IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RFA No.377 of 2016 and other connected appeals (O&M)
Reserved on : 18.10.2019
Pronounced on : 01.11.2019

Shri Bhagwan

... Appellant

Versus

State of Haryana and others

... Respondents

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

Present: Mr. P.R. Yadav, Advocate,
Mr. J.P. Ahlawat, Advocate,
Mr. N.D. Achinit, Advocate,
Ms. Bhanvi Sood, Advocate for
Mr. Aditya Jain, Advocate and
Mr. Kamal Mor, Advocate
for the landowners.

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

G.S. Sandhawalia, J.

The present judgment shall dispose of 9 appeals filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') both by the landowners (bearing RFA Nos.377, 493, 2198 of 2016 and RFA No.645 of 2017) and the State (bearing RFA Nos.3333, 3334, 3336, 3337 and 3359 of 2016) against the Award dated 03.10.2015 passed by the Reference Court, Gurgaon, for the land acquired in village Babupur pertaining to the notification dated 13.01.2010 issued under Section 4 of the Act.

2. The notification in question was dated 13.01.2010, whereby the land measuring 24.08 acres falling in village Babupur was acquired for the development and utilization of the same for sector roads of Sectors 99 to 115, at Gurgaon. The Land Acquisition Collector vide Award No.74 dated 31.03.2010 for the land of village Babupur had

awarded ₹36 lakhs per acre.

3. The Reference Court while deciding 10 cases, lead case of which was **LA Case No.427 of 2015 'Hari Kishan and others Vs. State of Haryana and another'** enhanced the market value to ₹1,43,91,000/- per acre alongwith all statutory benefits by relying upon the Award dated 25.01.2013 passed in **LA Case No.422 of 2011 'Nanak Chand and others Vs. State of Haryana and others'** (Ex.P3) pertaining to village Mohmadheri, the adjoining village.

4. In the said village the land had been acquired vide the same notification and for the same public purpose for the development and utilization of the same for sector roads of Sectors 99 to 115, at Gurgaon. The sale deeds in the said case relied upon were from the period 26.11.2010 to 17.06.2011 (Ex.P2 to P4) and Ex.P7 and P8. An average of the said sale deeds had been taken to fix the the market value @ ₹3,19,80,000/- per acre and after applying a cut of 55%, the market value had been fixed @ ₹1,43,91,000/- per acre. The sale deed dated 26.06.2007(Ex.P1) was discounted on account of the intervening period being 2½ years.

5. Counsel for the landowners have submitted that the Reference Court was not justified while falling back on the award as such, whereas there were sale deeds available of village Babupur which were depicting higher sale instances and, therefore, falling back on the award of the adjoining village was not appropriate. It is further submitted that there were other sale deeds of village Pawala Khusarpur also where

the sale instances of much higher value were available and, therefore, the appellants village was situated just behind Pawala Khusarpur. The market value would be more in relation than Mohmadheri, while referring to the Master Plan of Gurgaon in the connected appeals.

6. Counsel for the State on the other hand has pointed out that the land of village Pawala Khusarpur is of more value as it was situated closer to the main road and Babupur was situated behind the same and the benefit as such could not be granted as the market values were far apart. Once sale deeds were available of the village and onus being upon the landowners, they could not claim the benefit of the higher market value in the adjoining village.

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

Sr. No.	Exh.	Dated	Land Sold	Amount in ₹	Rate per Acre ₹	Revenue estate
1.	Ex.P1	05.10.2007	19 K 4 M	6,00,00,000/-	2,95,85,879/-	Babupur
2.	Ex.P2	05.10.2007	20 K 10 M	6,41,26,600/-	2,50,25,014/-	Babupur
3.	Ex.P4	17.06.2008	2 K 6 M	35,00,000/-	1,21,73,913/-	Babupur
4.	Ex.P5	25.02.2010	0 K 10 M	9,57,000/-	1,53,12,000/-	Babupur
5.	Ex.P6	24.10.2008	2 K 4 M	17,13,470/-	62,30,800/-	Babupur
6.	Ex.P7	25.02.2010	0 K 10 M	9,57,000/-	1,53,12,000/-	Babupur
7	Ex.P8	31.07.2007	3 K 6.5 M	1,08,89,375/-	2,62,00,000/-	Babupur
8	Ex.P9	17.12.2008	16 Kanals	9,14,76,000/-	4,57,38,000/-	Babupur
9	Ex.P10	09.05.2008	18 K 4 M	10,40,53,950/-	4,57,38,000/-	Pawala Khusarpur
10	Ex.P11	12.11.2008	40 Kanals	22,86,90,000/-	4,57,38,000/-	Pawala Khusarpur
11	Ex.P12	16.06.2008	1 K 1 M	25,60,000/-	1,95,04,761/-	Pawala Khusarpur
12	Ex.P13	21.07.2008	2 K 17.5 M	2,05,00,000/-	5,70,43,478/-	Pawala Khusarpur
13	Ex.P14	21.07.2008	1 K 16 M	1,30,00,000/-	5,77,77,777/-	Pawala Khusarpur

8. The Reference Court had rejected the sale deeds of the

village Babupur on the ground that they were executed between 2007 to 2008 whereas Ex.P5 and P7 were excluded on the ground that they were 10 marlas of land only where the acquisition was for 24.08 acres. The statement of PW-2 Sanjay Saini, Halqa Patwari was also taken into consideration that village Babupur was surrounded by village Dharampur, Mohmadheri, Pawala Khusarpur and Daultabad. From the evidence it has also come on record that Mohmadheri, Bajghera, Kherki Majra were also adjacent to each other apart from other said villages and the land had also been acquired for the same purpose and there is nothing to show that the land was not similar.

9. It is pertinent to notice that village Babupur was only granted ₹36 lakhs per acre in comparison by the Land Acquisition Collector, whereas the other villages like Pawala Khusarpur, Dhankot, Choma and Kherki Majra had been awarded ₹60 lakhs per acre by the Land Acquisition Collector. For villages Bajghera, Mohmadheri, the market value had been fixed @ ₹45 lakhs per acre, whereas for Daultabad it had been @ ₹50 lakhs per acre.

10. It is, thus, apparent that the market value awarded also was varying as such and this Court is dealing with the connected matters also. Keeping in view the settled principle once the sale exemplars are available, which are the best piece of evidence to assess the market value, this Court is of the opinion that falling back on the award of the adjoining village would not be correct method as such, if landowners can produce better evidence in the shape of sale exemplars. The law has been laid

down by the Apex Court in **Manoj Kumar & others Vs. State of Haryana & others 2018 (2) RCR (Civil) 815** regarding this aspect. The relevant portion of the said judgment read as under:-

> "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.
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> 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.
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> 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."

11. Resultantly, this Court proceeds to the re-fixation of the market value on the basis of the chart reproduced above. Ex.P1 and P2 though executed 2 ½ years earlier, whereby large chunks of land had been sold between the same vendors and vendees measuring as much as 39 kanals 14 marlas. If an average of the said two sale deeds is taken, which were executed on 05.10.2007, it would work out to ₹2,73,05,446/-

per acre, which could be the basis as such for fixing the market value. Similarly, vide sale deed dated 31.07.2007 (Ex.P8) land measuring 3 kanals 6.5 marlas was also sold @ ₹2,62,00,000/- per acre.

12. Counsel for the landowners have pressed for the rise @ 12%, keeping in view the law laid down **'Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another' 2008 (14) SCC 745** for the time difference between the sale deed dated 05.10.2007 and the notification dated 13.01.2010.

13. Counsel for the State on the other hand has pointed out that there was a dip in price as much as the rate per acre of Ex.P4 to P7 have to be taken into consideration. However, if one is to examine, the sale price of the adjoining village Pawala Khusarpur of the year 2008 of the chunks of land which are over 2 acres, the market value is working out @ ₹4,57,38,000/- per acre. Thus, there is no doubt that the advantage of potentiality of the land as such cannot be denied to the residents of the Babupur being the adjoining village.

14. It is not disputed that on an earlier occasion on 25.01.2008, the land was acquired for 150 meters wide periphery road linking Dwarka Township Delhi from Haryana boundary to National Highway No.8 near village Kherki Daula at Gurgaon. A perusal of the site plan would go on to show that the said road passes in close vicinity of the abadi of the Babupur which is situated in Sector 106. The landowners of village Pawala Khusarpur has further advantage, as its land is falling on the road coming from Dwarka which is called as the Northern Periphery Road.

15. In such circumstances, it would be appropriate if 10% cumulative enhancement is granted on average sale price of Ex.P1 and P2 on ₹2,73,05,446/- per acre for the intervening period. The market value would come to ₹3,30,39,589/- per acre (rounded off to ₹3,30,39,600/- per acre). A 10% cut would have to be put on the above market value, keeping in view the fact that the sale deeds are of 5 acres of land, whereas the land which has been acquired is measuring 24.08 acres and in comparison to the acquisition, the 10% cut as such would be reasonable. Accordingly, the market value is fixed ₹2,97,35,640/- per acre.

16. Resultantly, the appeals of the landowners are allowed and those of the State are dismissed by fixing the market value @ ₹2,97,35,640/- per acre alongwith all statutory benefits.

17. All pending civil miscellaneous applications in which no separate orders have been passed also stand disposed of, accordingly.

(G.S. SANDHAWALIA)
JUDGE

NOVEMBER 01, 2019
Naveen

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No