purchased by a buyer as noticed by three separate sale deeds within a close period of time and, therefore, the same value is liable to be granted to the appellants.

It is a known phenomena that land situated on the highway will command better value than the land situated away from the highway.

The evidence would also go on to show that portion of the land was away from the national highway, though might only be half acre from the National Highway as stated in the statement of Ram Niwas and also in the statement of Sunder Lal and the averments in the reference petition are that it had easy access to the G.T. Road. In such circumstances, the land on the highway would command higher price than the land lying in the interior.

The Apex Court, in '**V. Hanumantha Reddy (Dead) by Lrs. Vs. The Land Acquisition Officer & Mandal R. Officer**' ' 2003 (12) SCC 642, held that land abutting National Highway always fetches more price than the land lying in the interior and it is now a established principle of law and by no stretch of imagination, the sale instances could not be kept into mind.

In '**Haridwar Development Authority, Haridwar Vs. Raghubir Singh and others**' 2010 (11) SCC 581, the issue was regarding the adoption of the belting method. Resultantly, it was held that proximity to access to the main road and highway were factors which were to be taken into consideration, while upholding uniform market value given, since a compact contiguous land had been acquired. The relevant portion reads as under:-

“6. The question whether the acquired lands have to be valued uniformly at the same rate, or whether different areas in the acquired lands have to be valued at different rates, depends upon the extent of the land acquired, the location, proximity to an access road/Main Road/Highway or to a City/Town/Village, and other

relevant circumstances. We may illustrate :

(A) When a small and compact extent of land is acquired and the entire area is similarly situated, it will be appropriate to value the acquired land at a single uniform rate.

(B) If a large tract of land is acquired with some lands facing a main road or a national highway and other lands being in the interior, the normal procedure is to value the lands adjacent to the main road at a higher rate and the interior lands which do not have road access, at a lesser rate.

(C) Where a very large tract of land on the outskirts of a town is acquired, one end of the acquired lands adjoining the town boundary, the other end being two to three kilometres away, obviously, the rate that is adopted for the land nearest to the town cannot be adopted for the land which is farther away from the town. In such a situation, what is known as a belting method is adopted and the belt or strip adjacent to the town boundary will be given the highest price, the remotest belt will be awarded the lowest rate, the belts/strips of lands falling in between, will be awarded gradually reducing rates from the highest to the lowest.

(D) Where a very large tract of land with a radius of one to two kilometres is acquired, but the entire land acquired is far away from any town or city limits, without any special Main road access, then it is logical to award the entire land, one uniform rate. The fact that the distance between one point to another point in the acquired lands, may be as much as two to three kilometres may not make any difference.

7. The acquisition with which we are concerned relates to a comparatively small extent of village land measuring about 38 bighas of compact contiguous land. The High Court was of the view that the size and situation did not warrant any belting and all lands deserved the same rate of compensation. The Authority has not placed any material to show that any area was less advantageously situated.

Therefore the view of the High Court that compensation should be awarded at an uniform rate does not call for interference.”

It is to be noticed that if Ex.P1, Ex.P3 and Ex.P5 are taken into consideration, then of two of them were executed on the same date and one was executed 22 days earlier and the joint holding of the said three sale deeds would be 46.13 kanals (5.85 acres), which is slightly more than half the amount of the land which was being acquired, which is of 10 acres. The cut in such circumstances of 60% which has been put is on the higher side. Once land falling on the highway was valued and it had been purchased @ Rs.85 lakhs a year earlier this Court is of the opinion that the process of taking average of all sale deeds and applying major cut of 60% is not justified in the facts and circumstances. Firstly on the sale deeds of May, 2006 of Rs.85 lakhs 10% enhancement is liable to be granted. The amount would come to Rs.93,50,000/- and on the same if a development cut of 20% is put which amounts to Rs.18,70,000/- , the market value would work out to Rs.74,80,000/- for the land abutting the G.T. Road.

Similarly, cut of 20% is liable to be further granted on the land which is away from the main road and, therefore, an amount of Rs.14,96,000/- is liable to be reduced from the value of the land situated on the national highway. Resultantly, for the land situated away from the national highway the market value is fixed @ Rs.59,84,000/-.

Reliance upon 'Kasturi Vs. State of Haryana' 2003 (1)

SCC 354 can be placed upon for applying the 20% cut, wherein

acquisition was for 84.23 acres of land for setting up of residential and commercial area of Sector 13 and 23 in Bhiwani. The 20% cut applied by the Single Judge and upheld by the Division Bench was not interfered by the Apex Court on the ground that even though it was noticed that normal 1/3rd deduction is granted. In the said case, the exemplar was only of land measuring 3 kanals (1800 square yards).

In similar circumstances, in '**Trishala Jain and another Vs. State of Uttaranchal and another** '2011 (6) SCC 47, 10% deduction was made on the market value of the land, whereby the land was acquired for construction of Government Polytechnic Institute. In '**Chakas Vs. State of Punjab and others**' 2011 (4) RCR (Civil) 211, 10% was again deducted on account of the fact that Corporation is setting up its own industry and the land utilized for roads, sewerage and other such facilities were to be minimum as most of the land has been utilized by the Corporation.

In the present case, the acquisition is for the extension of Tourist Complex at Karna Lake, Karnal and, therefore, 20% cut would be reasonable as such.

The argument raised by the counsels that it is a contiguous piece of land has not been substantiated from the record and, therefore, the applicability of the principles laid down in '**HSI IDC Vs. Pran Sukh**' (2010) 11 SCC 175 cannot be applied and uniform compensation has rightly not been granted.

Accordingly, the appeals filed by the land owners are allowed and those of the State are dismissed. The market value stands enhanced to the tune of Rs.74,80,000/- for the land situated on the highway upto the depth of 2 acres and beyond that @ Rs.59,84,000/- alongwith all statutory benefits.

APRIL 27, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No