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

407

**RFA No.3996 of 2013 (O&M) and
other connected appeals
Reserved on : 15 & 17.10.2019
Pronounced on : 23.10.2019**

Naresh and others

... Appellants

Versus

State of Haryana and others

... Respondents

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

Present : Mr. Shailendra Jain, Senior Advocate with
Mr. Vikrant Rana, Advocate and
Mr. Sidharath Goyal, Advocate,
Mr. Aditya Jain, Advocate,
Mr. Sandeep Sharma, Advocate,
Mr. Amit Jain, Advocate,
Mr. Kamal Mor, Advocate for the landowners.

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

G.S. Sandhawalia, J.

The present judgment shall dispose of 42 appeals i.e. **RFA Nos.3996 to 4001, 4036, 4037, 4278, 4279, 4349, 4462, 5218 to 5221, 6417 to 6420 of 2013, RFA Nos.2149, 2208 to 2211, 2432 to 2438 and 2457 of 2015, RFA Nos.141, 996 & 1540 of 2016 and RFA Nos.423, 425, 426, 429 to 431 of 2019** filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') by the landowners against the Awards dated 19.03.2013 and 09.09.2015 passed by the Reference Court, Gurgaon, for the land acquired in village Dhanwapur.

2. Vide notification dated 13.01.2010 issued under Section 4 of the Act, land measuring 35.35 acres of village Dhanwapur was acquired

for the development and utilization of the same for sector roads of Sectors 99 to 115, at Gurgaon. The Reference Court vide the abovesaid awards had awarded a sum of ₹1,89,72,000/- per acre by placing reliance upon an earlier Award dated 31.10.2012 (Ex.P8) **'Babu Ram Gupta Vs. State of Haryana and another'** for the notification dated 25.01.2008, whereby ₹1,53,00,000/- had been assessed as market value. Resultantly, while giving 12% increase for the intervening period, the market value has been enhanced to ₹1,89,72,000/- per acre.

3. Counsel for the appellants have accordingly argued that sale deeds dated 31.03.2008 (Ex.P9 and P10), whereby land had been sold @ ₹4,10,00,000/- per acre should have been relied upon, rather than fall back on the award passed in **Babu Ram Gupta's case (supra),** as they were subsequent to the earlier notification dated 25.01.2008 and thus depicted the correct market value. It is, accordingly, submitted that no valid reasoning as such had been given by discarding the same and keeping in view the settled principle that the sale exemplars are better examples of market value than an award passed earlier, the market value should be enhanced.

4. Counsel for the State on the other hand has submitted that the said sale exemplars have not been depicted on any site plan to show the location as such and, therefore, the landowners cannot seek the benefit of the said sale deeds. It is submitted that the value of the land of the village is different as the land on the southern side is expensive and

that on the northern side is of less value. It is also submitted that the sale deeds (Ex.P9 and P10) are in favour of builders and necessarily a 50% cut would have to be imposed on them, on account of keenness of the builder to buy properties at any rate for commercial purpose and to build a land bank.

5. A perusal of the record would go on to show that on an earlier occasion in the same village, land had been acquired for the development and utilization of the land for 150 meters wide periphery road linking Dwarka Township Delhi from Haryana boundary to National Highway No.8 near village Kherki Daula at Gurgaon, vide notification dated 25.01.2008. The award in question passed in **Babu Ram Gupta's case (supra)** (Ex.P8) dated 31.10.2012, which has been relied upon would go on to show that on an earlier occasion also, the Reference Court as such had examined the site plan and the sale deeds. It had then come to the conclusion that the land which is situated on the southern side of the village Dhanwapur was being sold at a higher market value in the year 2011 at the rate of ₹5,40,00,000/- per acre. However, in March and April, 2007, the land was being sold @ ₹1,15,00,000/- to ₹2,50,00,000/- per acre. Resultantly, the sale deeds dated 31.03.2008 had been discarded at that point of time since they had been executed after expiry of more than two months of issuance of notification under Section 4 at that point of time. It was, however, noticed that Ex.P3 and P4 which were dated 23.08.2007 and 14.02.2008, respectively were adjoining the

land which had been acquired and, therefore, they were also relevant sale deeds, which could be taken into consideration for assessing the market value and since the land had been sold @ ₹3 crores and ₹3,80,00,000/- per acre. the average was then worked out @ ₹3,40,00,000/- per acre to fix the market value, on which 55% cut was applied to fix the market value @ ₹1,53,00,000/- per acre.

6. A Coordinate Bench of this Court in **RFA No.4475 of 2012 'Ram Chander and another Vs. State of Haryana and others'** and other connected cases decided on 20.05.2016, had set aside the averaging which had been done, by noting that Ex.P4 dated 14.02.2008 was post acquisition sale deed and thus, took into consideration Ex.P3 whereby 9 kanals 16 marlas of land had been sold @ ₹3 crores per acre to assess the market value at the said price. Relevant portion of the said judgment reads as under:-

> **<u>"Village Dhanwapur</u>**
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> **..**
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> As far as the evidence produced by the land owners before the learned reference court is concerned, the learned counsel for the appellants submitted that the sale-deeds Ex.P3 and Ex.P4 were relevant sale-deeds as discussed by the learned reference court in para 17 of the impugned award. However, after considering these sale-deeds, Ex.P4 has been found a post acquisition sale-deed. Once the sale-deed Ex.P3 dated 23.8.2007 was available on record, the post acquisition sale-deed Ex.P4 cannot be made the basis for assessing the market value of the acquired land. In the circumstances of this case, sale-deed Ex.P3 has been to be the best piece of evidence,

whereby land measuring 9 Kanals and 16 Marlas was sold at the rate of Rs.3 crores.

As the genuineness of the sale-deeds has been duly established on record, this Court has found no reason to disbelieve the same. Following the law laid down by the Hon'ble Supreme Court in the cases referred to hereinabove, it is held that since the area sold by way of this sale-deed Ex.P3 was more than one acre, no cut was warranted to be imposed on the market price, disclosed in the sale-deed. The findings recorded by the learned reference court in para 19, taking the average of two sale-deeds i.e. Ex.P3 and another post-acquisition sale-deed Ex.P4, as well as the finding imposing cut on the average market price, have been found patently illegal and the same are hereby set aside. Land owners of village Dhanwapur are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.3 crores per acre, from the date of notification under Section 4 of the Act."

7. The Apex Court in **Civil Appeal No.11814-11864 of 2017 'State of Haryana Vs. Ram Chander and another'** decided on 05.09.2017 has reduced the amount of compensation by 15% for the said notification to fix the market value @ ₹2,55,00,000/- per acre. Relevant portion of the said judgment reads as under:-

"10. In our opinion, the deduction of 15% towards development would have been sufficient, which ought to have been made in the instant cases, in the peculiar facts of the case, considering the potentiality of the area in question and the development which has taken place all around. This order not to be treated as a precedent in any other case. Thus, we modify the determination made by the High Court to the above extent only. Let deduction be made accordingly."

8. Thus, this Court has the benefit of the finalization of the market value of the said village just 2 years prior to the present acquisition proceedings initiated on 13.01.2010. The landowners have brought on record the Final Development Plan For Controlled Areas of Gurgaon-Manesar Urban Complex-2021 AD and 2025 AD as Ex.P1 & Ex.P2, respectively, which shows the location of the roads and the sectors roads laid out, which was the purpose of the acquisition for development and utilization of the sectors roads for Sectors 99 to 115 at Gurgaon. The earlier acquisition of 2008 is in close vicinity as such as per the site plan itself which show the location of the land which was acquired earlier.

9. In such circumstances, the said award would be a relevant piece of evidence and cannot be brushed aside as contended by the counsel for the landowners. It is a settled principle that onus is always upon the landowners to bring sufficient evidence on record to show the amount of compensation which is liable to be paid to them and for assessing the market value. No site plan had been brought on record or draftsman examined to that extent to show location of the land pertaining to Ex.P9 and P10 dated 31.03.2008 whether the same is situated on the southern side or on the northern side of the village Dhanwapur.

10. A perusal of the site plan would also go on to show that the road leading from Dwarka called as Northern Periphery Road was not far from the Abadi of village Dhanwapur, which is situated below the road

and the market value of the land below the Northern Periphery Road, would be far more.

11. The land which is situated on the northern side of the abadi area would necessarily command less value, as it was in the process of development and being further away from the town of Gurgaon. Thus, the landowners have thus withheld the location of the sale deeds dated 31.03.2008 which had been purchased by two developers. Nothing could be brought on record as to show that what was the reason as such for the jump in prices between 23.08.2007 whereby on earlier occasion the land had been sold @ ₹3 crores per acre, whereas 7 months later on 31.03.2008 the value had jumped to ₹4,10,00,000/- per acre. It was for the landowners to dispel this motion, which they had failed to do so by not producing the site plan showing the location of the said sale deed, which were tendered into evidence at rebuttal stage without examining the vendor and vendee as such. Though the certified copies can be accepted under Section 51A of the Act, but it has been held by the Apex Court in **'Cement Corporation Of India Ltd vs Purya & Ors', (2004) 8 SCC 270** that for assessing the market value, the vendor and vendee should be examined as such, so that they can be cross-examined on account of the peculiar factors, which may arise on account of the value as such. The relevant portion of the said judgment read as under:-

> "Section 51 A of the L.A. Act may be read literally and having regard to the ordinary meaning which can be attributed to the term 'acceptance of evidence' relating to transaction

evidenced by a sale deed, its admissibility in evidence would be beyond any question. We are not oblivious of the fact that only by bringing a documentary evidence in the record it is not automatically brought on the record. For bringing a documentary evidence on the record, the same must not only be admissible but the contents thereof must be proved in accordance with law. But when the statute enables a court to accept a sale deed on the records evidencing a transaction, nothing further is required to be done. The admissibility of a certified copy of sale deed by itself could not be held to be inadmissible as thereby a secondary evidence has been brought on record without proving the absence of primary evidence. Even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that contents of the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature advisedly has used the word 'may'. A discretion, therefore, has been conferred upon a court to be exercised judicially, i.e., upon taking into consideration the relevant factors."

12. Resultantly, the argument of the landowners that the said sale deeds would be better exemplars to assess the market value is rejected.

13. However, in view of the principle laid down by the Apex Court in **'Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another' 2008 (14) SCC 745**, the benefit of cumulative increase @ 12% is granted on the amount which has now been finalized by the Apex Court @ ₹2,55,00,000/- per acre for the notification dated 25.01.2008. Resultantly, the market value for village Dhanwapur is assessed @ ₹3,19,87,200/- per acre alongwith all statutory

benefits.

14. The present appeals stand allowed, accordingly.

15. All pending civil miscellaneous applications also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

OCTOBER 23, 2019
Naveen

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No