IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA Nos. 7271 of 2013 (O & M) and connected appeals
Date of decision: 22.11.2019

Dharampal and others ....Appellant(s)

Versus

The State of Haryana and others ...Respondent(s)

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

Present: Mr. Pawan Kumar, Senior Advocate with
Mr. Surya Kumar, Advocate,
Mr. Anshuman Mandhar, Advocate and
Mr. Jagtar Kureel, Advocate,
Mr. Shailendra Jain, Senior Advocate with
Ms. Anupama Arigala, Advocate (in RFA-5242-2014)
Mr. Rajat Garg, Advocate for
Mr. Aditya Jain, Advocate,
Mr. Sanjay Vij, Advocate,
Mr. Sanjay Vashisth, Advocate,
Mr. Harsh Bunger, Advocate,
Mr. Udit Garg, Advocate,
Mr. Varinder, Advocate for
Mr. Saurabh Arora, Advocate
Mr. Aashish Chopra, Advocate,
Mr. Sandeep Sharma, Advocate,
Mr. Harshit Anand, Advocate for
Mr. Shekhar Verma, Advocate,
Mr. Navneet Singh, Advocate,
Mr. J.S. Saneta, Advocate,
Mr. P.R. Yadav, Advocate
for the landowners.

Mr. Sudeep Mahajan, Addl. AG Haryana with
Mr. Abhinash Jain, AAG, Haryana.

G.S.SANDHAWALIA, J.

The present judgment shall dispose of 59 appeals i.e. RFA Nos. RFA Nos. 7271 of 2013, RFA Nos.248, 519, 520 , 531, 532, 573, 1248, 1249, 1410, 1411, 1412, 1787, 1788, 1789, 2147, 2148, 2305, 2393 to 2404, 2964, 3401, 3418, 3419, 3420, 3685, 4326, 5034, 5035, 5242, 5244, 7338, 8873, 8874, 8875, 8965, 9065, 9091, 9140 and 10321 of 2014, RFA Nos. 286, 2692, 5853, 6453, 7011 and 7012 of 2015 RFA Nos.707, 708 and 1809 of 2016, since common questions of facts and law are involved in all the appeals. Facts are being taken from ***RFA No. 7271 of 2013, Dharampal and others vs. State of Haryana and others.***

The present appeal has been filed under Section 54 of the Land Acquisition Act, 1894 (in short 'the Act') against the award of the Reference Court, Gurugram dated 12.09.2013 for village Ullawas wherein, market value had been assessed at Rs.1,90,84,284/- per acre by enhancing it from Rs.55,00,000/- per acre as awarded by the Land Acquisition Collector. Land measuring 85.09 acres was acquired of village Ullawas vide notification dated 24.06.2008. The Land Acquisition Collector, vide Award No. 38 dated 12.08.2009, had awarded Rs.55,00,000/- per acre which was acquired for the public purpose of construction and development of Sector roads 58 to 67, Gurgaon.

The Reference Court vide Award dated 12.09.2013, the lead case of which was LAC No. 842 of 2010, M/s. KSS Properties Pvt. Ltd. vs. State of Haryana and another, placed reliance upon sale deeds Exs. P-140 and 142 dated 12.10.2006 and 16.10.2006 to take out an average of the sale deeds at Rs.2,84,84,005/- per acre. The said award was thereafter followed on 23.11.2013, 08.01.2014, 19.07.2014, 25.08.2014, 06.01.2015 and 05.11.2015 by other Reference Courts. A 33% cut was applied which worked out at Rs.93,99,721/- per acre to fix the market value at the above rate i.e. Rs.3,943/- per square yard. The Reference Court had the advantage of a large number of sale deeds including the adjoining villages but chose to fall back on the sale deeds which were of the year October, 2006 in preference to the sale deeds which should have been closer in point of time as the notification is dated 24.06.2008.

Counsel for the land owners has placed reliance upon Ex.P-22 dated 23.11.2007 whereby, land was sold at Rs.4 crores per acre (Rs.8,264/- per square yard) to submit that the highest sale exemplar and the closest to the date of notification should be taken into consideration. It is pertinent to mention that sale deed bearing Sr. No. 3523 has also been exhibited as Ex.P-16 but the area of land has been shown wrongly as 20 kanals 8 marlas whereas it should have been 28 kanals 8 marlas. Resultantly, the market value against Ex.P-16 has also been wrongly calculated.

In the absence of State appeals, it has further been argued that no cut should be put as the land falls within the developed portion and there were licensed colonies around. Reliance has been placed upon the judgments of the Apex Court in ***Himmat Singh and others vs. State of M.P. and another, 2013 (16) SCC 392, C.R. Nagaraja Shetty vs. Special Land Acquisition Officer and Estate Officer and another, 2009 (11) SCC 75, Trishala Jain and another vs. State of Uttaranchal and another, 2011 (6) SCC 47*** to submit that in the extreme exigency, a cut of not more than 10% should be applied.

Reliance has been placed upon Ex.P-138, the site plan to show the location of Ex.P-16 that it is closer in point of time and proximity to seek further enhancement. Reliance has also been placed upon Exs. P-8 to P-11 to show that in December, 2006, the market value was Rs.3,74,00,000/- per acre and reference is made to Ex.P-34,the site plan and Ex.P-150, the sectorial plan. Reliance is also placed upon Ex. P-28, the licence, to show that as per clause 4, the service roads are also to be provided by the builders and, therefore, no development cut is to be imposed and the whole amount as of the sale deeds should be taken into consideration.

State, on the other hand, has submitted that builder sale deeds are not to be blindly accepted which only show the potentiality of the land in question and a necessary cut should be applied on them on account of the over keenness of the builders to purchase the land at any rate. Reliance has been placed upon the judgment in ***Ram Kanwar and others vs. State of Haryana and another, 2015 (1) RCR (Civil) 234*** to submit that 50% cut put by this Court was upheld by the Apex Court.

Similarly, reliance has been placed upon the judgment of this Court in ***RFA No. 7108 of 2012, Ram Pal (II)and others vs. Land Acquisition Collector and another*** decided on 31.05.2019 wherein, 50% cut has been applied on the builder sale deeds to assess the market value for acquisition of the land for the sectors in Faridabad.

The Reference Court has noticed that villages Ullawas, Behrampur, Badshahpur, Medawas, Ghata, Nangli Umarpur are adjoining villages and are contiguous to each other and has rightly discarded the sale deeds which are post dated for the year 2009 and 2010 Exs. P-46, P-60, P-64 and P-69. No fault can be found to the said reasoning as such as the date of Section 4 notification is sacrosanct. Ex.P-163 dated 09.04.2007 was rightly rejected on the ground that it was between two builders which were parent and subsidiary company and there was no stamp duty payable as such. Exs. P-17 to P-19 and P-21 were rejected on the ground that there were tube-wells with electricity connection, trees, wire fencing and constructed buildings and would not show the correct market value of the acquired land which was agricultural in nature.

Keeping in view the settled principle that Section 4 notification is the relevant date for assessing the market value and the relevant sale exemplars are to be of considerable size, this Court is of the opinion that the land owners are well justified as such to contend that the reliance upon Exs. P-140 and P-142 dated 12.10.2006 and 16.10.2006 was not justified as closer sale exemplars in point of time were readily available and the market value had gone up. The chart of the closer sale exemplars for village Ullawas are:-

Sr. No.	Exh. No.	Location/village	Vasika No.	Dated	Area Sold		Sale consideration	Rate Per Acre Rs.	Rate per square yards Rs.
					K				
1	P140/141	Ullawas	4323	12.10.2006	45	6.5	16,41,21,875/-	2,89,68,009/-	5,985/-
2	P142	Ullawas	4372	16.10.2006	14	16	5,18,00,000/-	2,80,00,000/-	5,785/-
3	P8/P23	Ulhawas	5781	18.12.2006	4	0	1,87,00,000/-	3,74,00,000/-	7,727/-
4	P9;P45	Ulhawas	5782	18.12.2006	28	0	13,09,00,000/-	3,74,00,000/-	7,727/-
5	P10/44	Ulhawas	5783	18.12.2006	6	8	2,99,20,000/-	3,74,00,000/-	7,727/-
6	P11	Ulhawas	5784	18.12.2006	52	8	24,49,70,000/-	3,74,00,000/-	7,727/-
7	P15	Ulhawas	6300	17.01.2007	8	0	3,50,00,000/-	3,50,00,000/-	7,231/-
8	P167	Ulhawas	114	09.04.2007	12	8	2,53,07,500/-	1,63,27,419/-	3,373/-
8	P22	Ulhawas	3523	23.11.2007	28	8	14,20,00,000/-	4,00,00,000/-	8,264/-

From the above sale exemplars, one thing would be clear that the market value can be assessed at Rs.3,74,00,000/- per acre in December, 2006 which are sale deeds in favour of Five Rivers Buildcon. The other sale deeds also as such are in favour of builders also namely M/s. Toucan Real Estates Pvt. Ltd. whereas, Exs.P-141 and P-142 are in favour of Alfonso Builders and Developers Pvt. Ltd.

In *Ram Kanwar's case (supra),* the Apex Court upheld the 50% cut which had been applied on account of the abnormal increase which was shown in the sale deeds by holding that necessary deductions had to be applied to bring it at par with the estimated fair market value of the acquired lands. The relevant portion reads thus:-

> *"19. In the instant case, though the sale deeds were for part of lands which were acquired by the acquiring authority under the notification, the said sale deeds indicated an abnormal increase of more than 100% in less than four months. It is not a far reaching implication of the said land being in the vicinity of area under development or already developed, which attributed additional locational advantages leading to escalation of the sale price at which a buyer would purchase the lands. Another fact noticed by the High Court is that the buyers for all these sale transactions had vested interest in the land adjoining or around the properties in such transaction.*
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> *20. In light of the aforesaid, it can be concluded that the buyers would not have hesitated in offering higher prices to purchase the lands than the market rate of such lands and, therefore, in determination of compensation payable to the land-losers, such price could not be relied upon without making necessary deductions bringing it at par with the estimated fair market value of the acquired lands. In our considered view, the High Court has correctly made appropriate deductions to the consideration offered under the sale deeds produced and marked in the evidence while assessing fair and true market value of the acquired lands on the date of issuance of Section 4 notification."*

Application for producing additional evidence bearing **C.M. No. 3682-CI of 2014 in RFA No. 2393 of 2014** and similar applications in connected cases have been filed to place on record the notification dated 05.02.2007 (Annexure A-4) and supporting master plan in pictorial form

(Annexure A-5). However, no effort as such was made to bring the same on record during the pendency of reference petitions, though, there was sufficient time as such and the documents were in existence at the time the petitions were pending before the Reference court. It is settled principle that the applications for additional evidence cannot be used to fill up the lacuna in the case, as held by the Apex Court in ***Satish Kumar Gupta and others vs. State of Haryana, 2017 (4) SCC 760.*** Neither the documents are necessary as such for the Court to pronounce the judgment as there are sufficient sale deeds as such on record for the purpose of fixing the market value and, therefore, the applications are dismissed.

Resultantly, keeping in view the principles laid down by the Apex Court in , this Court is of the opinion that the best sale exemplar, in such circumstances, would be which will be closest in point of time to be relied upon. Ex.P-22 was executed around 7 months prior to the Section 4 notification wherein, land measuring 28 kanals 8 marlas was sold at Rs.4 crores per acre on 23.11.2007 in favour of M/s. Toucan Real Estates Pvt. Ltd. Accordingly, applying a 50% cut on the same, the market value works out at Rs.2 crores per acre on 23.11.2007. Resultantly, the appeals are allowed and the market value is enhanced from Rs.1,90,84,284/- to Rs.2 crores per acre alongwith all statutory benefits. Pending miscellaneous applications, if any, in which no separate orders have been passed, also stand disposed of accordingly.

22.11.2019 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No