IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.3146-2019 (O&M)
along with other connected appeals
Decided on : 16.12.2019

Haryana State Industrial & Infrastructure Development Corporation
... Appellant

Versus

Teshi & others ... Respondents

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

Present: Mr.Sudeep Mahajan, Advocate
and Ms.Manjit Saini, Advocate, for the HSIIDC.

Mr.B.K.Bagri, Advocate
Ms.Meenakshi Sharma, Advocate, for
Mr.M.L.Sharma, Advocate
Mr.Sidharath Goyal, Advocate
Ms.Manjeet Kaur, Advocate, for
Mr.R.D.Yadav, Advocate
Mr.Balraj Gujjar, Advocate
Mr.Gulshan Nandwani, Advocate
Mr.Gaurav Aggarwal, Advocate
Mr.Abhishek Yadav, Advocate
Mr.Sanjay Mittal, Advocate
Mr.Gaurav Khokhar, Advocate, for
Mr.S.K.Aggarwal, Advocate
Mr.Amrit Singh, Advocate, for
Mr.P.S.Chauhan, Advocate, for the landowners.

Ms.Vibha Tewari, AAG, Haryana.

G.S. Sandhawalia, J. (Oral)

The present judgment shall dispose of 215 appeals, under Section 54 of the Land Acquisition Act, 1894 (for short, the 'Act'), filed by the HSIIDC, bearing RFA-3146 to 3149, 3163 to 3171, 3253 to 3258, 3261 to 3278, 3281 to 3294, 3296 to 3319, 3416 to 3431, 3776 to 3789, 3791 to 3806, 3925 to 3965, 4024 to 4076-2019, arising out of the impugned order dated 07.05.2018, passed by the Reference Court, Rewari.

The appeals have been preferred by the HSIIDC on account of a patent error which has occurred on the face of the record while assessing the market value of the 2 notifications, while only referring to the subsequent notification dated 31.10.2008. The Land Acquisition Collector had awarded a sum of Rs.16 lakhs per acre, for both the notifications. In such circumstances, the matter has to be remanded for the second time, to the Reference Court. The notifications in question are dated 08.06.2007 and 31.10.2008, issued under Section 4 of the Act and will accordingly be referred to as the '1st notification' and the '2nd notification', for the purpose of convenience.

By the 1st notification, land of 3 villages, namely, Rudh, Chirahara and Bawal were sought to be acquired for the extension of the Industrial Growth Centre, Bawal. Section 6 notification was published on 27.02.2008 and while deciding 43 cases lead case being LAC-1-2011 titled *Shish Ram & others Vs. State of Haryana & others*, the Reference Court, while dealing with Village Rudh, relying upon an earlier award dated 17.01.2015, passed in the case of 2nd notification dated 31.10.2008, in LAC-161-2011 titled *Babu Lal & others Vs. State of Haryana & others,* fixed compensation @ Rs.22 lakhs per acre, inspite of the fact that the judgment which had been relied upon in Babu Lal (supra) was for a subsequent notification, in as much as there is a gap of one year and four months. Resultantly, when the matters came before this Court, at the instance of the appellant-Corporation in **RFA-4236-2016** titled *HSIIDC Vs. Ram Kanwar (deceased) th LRs & others* (Annexure A-4), matters were remanded on 15.11.2017 (in RFA-4024-2019), primarily on the ground that reliance upon post-notification sale instance or award, to assess the true value of the land, was ordinarily unsafe and should be avoided. Another reason was that in Babu Lal(supra), for the subsequent notification also, the matters had been already remanded on 25.10.2017 for re-decision and the basis of the award itself no longer survived. It was mentioned that it would be appropriate and rather necessary if the land references arising out of both the notifications are decided together, if not earlier and by the same Court.

For the 2nd notification dated 31.10.2008, pertaining to 6 different villages i.e. Deodai, Bhagthala, Patuhera, Banipur, Karnawas and Asalwas, the declaration under Section 6 was issued on 08.08.2009 and the award was also @ Rs.16 lakhs per acre, as noticed earlier. The Reference Court, in Babu Lal(supra), had enhanced the market value to Rs.22 lakhs per acre. The said case was subject matter of challenge, both by the landowners and by HSIIDC in **RFA-3522-2015** titled *Babu Lal & others Vs. State of Haryana & others*, decided on 25.10.2017, while dealing with the land of Village Deodai. A Coordinate Bench of this Court, as noticed, had not appreciated the methodology adopted for fixing the market value and set aside the award passed which was based on its earlier award and rather than determining the value of the acquired land in terms of sale exemplars and had relied upon a judicial precedent. It was noticed that the land references pertaining to the other villages i.e. Patuhera, Banipur, Bhagthala, Karnawas and Asalwas were disposed of by the Reference Court while relying upon an earlier award dated 17.01.2015. Accordingly, the Co-ordinate Bench came to the conclusion that both the sides were aggrieved by the findings recorded by the Reference Court and nothing substantive was referred or demonstrated to increase the value of the acquired land and enhancement granted by the Reference Court was not a true reflective value of the land. Resultantly, the matters were remanded on 25.10.2017.

It is in such circumstances the Reference Court has, now, re-decided the issue vide impugned order dated 07.05.2018 and fixed the market value @ Rs.41,24,016/- per acre, for both the notifications. However, from the impugned award, it would be apparently clear that while deciding the issue the Reference Court was dealing with the two notifications which were one year and four months apart but had lost sight of the fact that the 1st notification dated 08.06.2007 existed. The same would be clear from para No.14 of the award whereby the Court proceeded to decide the market value of notification dated 31.10.2008, which reads as under:

> "14. Under this issue court has to decide what was the market value of the acquired land on 31.10.2008, the day when notification under Section 4 of the Act was published. Onus to prove the same is over the petitioners."

This fact is further fortified on account of the fact that an application was filed by the State dated 11.04.2019 (Annexure A-1), which is also there in the record which had been summoned that there was no reference to the notification dated 08.06.2007, for the three villages in question, i.e., Bawal, Chirhara and Rudh. It is pertinent to mention that for the 1st notification, 3 villages were subject matter of notification, as noticed above. Keeping in view the above application, the Reference Court came to the conclusion that it was a typographical mistake and the details of the villages left were not mentioned and passed the order on 09.05.2019 (wrongly mentioned as 09.05.2018) and the entry was directed to be made in the main award with red ink. Said order reads as under:

> "Original file received. Learned counsel for applicants has moved an application u/s 151/152 CPC with the averments that LA Case No.161 of 2011 along with other connected reference petitions were decided by this court vide award dated 07.05.2018, but due to typographical mistake, the complete detail of the acquisition of both the notifications and the land of the villages were left to be mentioned in para No.2 of the award, which is very essential. File perused. Inadvertently, notification no.32/3/07-4-IBI dated 08.07.2007 u/s 4 of the Act followed by notification under Section 6 of the Act dated 27.02.2008 for award No.5/R dated 25.09.2008 of village Bawal, Award No.1/R dated 29.08.2008 of Banipur, Award No.2/R dated 29.08.2008 of Chirhara & Award No.3/R dated 29.08.2008 of Rudh were left to be mentioned in the main award. In view of above, instant application stands allowed and Reader of the court is directed to make necessary correction in the main award with red ink. Papers be attached with main case file and be consigned to record room, after due compliance."

At this stage, the Reference Court faulted on a second occasion in as much as the earlier impugned award should have been recalled but it only incorporated the fact of the 1st notification. As noticed above, there was no discussion qua the notification dated 08.06.2007 in the impugned award.

The Reference Court, at the end of the day, in para No.15, relied upon 11 sale deeds and took the details of the sale deeds whereby the area was assessed as 207 kanals 75 marlas and the value was assessed @ Rs.24,14,27,614/-, falling in different villages. The average of the market value per acre was, thus, taken out at Rs.91,64,480/- and 55% cut was applied to come to the value @ Rs.41,24,016/- per acre. Relevant table reads as under:

Exhibits No.	**Sale-deed No.**	**Date**	**Area K-M**	**Value (Rs.)**	**Village**
Exh.P1	179	10.04.2008	85-16	8,55,00,000	Deodai
Exh.P2	6800	12.12.2007	32-4	3,96,36,000	Deodai
Exh.P3	6257	16.11.2007	58-15	9,30,00,000	Deodai
Exh.P4	7800	22.12.2006	1-2	5,61,614	Deodai
Exh.P5	854	09.05.2007	0-18	5,45,000	Deodai
Exh.P8	1316	19.09.2006	1-0	18,25,000	Bawal
Exh.P9	1770	29.11.2006	1-0	19,00,000	Bawal
Exh.P10	2146	30.01.2007	0-10	9,00,000	Bawal
Exh.PW5/3	43	13.04.2006	19-8	1,00,00,000	Bawal
Exh.P27	2254	15.02.2007	5-1	37,80,000	Asalwas
Exh.P28	2255	15.02.2007	5-1	37,80,000	Asalwas
Total			**207-75**	**24,14,27,614**	

Average market value per acre Rs.91,64,480/-
Deductions for developmental expenses 55%
VALUE PER ACRE Rs.41,24,016/-

A perusal of the chart above would also go on to show that the assessment has been made by consolidating the sale deeds from 15.02.2007 till 10.04.2008, without appreciating the fact that there are 2 notifications. The market value of the land acquired by the 1st notification dated 08.06.2007 was to be assessed separately and not clubbed with the 2nd notification dated 31.08.2008, keeping in view the difference of 1 year 4 months between the two date of the Section 4 notification. The villages of the 1st notification and the sale deeds of the said villages were also not taken into consideration and the error has again occurred there. Neither the site-plan has been examined to show the location of the said sale deeds.

Another error which is apparent on the face of the record is that the sale deeds vary from 18 marlas to 85 kanals 16 marlas, falling in different villages. The market value of each sale deed has not been calculated in a table for the Reference Court to examine that out of the said sale deeds which was inflated and those which fell within a common and narrow band-width, so that averaging could be resorted to, as laid down in **Maj. Gen. Kapil Mehra & others Vs. Union of India & another 2015 (2) SCC 262**. Relevant portion of the judgment read as under:

> "20. Where the lands acquired are of different type and different locations, averaging is not permissible. But where there are several sales of similar lands, more or less, at the same time, whose prices have marginal variation, averaging thereof is permissible. For the purpose of fixation of fair and reasonable market value of any type of land, abnormally high value or abnormally low value sales should be carefully

> discarded. If the number of sale deeds of the same locality and the same period with short intervals are available, the average price of the available number of sale deeds shall be considered as a fair and reasonable market price. Ultimately, it is in the interest of justice for the land losers to be awarded fair compensation. All attempts should be taken to award fair compensation to the extent possible on the basis of their accessibility to different kinds of roads, locational advantages etc. Four perpetual lease deeds A-7 to A-10 relied upon by the appellants are of the same locality – Vasant Kunj Residential Scheme and relate to the period ranging from September 1995 to December 1996, but they are just prior to Section 4 (1) notification. In our view, the High Court was justified in taking the average of the said four exemplars and approach adopted by the High Court in averaging the sale prices of Exs A7 to A10 cannot be said to be perverse."

Resultantly, the market value of smaller pieces of land have been clubbed with the larger chunks and thus, averaging exercise also suffers from an illegality. Resultantly, this Court is of the opinion that the award dated 07.05.2018, on the face of it, suffers from patent illegality and cannot be sustained, in any manner.

This Court is aware that the matter is being remanded for the second time but in the absence of any discussion of the sale exemplars in reference to the 1st notification and this Court being Court of First Appeal, does not have the benefit of a justified and valid reasoning. In the absence of the same, it would not be fair to both the sides to start appreciating the factual aspect, at the first instance. Accordingly, this Court has no option but to remand the matters.

Resultantly, the present appeals are allowed, order dated 07.05.2018 is set aside and the matters are remanded again to the Reference Court, Rewari, for fresh decision. Parties shall put in appearance before the District Judge, Rewari, on 15.01.2020. It is expected that both the notifications shall be decided together and be heard by the appropriate Court and disposed of, by keeping in mind the observations made above. Counsel for the landowners shall be given opportunity to lead additional evidence, if required, as per the provisions of Code of Civil Procedure, since sale deeds of all villages may not be readily available.

Appeals stand allowed in the above-said terms. Pending misc. applications, if any, also stand disposed of.

Office shall take steps to list the landowners' appeals which stand admitted, so that appropriate orders can be passed in them.

DECEMBER 16th, 2019 **(G.S. SANDHAWALIA)**
SAILESH **JUDGE**

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*