IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.4207 of 2009 and other connected appeals
Decided on : 26.02.2019

State of Haryana and others

... Appellants

Versus

Shiv Narayan and others

... Respondents

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

Present : Mr. Sudeep Mahajan, Addl. AG, Haryana.
Ms. Vibha Tewari, AAG, Haryana.

Mr. TapanYadav, Advocate,
Mr. Shobit Phutela, Advocate for
Mr. A.R.Takkar, Advocate for the landowners.

G.S. Sandhawalia, J. (Oral)

The present judgment shall dispose of 27 appeals, out of which 14 bearing RFA Nos.4207 to 4219 and 4434 of 2009 have been filed by the State and remaining 13 bearing RFA Nos.2946, 2947, 2954 to 2959, 5093 to 5095 of 2009, 462 and 2477 of 2010 have been filed by the landowners against the Award dated 31.01.2009 passed by the Reference Court, Rewari. The facts are being taken from **RFA No. 4207 of 2009 'State of Haryana and others Vs. Shiv Narayan and others'.**

2. The land had been acquired vide notification dated 05.07.2001 issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') falling in village Fideri, Tehsil & District Rewari measuring 402 kanals 12 marlas (50 acres approximately) for the purpose of construction of building of District Jail, Rewari. The Land Acquisition Collector (for short 'the LAC') vide Award dated 17.04.2003 had granted

₹1,25,000/- per acre for Chahi and ₹1,10,000/- per acre for Banjar and Gair Mumkin.

3. The basis of enhancement by the Reference Court are the three sale deeds Ex.P10 to Ex.P12 executed between 12.03.2001 to 24.05.2001, whereby price is ranging from ₹8,96,000/- to ₹8,18,823/- per acre for 5, 10 and 17 marlas of land respectively. The relevant table reads as under:-

Sr.No.	Ex.	Sale deed No.	Date	Area	Amount	Per Acre	Village
1.	P-5	149	15-04-01	0-5	75,000/-		Rewari
2.	P-6	1087	02-06-01	0-13	2,60,000/-	32,00,000/-	Rewari
3.	P-7	6146	10-03-01	0-5	1,20,000/-	38,40,000/-	Rewari
4.	P-8	5712	16-02-01	1-8	2,60,000/-	14,85,714/-	Khalilpuri
5.	P-9	5911	02-03-01	1-3	1,20,000/-	8,34,782/-	Khalilpuri
6.	P-10	6005	12-03-01	0-5	28,000/-	8,96,000/-	Fideri
7.	P-11	6183	20-03-01	0-10	54,000/-	8,64,000/-	Fideri
8.	P-12	838	24-05-01	0-17	87,000/-	8,18,823/-	Fideri

4. Keeping in view the smallness of the plot, the Reference Court applied a thumb rule by applying the cut as such and had granted ₹7 lakhs without specifying the percentage of deduction. The market value of land falling in village Rewari and Dhaliawas which was acquired vide notification dated 23.01.1990 and this Court had granted a uniform compensation @ ₹7,04,367/- per acre vide judgment dated 15.05.2006 passed in **LPA No.387 of 2001 'Pawan Kumar and another Vs. Land Acquisition Collector and others'** (Ex.P13), was ignored since there was sale instances of village Fideri itself.

5. Similarly, the judgment dated 11.12.2007 passed in **LA Case No.4 of 2004 'Jaswant Singh and others Vs. State of**

Haryana and others' (Ex.P16) pertaining to the land situated in village Khalilpuri and Kutubpuri Jagir which was acquired vide notification dated 17.04.2002, whereby a sum of ₹9,01,224/- per acre for all types of land upto the depth of two acres on both sides of Rewari-Dharuhera-Delhi Road and ₹7 lakhs per acre for all types of land beyond the depth of two acres on both sides of Rewari-Dharuhera-Delhi Road had been assessed, was also ignored, since it was post notification.

6. Counsel for the landowners has vehemently argued that this Court in **RFA No.3102 of 2008 'Jaswant Singh and others Vs. State of Haryana and others'** decided on 15.03.2018 has further enhanced the compensation to ₹9,22,242/- per acre and, therefore, the benefit of the highest amount should be granted as village Khalilpuri and Kutubpuri Jagir are adjoining villages as such. The land as such was falling on the National Highway No.71, which leads from Rewari to Dharuhera and, therefore, the potentiality of the land as such could not be disputed. Reference was also made to the site plans Ex.P1 and Ex.P12/1 to show the adjoining revenue limits and development which was taking place, apart from the potentiality of the land, which has been mentioned in the Section 18 petition to submit that the amount was liable to be enhanced. It is further contended that on an earlier occasion Section 4 notification had been issued on 16.01.1997 (Ex.P4), whereby 696 kanals 11 marlas of land (87 acres approximately) was sought to be acquired for the purpose of Police Lines and the land fell in village Rewari, Khalilpuri, Kutubpuri Jagir and Fideri, but the same did not materialize. It is also argued that,

thereafter, vide the subsequent notifications dated 17.04.2002 and 06.07.2007 acquisition had been done for the Police Lines leaving out the land of village Fideri.

7. It was, accordingly, argued that they are adjoining villages as such and, therefore, once the amount had been enhanced in **Jaswant Singh' case (supra)**, the same benefit was liable to be granted. It is, accordingly, submitted that there are commercial units around the area and the land had immense potential and was close to the residential area which was developed by the HUDA, as per the deposition of the claimant witnesses and as per deposition of the official witness RW-1 Narender Singh also and, therefore, the compensation was liable to be enhanced. It was, thus, argued that the benefit of the sale deeds of village Khalilpuri and Rewari, Ex.P5 to Ex.P9 as reproduced in the table above, should have been granted.

8. Counsel for the State on the other hand has vehemently opposed the said arguments and rather submitted that the State appeals are liable to be allowed as the sale exemplars were of small area ranging between 5 marlas to 17 marlas and in the present case a large chunk of 50 acres of land was acquired. It was argued that the land of the adjoining village Khalilpuri and Kutubpuri Jagir was situated in a better location in as much as it was on the main road from Rewari town leading to Jaipur Highway and, therefore, the potentiality of the land on National Highway No.71B would be more than what was the value on the road on National Highway No.71 leading to Dharuhera.

9. After perusing the site plans Ex.P1, Ex.PW12/1 and examining the evidence on record, it would be apparently clear that the land is situated a little away from the road which leads to National Highway No.8 between Delhi to Jaipur, though the villages as such might be adjoining. The cross-examination of PW-7 Rajbir Singh and PW-8 Sube Singh shows that the distance of National Highway No.8 was about 4 to 5 Kms from the acquired land and PW-9 Anil Kumar Patwari had stated that the District Police Lines is located on the Rewari-Dharuhera road in front of the acquired land of the District Jail in the revenue estate of the village Fideri. PW-12, Om Parkash, Draftsman also deposed that the distance of the acquired land from the Rewari-Delhi road at Point A was of half acre and point B was about four acres.

10. It is, thus, apparent from both the site plans that the land is situated abutting a comparative less important road which is connecting the Rewari town to Dharuhera, whereas the land of village Khalilpuri and Kutubpuri Jagir, which was subject matter of the acquisition dated 17.04.2002 approximately 9 months later, is situated at a better location on a tri-junction. It was in such circumstances, this Court had granted nominal enhancement while maintaining the belting system as such while also noticing that there was a *Nala* on the back portion, which would be having less value than what was on the main road. The said acquisition is by way of a subsequent notification than what is subject matter of consideration in the present set of appeals and, therefore, keeping in view the fact that the sale exemplars of the same village are already available

Ex.P10 to Ex.P12, this Court is of the opinion that reliance upon the same as such is not justified.

11. It is a settled principle that once the sale exemplar of the same revenue estate/village are available, then it would not be appropriate to fall back on the Award of the adjoining villages, keeping in view the settled principle of law laid down by the Apex Court in the case of **'Manoj Kumar & others Vs. State of Haryana & others' 2018 (2) RCR (Civil) 815** and in **'Loveleen Kumar etc. Vs. State of Haryana and others' 2018 (3) RCR (Civil) 127.** The relevant portion of the judgment passed in the case of **Manoj Kumar (supra)** 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.
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> 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."

12. Similarly, the relevant observations of **Loveleen Kumar (supra)** read as under:-

> "7. Having gone through the material on record and after considering the arguments of the advocates, we are of the opinion that the Reference Court, as well as the High Court, have not considered the sale deeds produced on behalf of the State for determination of compensation. A chart of the sale deeds on record filed before us by the learned advocates appearing on behalf of the State reveals prima facie the value of certain lands involved in those sale deeds. The site plan of the village Hansi depicts such sold patches as being in the middle of the acquired land.
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> The lands in all the sale deeds shown alongside the plan are in close proximity and adjoining to the land acquired under the Section 4 notification of the present case. There is no reason as to why the High Court, while coming to its conclusion, has not referred to the sale statistics. If the sale statistics are to be ignored, the High Court should have furnished reasons for doing so.
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> 8. The High Court has mainly relied upon Ashrafi (supra) for coming to its conclusion. In our considered opinion, the method of granting compensation on the basis of cumulative increase as done was not permissible in the facts of the case, in view of the sale deeds produced. The method of working out compensation without considering the evidence on record cannot be said to be justifiable. The land in Ashrafi (supra) was acquired in the year 1995 and was very small. It was for a commercial purpose. In the matter on hand, the land was acquired in the year 2005. Thus, there is a gap of about 10 years between the two acquisitions. Relying on such an acquisition of a decade ago may be unsafe. This Court in the case of ONGC Ltd. v. Rameshbhai Jivanbhai Patel, (2008) 14 SCC 745 observed that a transaction or acquisition over five years before the present acquisition is an

unreliable standard."

13. The benefit of the sale deeds of village Khalilpuri and Rewari which are subject matter of Ex.P5 to Ex.P9 are, thus, not liable to be granted, in view of the law laid down above. The Apex Court has held that the benefit of the sale deeds qua the market value of the adjoining villages would only be applicable if there are no sale exemplars of the said village available. In the present case as noticed the sale exemplars are very much present for the said village. The potentiality and the location of the land has already been discussed in detail to show the location of the land being a little away from the main road to the National Highway No.8 and, therefore, the value on the main road as such in comparison would always be more than on the adjoining highway. It is a settled principle that these factors have to be kept on the mental screen while determining the compensation and would be relevant factors and cannot as such be ignored. Merely because the land of village Fideri was also subject matter of consideration in the earlier acquisition which was acquired for Police Lines, would not as such mean that the value would be the same. The table would also go on to show that the market value for revenue estate of Rewari and Khalilpuri is much more, as it is closer to the main Rewari town, whereas Fideri being further away the value would keep on decreasing as one goes away from the main town.

14. The arguments as such raised by the State counsel regarding the smallness of the sale exemplars as such are likely to be rejected, keeping in view the law laid down by the Apex Court in **'Trishala Jain**

and another Vs. State of Uttaranchal and another' 2011 (6) SCC 47 and **'Mehrawal Khewaji Trust (Regd.), Faridkot and others Vs. State of Punjab and others' (2012) 5 SSC 432,** whereby it has been held that benefit of the best sale deeds should be given to the landowners after applying appropriate cut on account of the smallness of the plot.

15. Even if the benefit on the basis of Ex.P11 which is of 10 marlas is to be granted and whereby the market value was assessed @ ₹8,64,000/- per acre and a 20% cut is put on the same, the market value would work out @ ₹6,91,200/- per acre which is approximately the same as has been granted by the Reference Court @ ₹7 lakhs per acre. Similarly, if a 20% cut is put on the small sale deed of 5 marlas, whereby the market value was assessed @ ₹8,96,000/- per acre (Ex.P10), the market value would work out @ ₹7,16,800/- per acre, which is rightly opposed by the State counsel on account of the small area measuring 5 marlas (150 square yards approximately).

16. Resultantly, this Court is of the opinion that the market value had been assessed on the correct principles and there is no scope for modification both at the instance of the State or the landowners. Accordingly, the appeals filed by the State and the landowners are dismissed.

(G.S. SANDHAWALIA)
JUDGE

FEBRUARY 26, 2019
Naveen

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No