HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RFA No.594 of 2004
Date of Decision: 27.02.2019

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Khacheru & Ors. ... Appellants

VS.

Land Acquisition Collector-cum-
District Revenue Officer, Gurgaon & Ors. ... Respondents

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

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Present: Mr. Amit Jain, Advocate for the landowners

Mr. Ashish Kapoor, Advocate for IOCL

Ms. Vibha Tewari, AAG Haryana

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<u>Landowners</u>	**RFA Nos.594 to 601, 1300 of 2004, 167 & 168 of 2005**
<u>Indian Oil Corporation Ltd.</u>	**RFA Nos.777 to 788 of 2004**

<u>G.S. SANDHAWALIA, J</u>. (Oral)

(1) The above-captioned appeals under Section 54 of the Land Acquisition Act, 1894 have been filed both by the landowners and the Indian Oil Corporation Ltd. and are directed against the award of the Reference Court, Gurgaon dated 05.12.2003 whereby the market value of the land has been assessed @ ₹ 5,30,000/- per acre by adopting the uniform methodology irrespective of the nature of the acquired land.

(2) The notification in question under Section 4 was issued on 19.06.1996 and under Section 6 on 02.04.1997 for 35 acres 1 kanal 1 marla land situated within the revenue estate of village Bhondsi, Tehsil Sohna, District Gurgaon for the public purpose for setting up Liquefied Petroleum Gas Plant at Bhondsi. Vide the Award No.1 dated 06.08.1998, the Land Acquisition Collector, Gurgaon awarded compensation to the landowners @

₹ 5,30,000/- per acre for *chahi* land and ₹ 2 lakhs per acre for Bhud land along with statutory benefits.

(3) The Reference Court has rejected as many as 10 sale deeds of the landowners and the 13 sale deeds of the respondent-Corporation on the ground that some of the sale deeds Ex.P1, P3 & P4 were executed within a short period of about two months four days to two months nine days, prior to the publication of the notification under Section 4 of the Act whereas Ex.P5 to P10 were registered after acquisition in question and being post-dated sale transactions and as such all these sale transactions were not taken into consideration. Sale deed Ex.P2 which was executed ten months prior to the acquisition in question was not considered to be relevant on the ground that it was a single sale transaction and as such could not be taken into consideration for assessing the market value. The sale transactions Ex.R1 to R11 & R13 were not relied upon being below the amount awarded by the Collector in view of Section 25 of the Act whereas sale deed Ex.R12 for 16 kanals land (2 acres) which was sold at ₹ 6,70,000/- was discarded on the ground that it was a single transaction and the land was situated at a far off place in Rect.No.243 from the acquired land bearing Rect No.37 and therefore could not be said to be a comparable sale instance.

(4) Mr. Amit Jain, Advocate vehemently submitted that once sale exemplars were available and no cross-examination as such had been done on the *bone fide* transaction of the said sale deeds, the Reference Court was not justified in rejecting the sale transaction as they were the best piece of evidence. Therefore the market value should be on the basis of Ex.P1 which was a large chunk of land of 16 kanals 11 marlas and had been sold @ ₹ 72 lakhs and the per acre rate would be ₹ 34,69,880/-. He accordingly submitted

that on account of the largeness of the area no cut was liable to be imposed. He also referred to the potentiality to the land to submit that there were development in the vicinity by way of farm houses and therefore there was scope as such for development.

(5) Mr. Kapoor on the other hand pointed out from the evidence that Ex.P1 and P2 were sales by one M/s Orient Express Pvt.Ltd. to private persons whereas Ex.P3 & P4 were purchases by the same company from two brothers, namely, Jai Kishan and Jora sons of Ghansham and therefore the transaction could not be said to be *bona fide.* The company was dealing in the sale and purchase of the land in the area and it is accordingly, submitted that the uniform compensation awarded also was not justified and the compensation should have been as per the type of the land. The sale transactions which have been relied upon by both the parties are reproduced as under:-

Ex.No.	**Date of sale**	**Area Sold:**		**Sale Consideration:**	**Rate per acre:**
		K	**M**		
P1	10.04.1996	16	11	72,00,000.00	34,69,880.00
P2	21.08.1995	14	14	38,50,000.00	20,95,238.00
P3	15.04.1996	1	19	4,69,062.00	19,24,357.00
P4	15.04.1996	1	15	4,09,687.00	18,72,854.00
P5	18.10.1996	1	0	4,95,000.00	39,60,000.00
P6	30.10.1996	0	3	93,750.00	50,00,000.00
P7	18.10.1996	0	18	4,78,125.00	42,50,000.00
P8	03.07.1996	2	14	4,75,000.00	14,07,407.00
P9	03.07.1996	2	13	4,75,000.00	14,33,962.00
P10	03.07.1996	2	13	4,75,000.00	14,33,962.00
R1	03.06.1996	8	1	4,25,000.00	4,22,360.00
R2	13.06.1996	5	4	1,32,000.00	2,03,077.00

R3	19.06.1996	4	0	1,02,000.00	2,04,000.00
R4	13.06.1996	1	17	47,000.00	2,03,243.00
R5	13.06.1996	0	15	19,500.00	2,08,000.00
R6	20.06.1996	7	2	1,85,298.00	2,08,786.00
R7	20.06.1996	2	15	78,901.00	2,29,530.00
R8	20.06.1996	7	12	2,37,500.00	2,50,000.00
R9	20.06.1996	8	0	2,50,000.00	2,50,000.00
R10	20.06.1996	9	10	2,96,875.00	2,50,000.00
R11	21.06.1996	8	0	2,03,000.00	2,03,000.00
R12	17.05.1996	16	0	13,40,000.00	6,70,000.00
R13	28.05.1996	9	19	2,52,800.00	2,03,015.00

(6) A perusal of the pleadings and evidence as such would go on to show that the claim of the landowners was that the market value of the land was not less than ₹ 25 lakhs and it was situated 32 km from Delhi border road. The potentiality of being in close vicinity of the land of the farm house of the Ex-Prime Minister Sh. Chandra Shekher farms was stressed upon apart from the fact that the residential colony of Maruti Employees Cooperative Society was situated about half KM from the acquired land. Many farm houses such as Sona Farm Pvt.Ltd., Orient Express Farms Pvt.Ltd. and Vatika Resorts and Vatika Wood Farms had already existed prior to the notice under Section 4 of the Act. Many Industrial Units, such as Pro-Agro Seeds Industry, Bansal Cloth Mill, Orgnatic Pvt.Ltd. also existed near the land at the time of the notification under Section 4 of the Act.

(7) In the written statement filed by the respondent, the plea was taken that the land acquired was within the controlled area under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated

Development Act, 1963 and the said land could not be utilized or used except for agricultural purposes without obtaining permission of change of land use by the owner of the land and therefore there were restrictions in the use of the said land. The acquired land was surrounded by lands which were used for agricultural purposes and was at a distance of about 60 km from the Delhi Border. The farm of Sh. Chander Shekhar, Maruti Employees Cooperative Society and other farm houses etc. were not in existence at the time of notification under Section 4 and the said properties were situated far-away from the land in question and their vicinity and location was not relevant for assessing the market value. The land had been rightly classified into two categories, namely, *Chahi* and *Barani* and therefore there could not be two opinions in respect of the fact that *Chahi* land was more valuable than the *Bhud* land and therefore the Land Acquisition Collector had correctly assessed the market value of the land in accordance with its nature.

(8) As per the statement of Bhoop Singh PW1, it is apparent that the land was falling on the Dhumuspur Damdama road. The said witness had stated that DPS School is just 5 acres away from the acquired land and Kiran Bedi Navjyoti School is ½ km from the acquired land. Farms of Orient Company known as Orient village home were just located in front of the acquired land and Angna Country Club was just 1 km away from the acquired land i.e. on Sohna road. Empire Estate and Sona farm were just adjoining the acquired land and Vatika farms was 4/5 acres away from the acquired land. Copy of sale deeds were also exhibited by the said witness and the acquired land was stated to be 7-8 kms from Gurgaon and as per the cross-examination, the land sold by Jai Kishan and Jora Ex.P3 & P4 were sold at the rate of ₹ 19.50 lakhs per acre. He had denied that the Vatika

Farm and Empire Estate were not situated on Gurgaon-Sohna Road but on Damdama Road and Maruti Kunj Road respectively.

(9) Ex.P11 Map was prepared by PD Nagpal, Retired Tehsildar who deposed as PW2. As per the said map, the acquired land was shown in red colour and land shown in green and yellow colour was shown to be land of the sale deeds. He also deposed that the land situated was situated on Damdama road. He admitted that DPS School and Maruti Kunj were not shown in the site plan neither the farm of Kiran Bedi as they were situated ½ km from the acquired land. He stated that the same were on the southern side of the acquired land and he could not tell the distance of Vatika Farm and Empire Farm from the acquired land.

(10) As per the cross-examination of PW3 Hari Ram, the acquired land was at a distance of one Fallang from the village Bhondsi which was situated on the main Gurgaon-Alwar Road and on the Bhondsi-Damdama road, there was a *basti* known as Nain Gaon Bhondsi and the said *basti* was at a distance of about one fallang from village Bhondsi. As per the cross-examination, it is apparent that the farm of Sh. Chander Shekhar, Ex.Prime Minister was on the right side of the road, if one proceeds from Gurgaon to Bhondsi and it was situated less than one fallange from the main road.

(11) Further from the statement of RW1 Ringnam Leisam, Assistant Manager, LPG Engineering, it is clarified that the distance of Badshahpur from Bhondsi village was 5 km and Badshahpur and Bhondsi were situated on the Sohna-Alwar Road and the Dhumuspur Rithoj Road diverted from this road at the distance of 2 km from Badshahpur. The distance from this divergence to Bhondsi was 2½ km and village Dhumuspur from this diversion was about 2 kms and the diversion road led to village Rithoj and

the acquired land was about 0.5 kms from village Dhumuspur. The distance of the diversion point to Sh. Chander Shekher's point and village Bhondsi was 1.8 kms. The acquired land was an agricultural land and on one side of the acquired land, there was road and on other three sides, there was agricultural land.

(12) Thus on the cumulative reading of the evidence as such and from the site plan Ex.P11, it would be apparent that the land is not situated on the main Gurgaon-Alwar Road but a little off the main track. The potentiality of the land to some extent as such as projected for the purpose of commercial or residential growth is not apparent on the face of the record as the land is not on the main road. Merely, because there were some development in the shape of farm houses as such in the adjoining vicinity would not as such give the area the colour of development which would take place at a rapid pace. The sale deeds Ex.P1, P3 & P4 which were executed in 1996, however, as referred to in the chart above, can be also traced out on the site plan Ex.P11 also, whereas the sale deeds Ex.P2 dated 21.08.1995 is not depicted as such on the said site plan.

(13) The overall study of the sale consideration as such of the sale deeds would go on to show that from the period from 21.08.1995 to 15.04.1996, the market price as such was varying from ₹ 20,95,238/- and going down to ₹ 18,72,854/- per acre. The variation in Ex.P1 as such which is dated 10.04.1996 is also starkingly in contrast to the above-said rates as 16 kanals 11 marlas (2 acres approximately) was sold at a far higher rate ₹ 34,69,880/-. In such circumstances the argument raised by Mr. Kapur that total reliance on the sale deeds whereby M/s Orient Express Pvt.Ltd. is either a vendor or a vendee cannot be relied upon. It is apparent that the said

company is resorting to sale and purchase of land in the said area and profiting on the said basis and the said sale transaction as such cannot be held to be totally *bona fide* transactions as the company was profiting by purchasing the land at a lower rate and then alienating it at a higher rate. This fact would be clear that land in Ex.P3 & P4 was purchased @ ₹ 19,24,357/- on 15.04.1996 whereas four days earlier it had sold land @ of ₹ 34,69,880/- to Vipan Kumar vide Ex.P1 and that also of a much larger area i.e. 16 kanals 11 marlas. Ex.R12 which has been brought on record dated 17.05.1996 which was a month earlier to Section 4 notification is dated 19.06.1996 and is of 2 acres (16 kanals) and the market value would work out Rs.6,70,000/- which is also in sharp contrast as such to Ex.P2 to P4 which in comparison are ranging between ₹ 18,72,854/- to ₹ 20,95,238/-.

(14) The Apex Court in **Karnataka Urban Water Supply and Drainage Board vs. K. Gangadharappa & Anr. (2009) 11 SCC 164**, laid down the principles regarding fixation of market value with reference to the comparable sales to hold that the sale should be a reasonable time from the date of notification under Section 4(1) and it should be a *bona fide* transaction of the land acquired or the land adjacent to the land acquired possessing similar advantages.

(15) In **Maj.Gen.Kapil Mehra & Ors. vs. UOI & Anr. (2015) 2 SCC 262** certain factors which are required to be satisfied and only on fulfillment of the factors the compensation was to be awarded was noticed including the aspect of the *bona fide* sale transactions.

(16) In **Bhule Ram vs. UOI & Anr. (2014) 11 SCC 307**, it was held that the Court must avoid relying on a sham transaction which lacks *bona fide* and which had been executed for the purpose of raising the land

price just before the acquisition to get more compensation for the reason that it was a fraudulent move or design and should not be considered as a proof in such cases and such a conclusion could be inferred from the facts and circumstances of the case. The relevant portion reads as under:-

> *"9. In* ***Trishala Jain & Anr. v. State of Uttaranchal & Anr., AIR 2011 SC 2458****, this Court held that in case the parties do not lead any evidence on record it is difficult for the court to award compensation merely on the basis of imagination/ conjectures, etc. The Act provides for compensation for acquisition of land and deprivation of the property which is reasonable and just. The court must avoid relying on a sham transaction which lacks bona fide and which had been executed for the purpose of raising the land price just before the acquisition to get more compensation for the reason that fraudulent move or design should not be considered as a proof in such cases though such a conclusion can be inferred from the facts and circumstances of the case."*

(17) A persual of Ex.R12 would also go on to show that the payment for the said sale deed as such was made by pay order for the sale consideration of ₹ 13,40,000/- out of which ₹ 3 lakhs had already been paid and the balance amount of ₹ 10,40,000/- was received by pay order dated 16.05.1996 and the sale deed was executed a day later. In such circumstances, this Court is of the opinion that the sale deed Ex.R12 was wrongly ignored though it pertained to the same revenue estate whereby a reasonably large chunk of land of 16 kanals was sold. Merely, because it was at a distance from acquired land as such could not as such be a valid ground

for rejecting the same and the Reference Court should have placed reliance upon the said sale deed to fix the market value. The said sale deed had been tendered into evidence on 28.03.2003 by counsel and though it was objected to but no evidence in rebuttal as such was led to show that the said sale deed was not a *bona fide* transaction.

(18) In **Lal Chand Vs. Union of India 2009 (15) SCC 769,** it was noticed that the difference of urban and rural lands is to be kept in mind and distance of 1 or 2 kms in rural areas may not make much difference for the purpose of market value whereas in urban area, even a distance of 50 metre may make a huge difference in market value in urban properties. The relevant portion of the said judgment reads as under:-

> *"28. But a word of caution. What Narsaiah and Cement Corporation of India clarified was that a certified copy of a sale deed could be marked as an exhibit and its contents may be relied upon as evidence of the sale transaction, even without examining either the vendor or the vendee, in view of the enabling provision in Section 51 of the LA Act. If the acquisition is in regard to a large area of agricultural lands in a village, and the exemplar sale deed is also in respect of an agricultural land in the same village, it may be possible to rely upon the sale deed as prima facie evidence of the prevailing market value, even if such land is at the other end of the village at a distance of one or two kilometres. But the same may not be the position where the acquisition relates to plots in a town or city where every locality or road has a different value. For example in a place like Delhi there are some areas where the plot value is many times more than the value of plots in a neighbouring middle class locality which in turn may be many time more than the value of*

plot in a neighbouring slum area. Or the price of a property on a main road may be many times more than the price of a property on a parallel smaller road, though the two properties may be situated back to back. It cannot be said that merely because two properties adjoin each other or touch each other the value applicable to the property facing a main road, should be applied to the property to its rear facing a service road. Therefore, while a distance of about a kilometre may not make a difference for purposes of market value in a rural village, even a distance of 50 metre may make a huge difference in market value in urban properties."

(19) The argument of Mr. Kapoor though to place reliance upon the valuation done for the notification dated 27.10.1988 wherein the market value was assessed @ ₹ 2,52,800/- per acre is not justified in the facts and circumstances as a period of more than 8 years was intervening and therefore in view of the judgment of the Apex Court in ***The General Manager, Oil and Natural Gas Corporation Ltd. vs. Rameshbhai Jivanbhai Patel & Anr. (2008) 14 SCC 745,*** the said award would lose its significance and blindly resorting to the earlier award of 8 years earlier would not give the correct market value of the land. The Apex Court has categorically held that the said principle of cumulative increase cannot be applied for the period beyond 5 years in **Manoj Kumar vs. Haryana State, 2018(2) RCR (Civil) 815** and therefore the said argument is not liable to be accepted.

(20) Resultantly, keeping in view the above discussion, this Court of the opinion that market value as such of the land in question can be assessed @ ₹ 7 lakhs per acre keeping in view Ex.R12 in mind on account of the fact that the acquired land falls on the road and has a reasonable frontage as is

clear from Ex.P11. The principle of cut as such which has to be applied on account of over 35 acres being acquired is also not liable to be accepted in the facts and circumstances of the case as keeping in view the fact that Ex.R12 pertaining to 2 acres which is a large chunk of land and therefore would be showing the true market value as such and therefore no cut would be required on account of the smallness of the plot. The cut for the purposes of development in the present case is also not liable to be imposed especially keeping in view the fact that the land was being acquired for the public purpose for Liquefied Petroleum Gas plant.

(21) Similarly, in ***Atma Singh Vs. State of Haryana (2008) 2 SCC 568***, the acquisition was of 89 acres of land for the construction of a Cooperative Sugar Mill. Resultantly, it was held that the factory would yield goods for many years and produce by-products in the same process and would run efficiently and earn money and make profit and it would not be proper to make deduction from the price exhibited by the sale exemplars and 10% was fixed as deduction charges.

(22) The said view was followed by the Apex Court in ***Chakas Vs. State of Punjab & others 2011 (10) SCR 618***, by applying 10% cut only. Relevant portions of the judgment read as under:

> "*19. The Reference Court committed a grave error in deducting 50% of the value assessed by him, towards development charges and further reduced the said amount for the reasons not assigned by him. The learned Single Judge vide the impugned judgment has enhanced the amount of compensation but committed an error in fixing the base price as 2,75,000/- per acre for the acquired land, applying the doctrine of reasonable cut to the average price worked out by him at Rs.3,42,527/- per acre. We do not approve of the reasonings adopted either by the reference Court or by the High Court.*

> *How much amount is to be deducted from the base price would depend on various factors.*
>
> *20. As mentioned hereinabove, in the case in hand the bulk of the land that is almost 525 acres has been given to respondent No.3, the Corporation for setting up its own industry and other infrastructure thereon.Thus, the lands likely to be used towards roads, sewage and other such facilities would be minimum as most of the vacant land would be utilised by respondent No. 3 for its own benefits.*
>
> *21. Needless to say, once the industry is set up, it would be for the financial benefit and gain of respondent No.3 year after year. Thus, looking to the matter from all angles, respondent No. 3 - Corporation would be a great beneficiary at the cost of depriving the appellant - land owner of his sole livelihood of agriculture.*
>
> *22. Therefore, it is neither desirable nor proper to deduct more than 10% of the amount in the base price fixed by us at Rs.4,08,000/-. We accordingly do so. "*

(23) Accordingly keeping in view the sale exemplar as such which is of reasonably large chunk of land, this Court is of the opinion that no development cut is liable to be imposed and resultantly keeping in view the land is better placed and having access on the road, the market value is assessed @ ₹ 7 lakhs per acre plus statutory benefits.

(24) The argument raised by Mr. Jain that no witness was cross-examined on the issue of *bona fide* transaction is without any basis. The market value is to be fixed on the basis of the sale exemplars produced by the landowners and the onus is always upon them. It is the duty of the Reference Court to fix the correct market value and all factors have to be taken into consideration. Once from the record it is apparent that the sale deeds as such are being executed in close proximity to each other and there

is a huge variation in the market value and the parties involved are common, this Court will not accept the said sale deeds except with a pinch of salt.

(25) The argument as such which is being raised that uniform compensation was not liable to be granted is also not liable to be accepted. The land is in a compact block having similar advantages and disadvantages and therefore the decision of the Reference Court to grant uniform compensation is well justified.

(26) In **Avtar Singh & Anr. vs. State of Punjab & Anr. 2018(5) rcr (Civil) 854,** the acquisition was for 67 acres of land in two villages for the purpose of housing. Resultantly, it was held that as it is a single block and the land is similarly-situated, the uniform compensation had to be granted for land of both the villages.

(27) It is not that a particular stretch of land is closer to highway and has a better potential as such and therefore keeping in view the judgment in ***HSIIDC vs. Pran Sukh, (2010) 11 SCC 175*** the grant of uniform compensation at a higher rate is upheld by allowing the appeals of the landowners and fixing the market value @ ₹ 7 lakhs per acre along with statutory benefits whereas the appeals of the Corporation are accordingly dismissed.

27.02.2019 **(G.S. Sandhawalia)**
vvishal **Judge**

1. Whether speaking/reasoned? ***Yes***
2. Whether reportable? *Yes*