IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No. 4267 of 2014 (O & M)
and other connected matters
Date of decision: 22.11.2019

State of Haryana and another ....Appellant(s)

Versus

M/s. BTVS Buildwell Pvt. Ltd. ...Respondent(s)

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

Present: Mr. Pawan Kumar, Sr. Advocate,
with Mr. Surya Kumar, Advocate,
Mr. Sanjay Vij, Advocate,
Mr. Navneet Singh, Advocate,
Mr. Shekhar Verma, Advocate,
Mr. P.R. Yadav, Advocate,
for the land owners.

Mr. Sudeep Mahajan, Addl. A.G., Haryana,
with Mr. Abhinash Jain, AAG, Haryana.

Mr. Rajnikant Upadhay, Advocate,
for Mr. Rakesh Dhiman, Advocate,
for the cross objectors (in X.Obj. No. 68 of 2014).

G.S.SANDHAWALIA, J.

The present judgment shall dispose of 51 appeals and one cross objection i.e. RFA Nos. 4267 of 2014 and RFA Nos. 1614, 1615, 2116, 2188, 2521, 2711 (O & M) to 2724, 3113, 3831, 4268 to 4272 with X Obj. No. 68-CI of 2014, 4273 to 4294 of 2014 and RFA No. 215 and 2332 of 2015, since common questions of facts and law are involved in all the appeals. Facts are being taken from ***RFA No. 4267 of 2014, State of Haryana and another vs. M/s. BTVS Buildwell Pvt. Ltd.***

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 31.10.2013 for village Behrampur filed both by the State and the land owners. The Reference Court, while deciding 28 cases, lead case of which was LAC No. 652 of 2010, M/s. BTVS Buildwell Pvt. Ltd. vs. State of Haryana and another, assessed the market value at Rs.4,506.60/- per square yard (Rs.2,18,11,944/- per acre). The enhancement was granted from Rs.70,00,000/- per acre, as awarded by the Land Acquisition Collector by placing reliance upon sale deeds Exs. P-4 to P-7 and P-211 and P-212. Average of the said sale deeds was taken out at Rs.7,511/- per square yard and a cut of 40% was applied to fix the market value.

The acquisition in question was vide Section 4 notification dated 24.06.2008 whereby land measuring 33.91 acres was acquired for the public purposes of sector roads 58 to 67 for the revenue estate of Behrampur. The Land Acquisition Collector, vide Award No. 37 dated 12.08.2009 had fixed the market value at Rs.70,00,000/- per acre for all types of land.

The primary argument which has been raised by the counsel for the land owners is that as per the development plan dated 05.07.2007, the land fell within the developed portion and was part of the master plan as such and, therefore, further enhancement has been pressed for on the ground that there should have been no 40% cut. The benefit of the highest sale exemplars which are Exs. P-4 and P-5 dated 06.07.2007 should have been granted whereby land had been sold at Rs.9,722.90/- per square yard (Rs.4,17,58,823/- per acre).

State, on the other hand, has relied upon the sale deeds Exs. P-211 and P-212 dated 23.01.2008 and 04.02.2008 wherein, the land was sold at the rate of Rs.6,673.55/- per square yard (Rs.3,23,00,000/- per acre) and Rs.6,900.80/- per square yard (Rs.3,34,00,000/- per acre) to submit that they were of reasonable size of land measuring 1 acre each and showed a uniform market value rather than relying upon Exs.P-3 which showed spiraling increase in prices within a period of 2 months from Exs.P-212.

The sale exemplars which have been relied upon by the Reference Court are as under:-

Ex	Vasika No.	Date	Land Area		Total Sale Consideration	Rate Per Acre (₹)	Rate Per Sq. Yard
			K	M			
P3	5710	28.3.2008	44	6	205101563	37038656	7652.61
P4	1597	6.7.2007	2	11	15000000	47058823	9722.90
P5	1598	6.7.2007	2	11	15000000	47058823	9722.90
P6	1254	18.6.2007	3	15	13787500	29413333	6077.13
P7	1170	12.6.2007	6	8.875	23267860	28887352	5968.46
P211	4748	4.2.2008	8	0	33400000	33400000	6900.80
P212	4590	23.1.2008	8	0	32300000	32300000	6673.55

The reasoning which has been applied is faulty since the Reference Court had itself noticed that the market value was more in the year 2007 and in the year 2008, it had dipped. It was noticed that Exs.P-4 and P-5 were small chunks of land measuring 2 kanals 11 marlas which had been sold at a higher rates whereas the bigger chunk Ex.P-3 is of 44 kanals had fetched a lower amount. Accordingly, a finding was recorded that they were fluctuating and erratic sale deeds and resultantly, the average was taken. Ex.P-7 was wrongly discarded being post notification by noting it to be of 23.08.2008 though it was dated 12.06.2007. A deduction was put of 40% on the average thus taken out to fix the market value.

A perusal of the record would go on to show that in a petition filed under Section 18 of the Act, the claim as such was that the acquired land was adjacent to *abadi* of village Behrampur. It was adjacent to the *pucca* road which led to Behrampur and hardly 2 kilometers from Gurgaon city and the developed sectors. The acquired land was also *chahi* and used to yield 3 crops in a year. PW-1, Surjit Kumar, authorised person of M/s. BTVS Buildwell Pvt. Ltd. has placed licenses granted to the company and its associates. He had denied the suggestion that the land was not fully developed and that they were not entitled to enhanced compensation @ Rs.40,000/- per square yard. PW-2, Sanjay Saini, J.E. had produced the licenses Exs.P-2 to P-2/7 and PW-3-the Draftsman, Kanshi Ram had proved the site plan Ex.P-19 prepared by him with the help of the *Aksh Shajra* P-20. The development plan was Ex.P-10 and the sale deeds were Exs.P-3 to P-7. Similarly, PW-4-Mool Chand produced the site plan Ex.P-8. It was stated that he had seen the original sale deeds in relation to the lands mentioned in the site plan in green and yellow colour respectively.

A perusal of Ex.PW-4/1, the site plan would go on to show that the sale deeds Exs.P-211 and P-212 which were sold in favour of M/s. Full Bright Builders and G.P. Realtors Pvt. Ltd. have been depicted in green and yellow colour. Part of the land of Full Bright is falling in Khasra No. 19//2 has become part of the road for which the land has been acquired whereas, the land of the land owner has been shown in red colour corresponding to the site plan with Ex.P-19. It would be clear that Exs.P-4 and P-5 dated 06.07.2007, upon which reliance has been placed which are in favour of M/s. G.P. Realtors Pvt. Ltd. have been shown in light green colour and were not situated near the land which has been acquired and are at further distance. Similarly, the land which is the subject matter of Ex.P-3 dated 28.03.2008 which is in favour of M/s. Platoon Proprietor Build Pvt. Ltd. has been shown in blue colour and which is also adjoining the land of G.P. Realtors which is situated at a distance and, therefore, the sale exemplars cannot form a valid basis to assess the market value.

Resultantly, this Court is of the opinion that the sale exemplars P-211 and P-212 would be better sale exemplars and which are falling in a uniform price band of Rs.3,23,00,000/- and 3,34,00,000/- per acre having been executed just 10 days apart. The benefit of the highest sale deed, thus, can be granted to the land owners, which would be Rs.3,34,00,000/- per acre to assess the market value which is in close proximity to the notification under Section 4 being only 4 months in point of time earlier than the said notification, but also in location to the land acquired. The other sale deeds are liable to be ignored on the ground also that the vendor and the vendee have not been examined and as noticed, the said sale deeds have been produced without examining the said persons though it may not be necessary as such in view of the provisions under Section 51-A of the Act. However, a caveat has been put by the Constitutional Bench of the Apex Court regarding such sale deeds in ***Cement Corporation of India vs. Purya and others, 2004 (8) SCC 270.*** The Apex Court held that though the sale deeds may be read in evidence but the fact that the vendor and the vendee had not appeared for cross examination as to the location of the land and the peculiar circumstances for which the land may have been purchased for higher price is a factor which is to be kept in mind. The relevant part of the said judgment reads thus:-

> “31. *Thus, the reasoning of this Court in Narasaiah’s case that Section 51A enables the party producing the certified copy of a sale transaction to rely on the contents of the document without having to examine the vendee or the vendor of that document is the correct position in law. This finding in Narasaiah’s case is also supported by the decision of this Court in the case of Mangaldas Raghavji Ruparel (supra).*
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> *32. Therefore, we have no hesitation in accepting this view of the court in the Narasaiah’s case as the correct view.*
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> *33. The submission of Mr. G. Chandrasekhar to the effect that the contents of a sale deed should be a conclusive proof as regard the transaction contained therein or the court must raise a mandatory presumption in relation thereto in terms of Section 51A of the Act cannot be accepted as the Court may or may not receive a certified copy of sale deed in evidence. It is discretionary in nature. Only because a document is admissible in evidence, as would appear from the discussions made hereinbefore, the same by itself would not mean that the contents thereof stand proved. Secondly, having regard to the other materials brought on record, the court may not accept the evidence contained in a deed of sale. When materials are brought on record by the parties to the lis, the court is entitled to appreciate the evidence brought on records for determining the issues raised before it and in the said process, may accept one piece of evidence and reject the other.*
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> *34. In M.S. Madhusoodhanan and Anr. vs. Kerala Kaumudi (P) Ltd. and Ors. [(2004) 9 SCC 204],*

it is stated :

"119.... They are rules of evidence which attempt to assist the judicial mind in the matter of weighing the probative or persuasive force of certain facts proved in relation to other facts presumed or inferred (ibid). Sometimes a discretion is left with the court either to raise a presumption or not as in Section 114 of the Evidence Act. On other occasions, no such discretion is given to the court so that when a certain set of facts is proved, the court is bound to raise the prescribed presumption. But that is all. The presumption may be rebutted."

35. A registered document in terms of Section 51A of the Act may carry therewith a presumption of genuineness. Such a presumption, therefore, is rebuttable. Raising a presumption, therefore, does not amount to proof; it only shifts the burden of proof against whom the presumption operates for disproving it. Only if the presumption is not rebutted by discharging the burden, the court may act on the basis of such presumption. Even when in terms of the Evidence Act, a provision has been made that the court shall presume a fact, the same by itself would not be irrebuttable or conclusive. The genuineness of a transaction can always fall for adjudication, if any question is raised in this behalf."

Resultantly, the sale deeds Exs. P-3, P-4 and P-5, as such, cannot be blindly relied upon for enhancing the market value as prayed for by the land owners. The issue of builders' sale deeds has been time and again examined by this Court and the fact that it is well known that the builders as such purchase the land to increase their land bank and keeping the buying power as such to hold on to the land and to purchase the land at a higher price to encash on to the rising trends in a developing area. Resultantly, the builders' sale deeds as such necessarily have to be treated with a pinch of salt. Blind reliance would not be, thus, safe as it is settled principle that surging land prices are not safe and a bona fide sale transaction is the best example for fixing the market value.

The three-Judge Bench of the Apex Court in ***Ram Kanwar and others vs. State of Haryana and another, 2015 (1) RCR (Civil) 234*** upheld the 50% cut which had been applied by this Court 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."*

The applications for additional evidence have also been filed in RFA No. 2711 of 2014 and other connected appeals to place on record the notification dated 05.02.2007 (Annexure A-3) and master plan (Annexure A-4). However, no effort as such was made to bring the same on record during the pendency of the reference petition 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 applications for additional evidence cannot be used to fill up the lacuna in the case, as has been 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 purposes of fixing the market value and, therefore, the applications are dismissed.

Resultantly, keeping in view the above, 50% cut is granted on the best sale examplar of 3,34,00,000/- (Ex.P-211) as it would represent the adequate market value for the area in question which would work out to Rs.1,67,00,000/- per acre. In ***RFA No. 7271 of 2013, Dharampal and others vs. State of Haryana and others*** decided today, this Court has fixed the market value @ Rs.2 crores per acre for village Ullawas which was acquired for the same purpose by the same notification. The said village is closer to the heart of Gurgaon being located on the eastern side of village Behrampur and would, thus command more market value.

Resultantly, the State appeals are allowed and the market value as such works out to Rs.3,450/- per square yard (Rs.1,67,00,000/- per acre) alongwith all statutory benefits. The appeals of the land owners and cross objections are accordingly dismissed. Pending miscellaneous applications, if any, in which no separate orders have been passed, are disposed of accordingly.

22.11.2019 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No