

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

341

**RFA No.684 of 2012 (O&M) and
other connected cases
Decided on : 15.11.2019**

Smt. Brijesh and another

... Appellants

Versus

State of Haryan through Collector, Sonapat and others

... Respondents

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

Present : Mr. S.P. Khatri, Advocate,
Mr. Anil Dutt, Advocate and
Mr. Rahul Vats, Advocate for the landowners.

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

G.S. Sandhawalia, J. (Oral)

The present judgment shall dispose of 17 appeals i.e. **RFA Nos.684 to 694 of 2012, RFA Nos.7342 to 7346 and 7672 of 2011** filed by the landowners under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act'), which are directed against the Award of the Reference Court, Sonapat dated 05.09.2011, whereby the reference petitions filed under Section 18 of the Act have been dismissed.

2. The notification in question under Section 4 of the Act was issued on 07.02.2007 and the Section 6 notification was issued on 27.12.2007. The land measuring 31 acres 2 kanals 2 marlas was acquired for the public purpose for the construction of Water Works and Drinking Water Supply in Ganaur, District Sonapat. Vide Award No.5 dated 10.07.2008, the market value had been assessed @ ₹30 lakhs per acre by the Collector, leading to the filing of the Section 18 petition.

3. The reason for dismissing the references is that the two sale deeds dated 13.03.2006 (Ex.P10) & 31.03.2006 (Ex.P15) of Ganaur, which were relied upon and wherein the market value was between ₹92 lakhs to ₹95 lakhs per acre were discarded on the ground that the location of the land mentioned in the sale deeds could not be located on the Akshajra Plan (Ex.P14). Similarly, since vide abovesaid sale deeds the land had been purchased by the builders and the sale deeds were in favour of the builders, detailed perusal of Ex.P10 was done that there were post dated cheques pertaining to the date beyond the date of registration. A condition had been put in the sale deed that in case the cheques got dishonoured the sale deed would be considered as cancelled. Similar was the condition incorporated in Ex.P15 and, therefore, the said sale deeds were discarded. Reliance was placed upon the sale deeds produced by the respondents Ex.R2 and Ex.R3, wherein the land was sold @ ₹15 lakhs per acre and ₹20 lakhs per acre in March and February, 2006 and therefore, by giving an increase as such of 12% annually, it was calculated that the amount would come to ₹22,41,337/- per acre, which was less than the rate awarded by the Land Acquisition Collector (for short 'the Collector'). The other sale deeds of village Garhi Kesri (Ex.P1 to Ex.P9, Ex.P11 and Ex.P16 to Ex.P19) were discarded on the ground that they pertained to adjoining village Garhi Kesri. Resultantly, the relied claimed was declined.

4. An application for additional evidence bearing **CM-7955-CI-2017 in RFA-684-2012** as such has been filed to bring on record the

judgment and decree dated 01.10.2011 as (Annexure A-1) whereby the suit for recovery had been decreed in favour of Suraj Mal against AJS Builders Pvt. Ltd., on account of the sale deed dated 31.03.2006 (Ex.P15). In the application, it has also been averred that revenue estate of Garhi Kesri and Ganaur were the same and had been divided by vide notification dated 19.06.1992 (Annexure A-2). Rectangles of both villages were common and some rectangles were given to Ganaur and some were given to village Garhi Kesri.

5. Reference was made to the notification dated 02.05.2007 issued under Section 4 of the Act, wherein the land had been acquired by HSIIDC for the development of Industrial Area Phase-III. It was stated to be 5 acres from the land in question. Reliance was also placed upon directions issued by this Court in **CWP No.3273 of 2009 'Prem Singh and others Vs. State of Haryana and others'** decided on 13.02.2013 (Annexure A-3), wherein a compromise had been arrived at between the landowners and AJS Builders that fresh sale deeds would be registered against the proportion of area of the land against the amount received by them at the time of registration of the sale deeds. It is, thus, averred that subsequent sale deeds dated 31.10.2013 had been executed at the same rate and which were supplementary sale deeds. The site plan (Annexure A-6) has also been attached to show the location of the land and the land which had been acquired by the subsequent notification dated 02.05.2007. It is submitted that in **RFA No.6809 of 2014 'Raghubir and others Vs. State of Haryana and others'** decided on 18.02.2016,

the market value had been enhanced to ₹59,88,657/- per acre (Annexure A-7) by this Court. Photocopy of the order passed by the Apex Court in **Civil Appeal No.15179 of 2017 'Ashok Kumar Vs. State of Haryana and others'** has now been placed on record as Annexure A-9 to show that the judgment has been modified to the extent that compensation has been scaled down to ₹45 lakhs per acre on 06.09.2017. Resultantly, CM-7956-CI-2017 has also been filed for disposal of the appeal in terms of the judgment (Annexure A-7) on the ground that it is the adjoining village and, therefore, the same amount of compensation should be granted and the difference in the notification is only of 3 months.

6. The application has been opposed by the State by filing reply that the sale deeds Ex.P10 & Ex.P15 were cancelled admittedly due to the dishonouring of the cheques and, therefore, the Reference Court had rightly not relied upon the said sale deeds. The land belonged to village Ganaur, whereas land pertaining to Ex.P17 & Ex.P18 was situated in the revenue estate of Garhi Kesri, which had been acquired by the HSIIDC for the development of Industrial Area Phase-III. It was admitted that the land sold vide Ex.P17 & Ex.P18 was 1.05 Kms from the acquired land. It was also admitted that later on sale deeds had been got executed and registered as per the order of this Court dated 13.02.2013 passed in CWP No.3273 of 2009. The subsequent acquisition was for a different purpose and, therefore, the land also was falling in the different villages and reliance could not be placed upon the market value fixed for the

subsequent acquisition.

7. A perusal of the record would go on to show that it was the case of the landowners which came forth in the cross-examination of PW-1 Ramesh Chander that the acquired land was agricultural in nature and HSIIDC Industrial Estate was situated at a distance of 1 Km from the acquired land. The National Highway was situated 1½ Kms.

8. PW-2, Mool Chand in his cross-examination had stated that the acquired land was situated 3 killas from Firni and the land was situated on the Badshahi Road. The distance from commercial units and the HSIIDC Industrial Estate was 4 to 5 killas. PW-3 Rajbal had also stated that the acquired land was situated 4 to 5 Kilas from the Abadi of village Ganaur and so was the statement of PW-4 Raj Singh.

9. RW-1 Vijay Kumar, SDE in his cross-examination had stated that the acquired land was situated at a distance of 1 Km from Ganaur village. The Court Complex and Tehsil Complex were situated at a distance of 3-4 Kms from the acquired land. The railway line was situated on the back side of the Water Works and the near the Water Works there was agricultural land.

10. This Court has perused the site plan as such produced in the application for additional evidence as Annexure A-6. A perusal of the same would go on to show that the acquired land and the land acquired vide notification dated 02.05.2007 are in close vicinity and this fact as such has also come on record in the statement of the witnesses.

11. Accordingly, keeping in view the above the applications for

additional evidence CM-1270-CI-2012 & CM-7955-CI-2017 in RFA-684-2012 are liable to be allowed as it would help this Court to pronounce judgment in view of the provisions under Order 41 Rule 27 CPC and the events are also subsequent. Reliance can be placed upon the judgments of the Apex Court passed in **Union of India Vs. Ibrahim Uddin & another 2012 (8) SCC 148**. The relevant para reads as under:

“37. To sum up on the issue, it may be held that application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite condition incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage.”

12. The chart of the sale deeds produced is as under:-

Sr. No.	Ex.	Dated	Area	Amount in ₹	Name of village
1.	P1	04.04.2006	21 K 19 M	2,60,65,625/-	Garhi Kesri
2.	P2	13.03.2006	6 Kanals	71,25,000/-	Garhi Kesri

RFA No.684 of 2012 (O&M) and other connected cases

3.	P3	13.03.2006	7 K 16 M	92,62,500/-	Garhi Kesri
4.	P4	13.03.2006	2 kanals	23,75,000/-	Garhi Kesri
5.	P5	31.03.2006	12 K 19 M	1,53,78,125/-	Garhi Kesri
6.	P6	13.03.2006	2 Kanals	23,75,000/-	Garhi Kesri
7.	P7	13.03.2006	7 K 16 M	92,62,500/-	Garhi Kesri
8.	P8	13.03.2006	6 kanals	71,25,000/-	Garhi Kesri
9.	P9	13.03.2006	51 K 6 M	6,09,18,750/-	Garhi Kesri
10.	P10	13.03.2006	19 K 19 M	2,30,96,875/-	Ganaur
11.	P11	09.03.2006	25 K 7 M	3,01,03,125/-	Garhi Kesri
12.	P15	31.03.2006	11 K 1 M	1,31,21,875/-	Ganaur
13.	P16	13.03.2006	51 K 6 M	6,09,18,750/-	Garhi Kesri
14.	P17	09.03.2006	59 K 1 M	6,32,16,500/-	Garhi Kesri
15.	P18	10.03.2006	15 A 6 K 4 M	14,98,62,500/-	Garhi Kesri
16.	P19	10.05.2006	3 A 2 K 8 M	3,30,00,000	Garhi Kesri
17.	R2	13.03.2006	2 K 19 M	5,53,500/-	Ganaur
18.	R3	07.02.2006	3 K 7 M	8,38,000/-	Ganaur

13. It is not disputed that several of the sale deeds were subject matter of consideration in the cases pertaining to the notification dated 02.05.2007 when land had been acquired for the development of Industrial and Residential Complex for Phase-III at village Barhi. The villages involved were Lalheri, Barhi and Garhi Kesri. The Collector had also awarded the same rate of compensation @ ₹30 lakhs per acre which has been awarded in the present case. The Coordinate Bench of this court in the case of **Raghibir (supra)** had come to the conclusion that the sale deeds Ex.P59 to Ex. P61, Ex.P13 and Ex.P14 would show that the market value was ₹95 lakhs per acre. Similarly, two sale deeds of the State were also taken into consideration to come to the conclusion that the average market value would work out @ ₹11,94,030/- per acre. Resultantly, the average was taken of two sale deeds of both the sides i.e. the State and

the landowners which comes to ₹53,47,015/- per acre. The 12% increase was thereafter granted on account of the fact that there was a time gap of more than one year to come to the figure of ₹59,88,657/- per acre.

14. The said judgment was taken in appeal to the Apex Court and in **Ashok Kumar (supra)** the Apex Court has reduced the compensation to ₹45 lakhs per acre by applying a 25% cut towards development and while noticing that there was a dispute as such with the builder. Reliance was specifically placed upon sale deed dated 13.03.2006 (Ex.P8), which was in favour of M/s AJS Builders, whereby 6 kanals of land was also sold @ ₹71,25,000/- and Ex.P-11 dated 09.03.2006 to work out the market value @ ₹60 lakhs per acre. Thereafter, the 25% cut was put. The relevant portion of the said judgment reads as under:-

“After hearing learned counsel for the parties, in our opinion, the approach of the High Court while dealing with such cases is not proper neither in accordance with the settled principles of law laid down by this court in catena of the decisions. High Court ought not to have ignored the various sale transactions and was required to assign the reasons for accepting or rejecting the sale transactions, the High Court should have assessed the evidence but that has not been done. However, we are not remanding the matter and prolonging the agony of litigation further, as the claimants' valuable land has been acquired. We have scanned the evidence.

It is apparent that various sale deeds had been placed on record by the parties. No doubt about it that the sale deeds which have been relied on by the owners are of March, 2006 in which land was purchased by the company at the rate of 95,00,000/- per

acre; that would not reflect the real transaction between willing buyer and willing seller, which has to be taken into consideration as laid down by this court in Chimanlal Hargovinddas vs Special Land Acquisition Officer [AIR 1988 SC 1652]=[1988]3 SCC 751]. Though it was urged by learned Additional Solicitor General that the sale deed executed in favour of the company had been later on cancelled and thereafter sale deeds were to be executed afresh as per the compromise entered into, yet it was submitted by the learned counsel for the claimants that sale deeds were re- executed later on for the same consideration.

Since there was dispute as to sale deeds on record, that they were cancelled and stamp duty was refunded, it would not be safe to rely on them. Be that as it may. The fact remains that there are other sale deeds on record.

Taking into consideration the various sale deeds which are on record we find that P6 was for area 3 acres 5 kanals 16 marlas sold for Rs. 1,86,77,000/- (one crore eighty six lakh seventy seven thousand), P7 indicates that 3 acres 1 kanals 7 marlas were sold for Rs.3,01,03,125/- (Rupees three crores one lakh three thousand one hundred and twenty five) and P8 indicates that 6 kanals were sold on 13.3.2006 at the rate of Rs.71,25,000/- (seventy one lakh and twenty five thousand); if we take into consideration the aforesaid sale deeds and also the price reflected in various other sale deeds filed by the respondents, it would be appropriate to work out the price at Rs.60,00,000/- (Rupees sixty lakh) per acre, which has also been arrived at by the High Court. However, at the same time 25% cut towards development has to be made. That too considering the factual situation of the case considering the development which has taken place. Though the cut to the extent of 60 to 65% can also be made as urged by HSIIDC but cut has to be as per over all factual situation of the case. Thus it would be appropriate to award the compensation at the rate of

Rs.45,00,000/- (Rupees forty five lakh) per acre. That would be reasonable compensation in the facts and circumstances of the instance case. Amount has to be paid alongwith other statutory benefits. Let the amount be paid within a period of three months from today and compliance be reported to this Court.

Appeals are accordingly disposed of.”

15. A perusal of the site plan would go on to show that the acquired land is shown in blue colour and abutting the Rajpura Minor, which comes from the G.T. Road adjoining village Barhi. It was at a distance of 4 to 5 acres from the abadi of Old Ganaur and is at a distance of 3 acres from the railway line on the western side, whereas National Highway No.1 is on eastern side at a distance of approximately 2 Kms. The land which was acquired for Phase-III of HSIIDC is at a distance of 4 to 5 acres away on the south eastern side of the land acquired which is also as per the statement of the witnesses which has been discussed above. The sale deeds reference of which have been made are locatable in Rectangle No.151 and 160 which have been shown in red colour and are in close proximity to the land which had been earlier acquired vide notification dated 02.05.2007. The abadi of village Lalheri has also been shown part of which had also been acquired.

16. Therefore, in the opinion of this Court the judgment passed by the Apex Court is a relevant piece of evidence which can be taken into consideration for assessing the market value, keeping in view the fact that it pertains to village Garhi Kesri. As noticed it was the same revenue estate at one point of time having been bifurcated in two separate revenue

RFA No.684 of 2012 (O&M) and other connected cases

estate of Ganaur and Garhi Kesri, vide notification dated 19.06.1992 (Annexure A-2). In the reply to the application, it is admitted that land sold vide Ex.P17 & Ex.P18 was 1.05 Kms from the acquired land.

17. Resultantly, the argument of the State counsel that the land is being acquired for water works and the purpose is different would merit no acceptance merely on account of the fact that earlier the land had been acquired by the HSIIDC for the development of Industrial Area Phase-III. It is a settled proposition that the proposed usage of the land would not as such divest the landowners of the market value in view of the conditions which have been laid down in Section 23 and 24 of the Act.

18. Accordingly, this Court is of the opinion that a 10% cut on the amount awarded by the Apex Court i.e. ₹45 lakhs per acre in **Ashok Kumar (supra)**, would be appropriate assessment of the market value, which works out ₹4,50,000/- and, therefore, the market value of the present acquisition is assessed @ ₹40,50,000/- per acre alongwith all statutory benefits. The appeals of the landowners are allowed, accordingly. Payment be made by adhering to the directions given in '**HSIIDC Vs. Pran Sukh' (2010) 11 SCC 175.**

NOVEMBER 15, 2019
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No