**HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**
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**RFA No.1603 of 2011 (O&M)**
**Date of Decision: 01.02.2019**
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Nathi & Ors. ... Appellants

VS.

State of Haryana & Anr. ... Respondents
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**CORAM: HON'BLE MR.JUSTICE G.S. SANDHAWALIA**
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Present: Mr. Kul Bhushan Sharma, Advocate
Mr. Amit Aggarwal, Advocate
Ms. Amrita Nagpal, Advocate for the appellant

Mr. Sudeep Mahajan, Addl. AG Haryana
Ms. Vibha Tewari, AAG Haryana
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| **Landowners's Appeals** | RFA Nos.1603 to 1606, 1622 to 1624, 2291, 2292, 2293, 3396, 4191 to 4195, 4784 to 4795, 7247 to 7250, 2291 of 2011<br>RFA Nos.495, 4718 of 2012<br>RFA Nos.4406, 4407 of 2013 |
| **State's Appeals** | RFA Nos.2394, 2396, 2397, 2399 to 2406, 3297 to 3300, 3302 to 3309, 2392, 2393, 2395, 2398, 2404, 3301 of 2011<br>RFA No.1005 of 2012<br>RFA Nos.538, 539 of 2015 |
| **Landowner's cross-objections** | XOBJR No.92-CI-2011 in RFA-2401-2011<br>XOBJR No.103-CI-2011 in RFA-2405-2011<br>XOBJR No.104-CI-2011 in RFA-3302-2011 |

**G.S. SANDHAWALIA, J. (Oral)**

(1) The present batch of 67 appeals and 3 cross-objections filed by the State and the landowners under Section 54 of the Land Acquisition Act, 1894 arises out of the award of the Reference Court, Faridabad dated 21.08.2010 pertaining to the common notification dated 01.08.2007. The villages in question for which land was being acquired for construction of Rainney Well Scheme fall in district Faridabad. The Land Acquisition Collector, Urban Estate, Faridabad vide award dated 15.01.2008, assessed the common amount of compensation @ ₹ 16 lakhs along with statutory benefits

payable to the landowners. The description of the villages and the land acquired are as under:-

| **Village** | **Land** | **Market Value as granted by Ref.Court** |
|---|---|---|
| Kidawali | 6.72 acres | 25,42,000 per acre |
| Dadasia/Dadsiya | 2.84 acres | 48,40,000 per acre |
| Lalpur | 5.40 acres | 25,42,000 per acre |

(2) An application for additional evidence have also been filed i.e. CM No.4442-CI-2016 in RFA No.4784 of 2011 pertaining to the village Lalpur wherein site plan (A2) is sought to be brought on record to show the location of three villages. The Reference Court enhanced the market value for three villages also though in the award dated 04.01.2011 pertaining to Lalpur, the 13 reference petitions were also dismissed for enhancement.

(3) The basis of enhancement for Kidawali was sale deed dated 14.11.2007 (Ex.P1) for land measuring 14 kanals 6 marlas and the average price per acre worked out to ₹ 28,25,175/-. A 10% cut was put of ₹ 2,82,517/- to assess the market value @ ₹ 25,42,658/- which was thus rounded off to fix the market value @ ₹ 25,42,000/- per acre.

(4) Similarly for village Dadasiya sale exemplar dated 30.07.2007 (Ex.P2) one day prior to Section 4 dated 01.08.2007 was taken into consideration wherein land measuring 18 marlas was sold @ ₹ 1500/- per sq.yard. Resultantly, a 1/3rd cut was put on the same to fix the market value @ ₹ 1000/- to assess @ ₹ 48,40,000/- per acre which has been vehemently opposed by the State by award dated 01.12.2010 wherein thirteen reference petitions were decided.

(5) Vide award dated 07.03.2013, the Reference Court relied upon the judgment pertaining to village Kidawali, the lead case of which was Swaran Singh and which was duly exhibited as PW4/A to grant the same

amount of compensation @ ₹ 25,42,000/-. It is pertinent to notice that another Reference Court vide award dated 04.01.2011 for village Lalpur had not taken into consideration the said award while deciding the 13 reference petitions on the ground that Lalpur was situated next to the Yamuna river.

(6) Resultantly, the benefit of sale deed of village Kidawali was not granted and neither the sale instance pertaining to 14 kanals 6 marlas and the reference petitions were dismissed. It is in such circumstances the application for additional evidence has also been filed bringing to the notice that three village in question are situated adjoining to each other and therefore it is argued that the sale deed of adjoining village should be taken into consideration to assess the market value. Apart from that the sale exemplar of 4 marlas was also sought to be brought on record along with application for village Lalpur wherein land was sold @ ₹ 1,25,000/- to press for higher market rate. It is settled principle that additional evidence can be allowed where it is necessary for pronouncement of the judgment. The provisions of Order 41 Rule 27 CPC provides that if the Appellate Court requires any documents to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause, the appellate court may allow such evidence or document to be produced or witness examined. Reliance can be placed upon the judgments in ***Wadi Vs. Amilal & others 2004 (1) Scale 82, North Eastern Railway Adminstration, Gorakhpur Vs. Bhagwan Das (D) by LRs 2008 (8) SCC 511, Union of India Vs. Ibrahim Uddin & another 2012(8) SCC 148, Union of India Vs. K.V.Lakshman & others 2016 AIR (SC) 3139.*** The observations in ***North Eastern Railway Adminstration, Gorakhpur's*** case (supra) are as under:-

*"12. Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but Section 107 C.P.C., which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 C.P.C. Nevertheless, the additional evidence can be admitted only when the circumstances as stipulated in the said rule are found to exist. The circumstances under which additional evidence can be adduced are :*

*(i) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, (clause (a) of sub rule (1)) or*

*(ii) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within the knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, (clause aa, inserted by Act 104 of 1976) or*

*(iii) the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. (clause (b) of sub rule (1))."*

(7) Site plan (Ex.A2) in question which has now been placed on record only helps this Court to assess the location of the land and all the 3 villages are adjoining each other and rather all the 3 villages fall onto the bank of river Yamuna and would have the same advantages and disadvantages. The observations of the Reference Court thus for Lalpur that it would be located at disadvantageous position cannot be justified in the facts and circumstances. Even otherwise the evidence has been discussed in

detailed in the award of the Reference Court dated 07.03.2013 wherein it has been held that PW5 Om Parkash Halqa Patwari on the basis of *Aks Shajra* has stated that lands of village Lalpur and Kidawali are adjoining as their boundaries touch each other which further confirms the veracity as such of Annexure A2 which has now been sought to be brought on record. No doubt the Reference Court has held while dismissing the Reference petitions vide award dated 04.01.2011 has held that in the absence of any site plan, the Court is at loss. Now since material evidence has come on record, this Court has no hesitation in coming to the conclusion that 3 villages in question are adjoining each other. Even the Land Acquisition Collector has awarded an equal amount of compensation for the land of the 3 villages @ ₹ 16 lakhs and therefore the offer of compensation was also based on the same principle since the villages were situated contiguous to each other. Resultantly, the observations of the Apex Court in ***The General Manager, Oil and Natural Gas Corporation Ltd. vs. Rameshbhai Jivanbhai Patel & Anr. (2008) 14 SCC 745*** wherein the Apex Court has held *qua* the above-stated principle would come into place. The same reads as under:-

> *"7. The fact that Santhal village adjoins Ijapura is not disputed. The fact that Ex.15 related to the acquisition of lands in the neighbouring Santhal village, for the benefit of the appellant - ONGC is also not disputed. The Reference Court and the High Court have recorded a concurrent finding of fact that having regard to the proximity and similarity between the lands at Santhal covered by Ex. 15 and the acquired lands in Ijapura, the market value determined in regard to the Santhal lands afforded a reasonable basis for determining the market value of the acquired lands. We also find from the evidence of one of the claimants - Laljibhai examined as CW1, that the boundaries of Santhal, Kasalpura and Modipur villages are adjacent to the*

*acquired lands; and that the lands of one Ramanbhai Keshavlal of Santhal Village acquired on 6.1.1987 (subject matter of Ex.15) and the acquired lands were in neighbouring areas divided only by three or four agricultural fields. We also find that the Ex. 15 was also the basis for determining the market value of lands which were the subject matter of another acquisition for ONGC in Santhal and other villages under notification dated 31.7.1986; and that this Court affirmed the award of compensation at the rate of Rs.10 per sq. m. in regard to such acquisition relying on Ex. 15 (vide in ONGC Ltd. v. Sendhabhai Vastram Patel & Ors., 2005 (6) SCC 454). We are therefore of the view that in the absence of any evidence relating to sale transactions or acquisitions relating to the village of Ijapura itself, and having regard to the evidence relating to proximity of Santhal lands, Ex.15 offered a reasonable basis for determining the market value of the acquired lands in Ijapura. In view of Ex.15 relating to neighbouring Santhal, Ex.16 relating to Chalsana loses relevance."*

(8) Reliance can also be placed on the judgment of the Apex Court in ***Union of India vs. Harinderpal Singh (2005) 12 SCC 564*** wherein the uniform value was given for the land falling in different villages by this Court while discarding the belting method which was duly upheld. In ***Charan Dass (dead) by LR vs. Himachal Pradesh Housing And Urban Development Authority & Ors. (2010) 13 SCC 398***, it was held as under:-

*"As already noted, the first step being the determination of the market value of the land on the date of publication of Notification under sub-Section (1) of Section 4 of the Act. One of the principles for determination of the market value of the acquired land would be the price that a willing purchaser would be willing to pay if it is sold in the open market at the time of issue of Notification under Section 4 of the Act. But finding direct evidence in this behalf is not an easy task and, therefore,*

*the Court has to take recourse to other known methods for arriving at the market value of the land acquired. One of the preferred and well accepted methods adopted for ascertaining the market value of the land in acquisition cases is the sale transactions on or about the date of issue of Notification under Section 4 of the Act. But here again finding a transaction of sale on or a few days before the said Notification is not an easy exercise. In the absence of such evidence contemporaneous transactions in respect of the lands, which have similar advantages and disadvantages is considered as a good piece of evidence for determining the market value of the acquired land. It needs little emphasis that the contemporaneous transactions or the comparable sales have to be in respect of lands which are contiguous to the acquired land and are similar in nature and potentiality. Again, in the absence of sale deeds, the judgments and awards passed in respect of acquisition of lands, made in the same village and/or neighbouring villages can be accepted as valid piece of evidence and provide a sound basis to work out the market value of the land after suitable adjustments with regard to positive and negative factors enumerated in Sections 23 and 24 of the Act. Undoubtedly, an element of some guess work is involved in the entire exercise, yet the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard."*

(9) Resultantly, it can be safely stated that if the amount of compensation is assessed for the market value for one of the villages which could be safely applied for all the three villages as the acquisition is also for the same purpose. Reliance can also be placed upon the observations made in ***Premwati vs. Union of India & Ors. (2013) 7 SCC 57***, which reads as under:-

*"10. For applying the said rate, the Division Bench relied upon another decision of the Delhi High Court in* ***Bedi Ram v. Union of India and another, reported in 93 (2001) DLT 150****, where the lands*

*situated in the estate of Samaipur, which was also one of the villages governed by the present acquisition proceedings. One other relevant factor which is required to be noted is that P.W.3, who is Halqa Patwari, has deposed before the reference Court and confirmed that the site plan marked as 'E' is the correct consolidated site plan of village Samaipur and village Shahibabad Daulatpur. He also further confirmed that the boundaries of village Shahibabad Daulatpur and of village Samaipur are adjoining and continuous. By relying upon the testimony of P.W.1, the son of the appellant, as well as P.W.3 the Halqa Patwari, it was contended that the lands of the two villages viz., Shahhibabad Daulatpur and village Samaipur are adjoining villages and, therefore, the market value of the lands of these two villages cannot be different.*

*11. The High Court has in fact accepted the submission by referring to village Siraspur with reference to the lands, pertaining to the said village in Balbir Singh's case, in which a year later, the value of the land was fixed to a sum of L 50,000/- per bigha.*

*12. Keeping the above factors in mind, when we consider the submissions of the learned counsel for the appellants, we find that the reasoning of the Division Bench of the High Court in having relied upon Balbir Singh's case and Bedi Ram's case was perfectly justified. We would, however, hasten to add that when once the Division Bench rightly felt that whatever was decided in Balbir Singh's case, so far as it related to the value of the land fixed therein, can be applied even in respect of the land situated in Shahibabad Daulatpur, which is an adjacent village and the acquisition in respect of the lands in the said village was made simultaneously along with the lands situated in Samaipur and Siraspur villages, are of the considered opinion that the same value, which was applied in Balbir Singh's case should have been applied even in respect of the lands belonging to the appellants. We say so because, we find in Balbir Singh's case, while fixing the land value in a sum of L50,000/- per bigha, the High Court considered the various sale deeds of the period between 18.01.1982 and 22.07.1983.*

*13. In the case on hand, we are concerned with the land situated in Shahibabad Daulatpur village and the extent of land which were* *acquired from the appellants was 94 bighas 2 biswas of different Khasra Nos. covered by Award No. 26/83-84 and 4 biswas in Khasra No. 33/26, covered by Award No. 57/83-84. Thus, the extent of land acquired from the appellants were also considerably large. The total extent of land thus, acquired in all the four villages were around 785 bighas of continuous lands and the acquisition was for the purpose of establishing the Delhi Technological University.*

*14. We are, therefore, of the view that while every other reasoning of the Division Bench in adopting the value, which was fixed in Balbir Singh's case was justified, there is no need to deduct any amount from the said value, in as much as the exemplar relied upon by the Division Bench in Balbir Singh's case, were all sale deeds pertaining to the period 18.01.1982 to 22.07.1983 i.e., prior to the very first notification issued in respect of the present acquisition of all the four villages viz., 01.08.1983, which notification pertains to the lands belonging to the appellants which were situated in Sahibabad Daulatpur village."*

(10) Coming to the issue as to what is the market value which is liable to be paid to the landowners on account of account of the acquisition, it is to be noted that the State counsel Mr. Mahajan was well justified in holding out that sale deed dated 14.11.2007 (Ex.P1) was three months post notification and therefore 10% cut was not justified while placing reliance upon the observations of the Apex Court in ***Rameshbhai Jivanbhai Patel & Anr.*** (supra). Though counsel for the State has as such argued that the principle of post-dated sale exemplar is not safe but the fact remains that even the Reference Court has noticed that the sale deed had been proved by Jawaharlal Gupta PW6 who had purchased the land and no suggestion was given to the witness that it was an inflated sale consideration. It was also noticed that the amount of sale consideration is ₹ 50,05,000/- was paid by way of bank draft details whereof are duly mentioned in the sale deed and therefore it cannot be said that the said sale deed was executed for the

purpose of inflating the market value and therefore it can be safely relied upon. The only issue thus remains is that if the reverse cut is imposed which issue has also been discussed by the Apex Court in ***Chander Shekher vs. Land Acquisition Collector 2012 (1) SCC 390*** after considering the ***Rameshbhai Jivanbhai Patel & Anr.*** (supra), this Court is of the opinion that the percentage of reverse cut should be 20% in the facts and circumstances to assess the market value which would work out to ₹ 5,65,035/-. Resultantly, this Court is of the opinion that market value as such for village Kidawali would work out to ₹ 22,60,140/- per acre.

(11) The argument raised by Mr. Sharma that the market value actually would be ₹ 48,40,000/- as assessed for village Dadasia and the appeals should be allowed on the same principle of adjoining villages and the market value would be enhanced is not liable to be accepted. A perusal of Ex.P2 sale deed dated 30.07.2007 would show that it was executed by Satbir s/o Sukhbir s/o Khachedu. The sale was executed two days earlier before the notification dated 01.08.2007. It is relevant to note that Sukhbir also filed land reference No.482/2008 and his land was also subject matter of acquisition thus the sale deed has been executed by his son. This aspect was totally lost sight of by the Reference Court while placing reliance upon Ex.P2 to fix the market value @ ₹ 1000/- per sq.yard. Resultantly, the State is well justified in submitting that it was not a *bona fide* transaction and it should not have been relied upon to fix the market value for the land falling in village Dadasia. The argument is accordingly accepted and the said sale exemplar is thus rejected and the reliance placed upon the same by the Reference Court was not justified.

(12) Similarly, the argument raised that Ex.A1 brought on record as additional evidence should be taken into consideration for assessing the market value is not liable to accepted. The said sale deed is pertaining to only 4 marlas of land and therefore cannot be taken into account vis-à-vis a larger chunk of land of Lalpur whereby 5.40 acres land had been acquired and therefore it would not depict the correct market value for the large area of land which is being acquired. In comparison to the sale exemplar which is being relied upon of the adjoining village of Kidawali thus would depict a better and correct picture of the market value of the land of village.

(13) Resultantly, in view of the above cumulative discussion it can be held that the market value for all the 3 villages would work out @ ₹ 22,60,140/-. Accordingly, the State appeals are allowed whereas the appeals and the cross-objections filed by the landowners are dismissed. Accordingly, the awards of the Reference Court are modified accordingly. However, the appeals of the landowners against award dated 04.01.2011 i.e. RFA No.4784 to 4795 of 2011 are allowed by fixing the market value at the above-stated rate i.e. ₹ 22,60,140/- per acre along with all statutory benefits.

(14) The State shall also comply with the directions laid down by the Apex Court in ***HSIIDC vs. Pran Sukh, (2010) 11 SCC 175.***

**01.02.2019** **(G.S. Sandhawalia)**
*vvishal* **Judge**

*1. Whether speaking/reasoned?* ***Yes***
*2. Whether reportable?* *No*