

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RFA No.3552 of 2010 & other connected appeals
Decided on : 31.01.2019

Om Parkash and others

... Appellants

Versus

State of Haryana and others

... Respondents

Notification dated: 29.09.2005				
Regular case No.	Case number and year	Filed by	Award date	Village
342	3552 to 3564, 5357 and 5358 of 2010, 6117 of 2011	Landowners	02.02.2010	Kalwari
	3552 and 3553 of 2009	--	13.06.2009	Goyala
	1055 to 1059, 1060, 1061 and 10610 of 2014	--	21.11.2009	Gogjaka (Gogijaka) Sehsola Kherli Kankar
	7390 to 7392 of 2015	--	26.02.2010	Indri
	1631 to 1636 of 2014 and 2372 of 2015	--	23.12.2010	Padheni
	453, 2314, 2570, 2571, 2572, 2351, 3186, 3187, 4109 to 4112, 4118, 4119 and 4367 of 2013	--	25.11.2009 01.05.2010 03.02.2012	Rewasan
	118, 407 to 410 of 2017	--	23.01.2010	Sabras
	238 of 2012 , 132, 133 and 722 of 2016	--	15.03.2010 15.04.2010	Khor/Khod Roopaheri
	103 to 105 of 2012	--	09.08.2010	Bahadri
	5383 of 2011 and 4414 of 2015	--	22.01.2010	Gudhi
	2335, 7832, 7833 of 2011, 79 to 81 of 2012	--	29.10.2010	Kherli Kankar
	3897 to 3904 of 2010, 4344 of 2011, 572 of 2014, 3420 of 2015	--	22.12.2009 22.01.2010	Dhingarheri

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

Present: Mr. Arun Jain, Senior Advocate with
Mr. Nitin Jain, Advocate,
Mr. Shailendra Jain, Senior Advocate with
Ms. Anupama Arigala, Advocate,
Mr. Jaivir Yadav, Advocate,
Mr. Tapan Yadav, Advocate,
Mr. Ashish Gupta, Advocate,
Mr. Gaurav Aggarwal, Advocate
for the landowners.

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

Mr. Pritam Singh Saini, Advocate
for the HSIIDC.

G.S. Sandhawalia, J. (Oral)

The present order shall dispose of 82 appeals as referred in above table filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') arising out of the Awards of the Reference Court, Gurgaon dated 21.11.2009, 25.11.2009, 22.12.2009, 22.01.2010, 23.01.2010, 02.02.2010, 26.02.2010, 15.03.2010, 15.04.2010, 01.05.2010, 09.08.2010, 29.10.2010, 23.12.2010 and 03.02.2012.

2. The notification under Section 4 of the Act in question is dated 29.09.2005 and there are as many as 14 villages in question which are situated in Tehsil Taoru, District Mewat, details of which are mentioned in the above table.

3. The purpose of acquisition in the present set of appeals was for construction of the Express Highway connecting National Highway Nos. 1, 10, 8 and 2. For the purposes of referring to the facts, reference is being made to the facts of **RFA No. 3552 of 2010** titled as '**Om Parkash**

and others v. State of Haryana and others', which arises out of **LAC No. 260 of 2008** and the Reference Court had passed the Award on 02.02.2010, dismissing the claim for enhancement from ₹12,50,000/-as had been awarded by the Land Acquisition Collector (for short 'the LAC') on 11.05.2006 for the land measuring 351 kanals 2 marlas, situated in village Kalwari, Tehsil Taoru, District Mewat. The reasoning given by the Reference Court not to grant any benefit of enhancement was that the sale deeds Ex.P1 to P4, on the basis of which enhancement was sought, are of village Pathreri.

4. Reference was also made of Ex.PW4/A Aks-shajra to show the location of the acquired land as well as land of the others and a finding was recorded that no surrounding facilities and amenities had been reflected therein. Reliance was also placed on the judgment of an earlier Award dated 13.06.2009 passed in **LAC No. 100 of 17.03.2008** titled as '**M/s Cosco Blossom Private Limited v. State of Haryana and others'** (Ex.R3) for village Goyala, which is also subject matter of appeal in **RFA No.3553 of 2009**, and is also for the notification of even date, wherein reliance upon sale deeds Ex.P10/1 to P10/4 was not made on the ground that it would not help the landowners as they related to small pieces of land measuring 1/2 marla to 1 kanal 5 ½ marlas.

5. It is also pertinent to notice that the said reference was also dismissed on the ground of being barred by limitation and benefit was granted for enhancement and on the issue of super-structure, which is also subject matter of challenge in RFA No. 3552 of 2009 pertaining to

village Goyala.

6. Similarly, reference was also made to the award passed in **LAC No.179 of 25.3.2009** titled as '**Ram Kumar and others v. State of Haryana and others**' decided on 21.11.2009 (Ex.R4), pertaining to village Gogjaka, Sehsola and Kherli-Kankar, Tehsil Taoru, District Mewat. The said judgment is also subject matter of appeal in **RFA No. 1061 of 2014** titled as '**Sakuntla v. State of Haryana and others**'. In the abovesaid Award dated 21.11.2009 passed in the case of **Ram Kumar (supra)** the sale deeds Ex.P1 to P3 were also not relied upon since they were pertained to village Gangwani, Dadu and Jhamuvas and not for the villages which are subject matter of acquisition. Accordingly, by holding that the Awards Ex.R3 and R4 pertain to the same notification and no enhancement has been granted, the reference Court dismissed the present reference also.

7. Counsel for the landowners has taken this Court through the evidence on record particularly the ask-shajra Ex.PW4/A to point out that the situation of the acquired land is depicted in Red portion and the location of Ex. P1 to P4 the sale exemplars is also shown in Green portion. It is also pointed out from the evidence of PW2-Ram Kanwar, who in affirmative had referred to the said sale deeds which pertained to village Pathreri and that they were at a distance of 16-17 killas from the land acquired. The said sale deeds Ex. P3 and P4 of 32 kanals and 16 kanals 4 marlas, which are pertaining to the year 2004, would show that the market value was hovering around ₹13.85 lakhs to ₹13.91 lakhs,

whereas for sale deed dated 12.04.2005 (Ex. P2), which was for 16 kanals 9 marlas, the market value was worked out ₹30 lakhs per acre. Sale deed Ex.P1 dated 14.07.2005, which was for land measuring 32 kanals 13 marlas, per acre cost would come out @ ₹37,99,326/-.

8. A perusal of the said sale deeds would go on to show that they were executed in favour of industrial units and the location from the site plan would go on to show that they are abutting a road as such and therefore, their value as such could be higher on account of their location.

9. An application for additional evidence has also been filed in **RFA No.3900 of 2010 'Partap Singh Vs. State of Haryana and others'** and in other cases also showing the express highway traversing through the land of the villages and their location. The sale exemplars as such seems to be situated on the road which is a link road from Bilaspur to Taoru.

10. PW-4, Jabbar Khan, Patwari (retired) had proved Ex.PW4/A and the location of the sale deeds, but in cross-examination admitted that they were at a distance of 7 to 8 Kms from the acquired land. However, counsel for the landowners submits that from the evidence of RW-1 Deenu Mohammad, Patwari, it has come on record that two villages Pathreri and Udaipuri are the neighbouring villages of village Kalwari and, thereafter, village Bilaspur and after that National Highway No.8 runs through the revenue estate of village Bilaspur.

11. It is submitted that the principle of the land falling in the adjoining villages has been totally lost sight off. Reference is made to

the judgment of the Apex Court passed in '**Union of India Vs. Harinder Pal Singh and others**' 2005 (12) SCC 564, '**Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another**' 2008 (14) SCC 745 and '**Charan Dass (dead) by L.Rs. Vs. Himachal Pradesh Housing and Urban Development Authority and others**' 2010 (13) SCC 398.

12. This aspect has been totally lost sight off by the Reference Court while passing the impugned awards. Sufficient material as such was available and even Ex.PW4/A as such has not been completely taken into consideration and, therefore, the finding as such that it does not prove location of the acquired land and the surrounding facilities and amenities is not justified in the facts and circumstances. Reference to the earlier Award passed in the case of **Cosco Blossom (supra)** and **Ram Kumar (supra)** was also not justified, since it is a settled principle that if the landowners have a better evidence in subsequent reference petitions, it is always open to the Reference Court to keep the same in mind and fix the compensation accordingly. Merely because on an earlier occasion some landowners were not granted the benefit of enhancement as such would not bind other landowners who had filed different reference petitions and it could not adversely affect them. Reference can be made to the observations of the Apex Court made in the case of **Manoj Kumar & others Vs. State of Haryana & others** 2018 (2) RCR (Civil) 815 regarding this proposition. Relevant portion of the said judgment reads 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

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13. Another aspect which is to be kept in mind is that for the notification dated 11.01.2005, whereby the land of 15 villages was acquired for the same purpose for the construction of the Express Highway, a uniform compensation as such was awarded by the Reference Court to the tune of ₹43,17,841/-, by enhancing it from the same amount of compensation of ₹12,50,000/- as awarded by the LAC. This Court in '**RFA No.1853 of 2012 'Attar Singh Vs. State of Haryana and others'**' decided on 05.02.2016, keeping in view the judgment passed in '**HSIIDC Vs. Pran Sukh' (2010) 11 SCC 175**', wherein the land had been acquired on 15.11.1994 and the market value had been fixed @ ₹20 lakhs per acre, had granted 8% annual increase, since village Kasan was also subject matter of acquisition in both the sets. Resultantly, the market value had

been enhanced to ₹62,11,700/- per acre.

14. It is not disputed that the Apex Court in '**Surender Singh Vs. State of Haryana and others'** 2018 (3) SCC 278, has set aside the said fixation of market value and relegated the cases to the Reference Court to decide the cost of the land as prevalent on the date of acquisition by holding that there was sufficient evidence which was to be taken into consideration as to whether the belting system or flat system or different rates for different lands depending upon the quality of land situated in different villages etc. was to be applied. It was held that the landowners will be given adequate opportunity to lead additional evidence and similarly the respondents will be given adequate opportunity to rebut the same. Relevant portion reads as under:-

“37. The High Court, in the absence of any evidence on any of these issues, could not have determined one flat market rate of the acquired land in question by applying one isolated rate of one land situated in one village Kasan and adding 8% annual increase from 1994 in such rate and made it applicable to the entire lands situated in 15 different villages.

38. In our opinion, it is only when the evidence had been adduced by the parties to the lis on the aforementioned issues, the Court would have been in a position to apply its mind objectively as to which method should be applied for determination of the rate, i.e., whether belting system or flat rate system or different rates for different lands depending upon the quality of land situated in different villages etc.

39. The fair market value of the acquired land cannot be decided in isolation on the basis of only one factor. There are several other factors, which govern the determination of the rate. These factors need to be proved with sufficient evidence. It must appear that the Courts have made sincere endeavor to

determine the fair market rate of the acquired land and while determining has taken into account all relevant aspects of the case. It is the duty of the landowners and the State to adduce proper and sufficient evidence to enable the Courts to arrive at a reasonable and fair market rate of the acquired land prevalent on the date of acquisition.

40. Taking into consideration the aforesaid infirmities, which we have noticed, we have no hesitation in holding that the trial in these cases has not been satisfactory. We cannot countenance the cursory manner in which both the Courts below proceeded to determine the market rate of the acquired land. It has certainly caused prejudice to both the parties.

41. We do not blame any party for prosecuting their case in wholly unsatisfactory manner but the fact remains that both the parties failed to adduce sufficient evidence on several material issues, as a result, both the Courts below did not record any finding on any of the material issues arising in the case.

42. In the light of the foregoing discussion, we find it difficult at this stage to determine the fair market rate of the acquired land for want of sufficient evidence. If we do, it will cause prejudice to the parties. We, therefore, refrain from doing so.”

15. In the **CM-7328-CI-2017 in RFA No3900 of 2010** filed under Section 151 CPC, counsel for the landowners have placed reliance upon the judgment passed in **RFA No.7126 of 2013 'Kanwar Lal and another Vs. State of Haryana and others'** passed by a Coordinate Bench, which was for the notification dated 17.11.2005 for villages Fazilwas, Chandla Dungerwas, Langra and Udaipuri, Tehsil and Distrit Gurgaon. In the said case the acquisition was also for the same purpose and the market value was fixed @ ₹12,50,000/-. By placing reliance upon the earlier award, the market value as such had been modified to bring it at par with ₹62,11,700/-. The said order has also been set aside in a

subsequent bunch of SLP No (s).20222 of 2018 '**Managing Director Haryana State Industrial and Infrastructure Development Corporation and others' Vs. Rohtas and others'** decided on 23.07.2018, in view of the cases being covered by the judgment passed in **Surender Singh (supra)**. Resultantly, the matters have been relegated to the Reference Court for fresh decision.

16. The argument as such which is raised by the counsel for the HSIIDC and the State that there was sufficient material on record and this Court should proceed to determine the market value on the basis of the same, is not justified, in view of the peculiar facts. It would be totally inappropriate to fix the compensation, keeping in view the fact that adjoining villages Fazilwas, Chandla Dungerwas, Langra and Udaipuri are also closely placed, which would be clear from the map (Annexure A-11) which has been sought to be placed on record by way of additional evidence for which remand has been done to the Reference Court.

17. Resultantly, it would lead to contradictory findings coming and, therefore, in the opinion of this Court it would be more appropriate if the matters are remanded for fresh decision, keeping in view the fact that in similar circumstances for different notifications, land sought to be acquired for the same purpose. The Apex Court has chosen to direct that the landowners should be given adequate opportunity to bring on record sufficient material, to enable the Courts to arrive at a reasonable and fair market value as prevalent on the date of acquisition. One cannot lose

sight of the fact that it is not a case of an expansion of an highway, but it is a case of construction of express highway at a first instance and the land has been acquired through totally rural areas, which did not have access as such to the main highways at an initial stage. Rather the highway would lead to development of the land of the villages through which it is passing and it is for the Reference Court to keep these factors in mind while assessing the market value. The compensation also at the uniform rate as such which had been done by the Collector would also have to be gone into by the Reference Court as the value would also depend from the location of the village to the closest urban area and the potentiality of the land on account of various factors which might be on account of development in nature of residential, industrial growth etc. , apart from being situated close to connecting roads. Thus, these factors have to be totally keep in mind by the Reference Court, while taking a decision afresh as per the judgment of the Apex Court passed in the case of **Surender Singh (supra)**.

18. Accordingly, the Awards dated 21.11.2009, 25.11.2009, 22.12.2009, 22.01.2010, 23.01.2010, 02.02.2010, 26.02.2010, 15.03.2010, 15.04.2010, 01.05.2010, 09.08.2010, 29.10.2010, 23.12.2010 and 03.02.2012 are set aside and the matters are remanded to the Reference Court for afresh decision, as per the terms of **Surender Singh (supra)**.

19. Needless to say that this Court has not observed or set aside the findings recorded in any of appeals, whereby the appeals are

dismissed on account of being time barred and the Reference Court will decide the matters afresh qua this aspect and super structure, as this Court has not gone into these aspects at this point of time.

20. The Reference Court would make efforts to dispose of the matters by 30.09.2019. Parties shall put in appearance through their counsels before the District Judge, Mewat at Nuh on 28.02.2019.

21. Resultantly, the present appeals are disposed of in the abovesaid terms. All pending civil miscellaneous applications for additional evidence stand disposed of, accordingly.

JANUARY 31, 2019
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No