

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

RFA No. 487 of 2013
and other connected cases
Date of decision: 18.11.2019

Rajinder Singh Kohli

....Appellant(s)

Versus

The Land Acquisition Collector, Urban Estate, Gurgaon and others

...Respondent(s)

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

Present: Mr. Sandeep Sharma, Advocate,
Mr. Sonu Giri, Advocate,
Mr. Adarsh Jain, Advocate,
Mr. Rishabh Goel, Advocate
for Mr. Lokesh Sinhal, Advocate (in RFA No. 1792 of 2013)
Ms. Gurinderjit Kaur, Advocate,
for Mr. Rajesh Lamba, Advocate,
(in RFA Nos. 4402 of 2013 and 2825 of 2014)
Mr. Surender Saini, Advocate,
for Mr. P.R. Yadav, Advocate, (in RFA No. 4301 of 2014)
for the land owners.

Mr. Sudeep Mahajan, Addl. A.G., Haryana,
with Mr. Shivendra Swaroop, AAG, Haryana,
with Ms. Vibha Tewari, AAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 20 appeals i.e. RFA Nos. 487, 1792, 2596, 4402, 4365 of 2013, 2825 to 2830 of 2014, 4301, 7189 of 2014, 46, 143, 2124, 5778 of 2015 & 63, 122 and 3919 of 2016 since common questions of facts and law are involved in all the appeals. RFA Nos. 487, 1792, 2596, 4402, 4365 of 2013, 4301 of 2014, 46 of 2015 and 122 and 3919 of 2016 have been filed by the land owners and RFA Nos. 2825 to 2830, 7189 of 2014, 143, 2124, 5778 of 2015 and RFA No. 63 of 2016 have been filed by the State. Facts are being taken from ***RFA No. 487 of***

2013, Rajinder Singh Kohli vs. The Land Acquisition Collector, Urban Estate, Gurgaon and others.

The present set of appeals has been filed under Section 54 of the Land Acquisition Act, 1894 (in short 'the Act') by the land owners and the State which arise out of the notification dated 02.06.2004 under Section 4 of the Act. The villages in question are Choma, Carterpuri and Sarai Alawardi, Tehsil and District Gurgaon. The public purpose for acquisition of the land was for development and utilization of land for residential, commercial and institutional Sectors 2 and 3. The land acquired was 9.19 acres in Choma, 2.925 acres in Carterpuri and 8.45 acres in Sarai Alawardi. The Land Acquisition Collector, vide awards had granted Rs.15,00,000/- per acre as compensation for all types of land for all the three villages. The land owners, aggrieved against the grant of compensation, had filed petition under Section 18 of the Act and the first LA Case No. 463 of 2010, Narendra Singh Chahal and another vs. State of Haryana and others was decided on 18.10.2012 alongwith 5 other cases.

The Reference Court enhanced the compensation to Rs.1,06,25,000/- per acre alongwith all statutory benefits. The said award was followed on 01.02.2013 by another Reference court. Similarly, for village Carterpuri, the award of Choma was relied upon and the same amount of compensation was granted on 23.11.2013. Thereafter, another award was passed on 03.09.2015, Qabul Chand (D) through L.Rs. vs. State of Haryana and others wherein, the judgment in LAC No. 154 of 2012, Kamlesh Kapoor vs. State of Haryana and others decided on 23.11.2013 was relied upon. Lastly, for village Sarai Alawardi, the judgment in *Narendra Singh Chahal's case (supra)* was relied upon to grant the same

amount of compensation on 26.08.2014 and 07.04.2015. Thus, the reasoning in *Narendra Singh Chahal's case (supra)* is a subject matter of consideration as to whether it is justified in the facts and circumstances as apparently, on the face of it, the same is erroneous in view of the settled principles of law and, therefore, the State appeals merit consideration.

The basis for enhancement from Rs.15,00,000/- per acre to Rs.1,06,25,000/- per acre is by taking a sale exemplar dated 23.08.2007 (Ex.P-2) into consideration which is for land measuring 16 kanals and 8 marlas and in favour of one builder namely M/s. Puri Construction Pvt. Ltd. whereby, land was sold at Rs.4.25 crores per acre. A 55% deduction on the sale price was made firstly on account of development and thereafter a 20% deduction on account of de-escalation of prices to determine the market value keeping in view the fact that the sale deed was 3 years, 2 months and 20 days post the Section 4 notification. The judgment of the Apex Court in ***Chandrashekar (D) by L.Rs. and others vs. Land Acquisition Officer, 2012 (1) SCC 390*** was kept in mind that the deduction should not exceed 75%. The sale deed Ex.P-1 dated 30.07.1996 being 9 years prior to the date of Section 4 notification for village Choma for plot measuring 620 square yards of the value of 26.40 lakhs per acre was ignored on the ground that it was much prior in time.

The State has accordingly argued that the reliance upon a post dated sale deed by as many as over 3 years is not justified and the principle of reverse cut has not been appreciated in the judgment in ***General Manager, ONGC Ltd. vs. Rameshbhai Jivanbhai Patel and another, 2008 (4) RCR (Civil) 487***. It is submitted that in spite of noticing the said judgment, the Reference Court has applied the reverse cut.

In response to the argument raised by the landowners that Ex.P-1 dated 30.07.1996 as such be taken into consideration to grant 12% cumulative enhancement for the difference of 8 years is also objected to by the State on the same principle and the law laid down in *ONGC's case (supra)*. It is submitted that the benefit of cumulative enhancement beyond a period of 4 to 5 years is not liable to be granted to repel the argument raised by the land owners that the market value was increasing between 1996 to 2007 and, therefore, the amount granted was not justified. The Apex Court in *ONGC's case (supra)*, regarding both the issues of a reverse cut being applied and also on the issue that the cumulative enhancement cannot be granted beyond 4 to 5 years, has held as under:-

“12. Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisition), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on-sale transactions/acquisitions precedes the subject acquisition by only a few years, that is upto four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the 'rate' of annual increase may itself undergo drastic change

apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase.

13. Much more unsafe is the recent trend to determine the market value of acquired lands with reference to future sale transactions or acquisitions. To illustrate, if the market value of a land acquired in 1992 has to be determined and if there are no sale transactions/acquisitions of 1991 or 1992 (prior to the date of preliminary notification), the statistics relating to sales/acquisitions in future, say of the years 1994-95 or 1995-96 are taken as the base price and the market value in 1992 is worked back by making deductions at the rate of 10% to 15% per annum. How far is this safe? One of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices. Let us illustrate. Let us assume there was no development activity in a particular area. The appreciation in market price in such area would be slow and minimal. But if some lands in that area are acquired for a residential/commercial/industrial layout, there will be all round development and improvement in the infrastructure/ amenities/facilities in the next one or two years, as a result of which the surrounding lands will become more valuable. Even if there is no actual improvement in infrastructure, the potential and possibility of improvement on account of the proposed residential/commercial/ industrial layout will result in a higher rate of escalation in prices. As a result, if the

annual increase in market value was around 10% per annum before the acquisition, the annual increase of market value of lands in the areas neighbouring the acquired land, will become much more, say 20% to 30%, or even more on account of the development/proposed development. Therefore, if the percentage to be added with reference to previous acquisitions/sale transactions is 10% per annum, the percentage to be deducted to arrive at a market value with reference to future acquisitions/sale transactions should not be 10% per annum, but much more. The percentage of standard increase becomes unreliable. Courts should therefore avoid determination of market value with reference to subsequent/future transactions. Even if it becomes inevitable, there should be greater caution in applying the prices fetched for transactions in future. Be that as it may.”

Subsequently, in ***Manoj Kumar and others vs. State of Haryana and others, 2018 (2) RCR (Civil) 815*** also, the principle as such has been followed that it is not safe to rely upon the principle of cumulative enhancement beyond the period fixed in *ONGC's case (supra)* keeping in view the fact that the land value may vary and might even dip at some point of time. The relevant portion in *Manoj Kumar's case (supra)* reads thus:-

“15. The awards and judgment in the cases of others not being inter parties are not binding as precedents. Recently, we have seen the trend of the courts to follow them blindly probably under the misconception of the concept of equality and fair treatment. The courts are being swayed away and this approach in the absence of and similar nature and situation of land is causing more injustice and tantamount to giving equal treatment in the case of

unequal's. As per situation of a village, nature of land its value differ from the distance to distance even two to three-kilometer distance may also make the material difference in value. Land abutting Highway may fetch higher value but not land situated in interior villages.

16. The previous awards/judgments are the only piece of evidence at par with comparative sale transactions. The similarity of the land covered by previous judgment/award is required to be proved like any other comparative exemplar. In case previous award/judgment is based on exemplar, which is not similar or acceptable, previous award/judgment of court cannot be said to be binding. Such determination has to be out rightly rejected. In case some mistake has been done in awarding compensation, it cannot be followed on the ground of parity an illegality cannot be perpetuated. Such award/judgment would be wholly irrelevant.

17. There is yet another serious infirmity seen in following the judgment or award passed in acquisition made before 10 to 12 years and price is being determined on that basis by giving either flat increase or cumulative increase as per the choice of individual Judge without going into the factual scenario. The said method of determining compensation is available only when there is absence of sale transaction before issuance of notification under [section 4](#) of the Act and for giving annual increase, evidence should reflect that price of land had appreciated regularly and did not remain static. The Recent trend for last several years indicates that price of land is more or less static if it has not gone down. At present, there is no appreciation of value. Thus, in our opinion, it is not a very safe method of determining compensation.

18. To base determination of compensation on a previous award/ judgment, the evidence considered in the previous judgment/ award and its acceptability on judicial parameters has to be necessarily gone into, otherwise, /gross injustice may be caused to any of the parties. In case some gross mistake or illegality has been committed in previous award/judgment of not making deduction etc. and/or sufficient evidence had not been adduced and better evidence is adduced in case at hand, previous award/judgment being not inter-parties cannot be followed and if land is not similar in nature in all aspects it has to be out-rightly rejected as done in the case of comparative exemplars. Sale deeds are at par for evidentiary value with such awards of the court as court bases its conclusions on such transaction only, to ultimately determine the value of the property.”

It is settled principle of law that the onus to prove the market value is on the land owners. Reliance can be placed upon the judgments of the Apex Court in ***Basant Kumar and others vs. UOI and others, 1996 (11) SCC 542; Gafar vs. Moradabad Development Authority, 2007 (7) SCC 614; Special Land Acquisition Offiver vs. Karigowda and others, 2010 (5) SCC 708.***

Faced with this situation, counsel for the land owners have argued that the villages are in close proximity to Delhi and situated on the road coming from Dwarka to Kherki Dhaula (now known as Northern Periphery Road). It is submitted that for subsequent notifications dated 25.01.2008 for village Choma, the market value had been modified by the Apex Court in ***Civil Appeal Nos. 11814-11864 of 2017, State of Haryana vs. Ram Chander and another*** dated 05.09.2017 and fixed at Rs.4,06,34,750/-. Similarly, for the notification dated 13.01.2010 for

village Choma, this Court in ***RFA No. 4775 of 2014, Tek Ram and another vs. State of Haryana and another***, decided on 01.11.2019, has fixed the market value at Rs.5,01,76,000/- per acre alongwith all statutory benefits. It is submitted that the said fixation of market value would only point at the increasing trend, though it might be post notification. In such circumstances, an opportunity be given to the land owners to place material on record by way of additional evidence as admittedly, there is a lapse as such on the part of the land owners not to produce the sale deeds closer in point of time of Section 4 notification dated 02.06.2004.

It is settled principle that the date of Section 4 notification is the sacrosanct date for determining the market value under Section 23 of the Act. Keeping in view the fact that the onus as such is upon the land owners but, however, they have failed as such to discharge their onus in the present case keeping the fact that they will be gravely prejudiced if the matter is not remanded, it would be fair to accept the plea of the land owners that they be given another opportunity to prove the correct market value around the time of the Section 4 notification.

State has vehemently opposed this line of action on the ground that the onus was on the land owners.

Judicial notice can be taken of this fact that the land owners keep the relevant sale deeds back in order to get higher appreciation by trying to take the benefit of a post dated notification, which has happened in this case. This led to a spiralling effect in the rate of compensation not only of village Choma but for the adjoining villages of Carterpuri. The same mistake has happened for Carterpuri and Sarai Alawardi. The Reference Court has also failed to take into consideration the location of the third

village Carterpuri, though it may have a connectivity to the Delhi border and is situated close to village Choma, though not being on the main road. But the third village Sarai Alawardi does not seem to have any similar advantages as per the site plan of Gurgaon. The Reference Court would require to do the necessary exercise to locate the locations of the revenue estates and rather than falling back and having blind reliance upon the awards of Choma in *Narendra Singh Chahal's case (supra)*. The Apex Court in *Manoj Kumar's case (supra)* has also held that such methodology is not permissible and the best exemplars are sale exemplars of the villages in question.

Resultantly, this Court is of the opinion that keeping in view the over all locations of the villages, the matters are liable to be remanded as the Reference Court has decided the matter in a very cavalier method. Needless to say since the matters are pertaining to the notification of the year 2004, it would be appropriate if 3 effective opportunities are given to both sides to produce the relevant sale deeds so that the market value can be assessed. The appeals filed by the State are accordingly allowed whereas the appeals of the land owners are dismissed. Resultantly, the matters are remanded to Reference Court and the reference petitions be decided within a period of one year from the date the matters are first taken up by the Reference Court.

Miscellaneous applications, if any, are also disposed of accordingly.

18.11.2019

shivani

Whether reasoned/speaking

Whether reportable

(G.S. SANDHAWALIA)

JUDGE

Yes/No

Yes/No

