

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

407

RFA No.4775 of 2014 (O&M) and
other connected appeals
alongwith cross-objections
Reserved on : 15.10.2019
Pronounced on : 01.11.2019

Tek Ram and another

... Appellants

Versus

State of Haryana and another

... Respondents

Appeals filed by landowners	Appeals filed by the State	Cross-Objections by the landowners
RFA Nos.4775, 4776 to 4780, 5245, 5279, 6690, 7210, 7227, 7251, 8817, 9255 to 9258, 9290, 9291 of 2014 RFA No.58 of 2015, RFA Nos.192 and 193 of 2016	RFA Nos.10714 to 10756 of 2014	XOBJR No.100-CI of 2017 in RFA No.10714 of 2014, XOBJR No.102-CI of 2017 in RFA No.10715 of 2014, XOBJR No.110-CI of 2017 in RFA No.10716 of 2014, XOBJR No.120-CI of 2017 in RFA No.10720 of 2014, XOBJR No.107-CI of 2017 in RFA No.10721 of 2014, XOBJR No.113-CI of 2017 in RFA No.10723 of 2014, XOBJR No.97-CI of 2017 in RFA No.10724 of 2014, XOBJR No.111-CI of 2017 in RFA No.10725 of 2014, XOBJR No.106-CI of 2017 in RFA No.10726 of 2014, XOBJR No.99-CI of 2017 in RFA No.10727 of 2014, XOBJR No.119-CI of 2017 in RFA No.10729 of 2014, XOBJR No.103-CI of 2017 in RFA No.10731 of 2014, XOBJR No.98-CI of 2017 in RFA No.10735 of 2014, XOBJR No.104-CI of 2017 in RFA No.10736 of 2014, XOBJR No.108-CI of 2017 in RFA No.10738 of 2014, XOBJR No.101-CI of 2017 in RFA No.10739 of 2014, XOBJR No.118-CI of 2017 in RFA No.10740 of 2014, XOBJR No.105-CI of 2017 in RFA No.10742 of 2014, XOBJR No.117-CI of 2017 in RFA No.10746 of 2014, XOBJR No.114-CI of 2017 in RFA No.10747 of 2014, XOBJR No.121-CI of 2017 in RFA No.10751 of 2014, XOBJR No.122-CI of 2017 in RFA No.10752 of 2014, XOBJR No.109-CI of 2017 in RFA No.10753 of 2014, XOBJR No.112-CI of 2017 in RFA No.10756 of 2014,

RFA No.4775 of 2014 (O&M) and other connected appeals alongwith cross-objections

-2-

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

Present : Mr. J.P. Ahlawat, Advocate,
Mr. N.D. Achint, Advocate,
Mr. Aditya Jain, Advocate,
Mr. Varun Baanth, Advocate,
Mr. R. Kartikeya, Advocate,
Mr. Rahul Vats, 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 65 appeals and 24 cross-objections filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') both by the landowners and the State against the Awards dated 21.02.2014 and 09.11.2015 passed by the Reference Court, Gurgaon, for the land acquired in village Choma pertaining to the notification dated 13.01.2010 issued under Section 4 of the Act.

2. The Land Acquisition Collector vide Award No.73 dated 31.03.2010 for the land of village Choma measuring 25.51 acres had awarded ₹60 lakhs per acre. The Reference Court vide its Award dated 21.02.2014 while deciding 52 cases, lead case of which was **LA Case No.17 of 2011 'Nihal Singh Vs. State of Haryana and others'** enhanced the compensation to ₹1,46,45,799/- per acre on the basis of Ex.P6/A, Ex.P7/A and Ex.P8/A by taking the average of the said sale deeds @ ₹1,83,07,248/- per acre. A 20% cut was put on the same to fix the market value. The other Award dated 09.11.2015 only followed the said view.

3. The chart of the sale deeds which were produced before the

RFA No.4775 of 2014 (O&M) and other connected appeals alongwith cross-objections

Reference Court reproduced below:-

Sr.No	Ex.	Dated	Land Area	Total Value in ₹	Rate per acre in ₹	Village
1	P6	23.03.07	82 K 0 M	25,12,78,125	2,45,00,000	Choma
2	P8	22.05.08	1 K 13 M	16,00,000	77,34,139	Choma
3	P10, P14 & P5/B	16.07.08	42 K 2 M	21,04,80,000	3,99,96,200	Choma
4	P3/A	08.05.08	8 K 10 M	3,18,75,000	3,00,00,000	Choma
5	P4/A	17.07.08	4 K 1 M	1,50,00,000	2,96,29,629	Choma
6	P5/A	16.04.08	40 K 0 M	14,30,00,000	2,86,00,000	Choma
7	P6/A	04.08.09	0 K 3.3. M	3,80,000	1,82,40,603	Choma
8	P7/A	09.11.09	0 K 2 M	2,31,800	1,85,44,000	Choma
9	P8/A	03.12.09	3 M 8 S	4,40,800	1,81,37,141	Choma
10	P1/B	30.11.06	137 K 7 M	60,26,89,375	3,51,03,858	Choma
11	P2/B	19.02.07	23 K 3 & 8 S	6,97,13,314	2,42,27,042	Choma
12	P3/B	23.03.07	82 K 1 M	25,12,78,125	2,45,00,000	Choma
13	P4/B	18.05.07	71 K 12 M	28,64,00,000	3,20,00,000	Choma
14	P6/B	23.08.07	16 K 8 M	8,71,25,000	4,25,00,000	Choma
15	P7/B	23.05.11	3 K 15 M	75,00,000	1,60,00,000	Choma

4. A perusal of the above chart would go on to show that the sale deeds Exs.P6/A, P7/A and P8/A which were relied upon as such are of miniscule area of Marlas and could not found the basis of the market value of the land which was being acquired measuring 25.51 acres, though they might have been closer in point of time as such of the notification in question being of the year 2009. The Reference Court had also noticed that the market value as such whereby the land had been sold vide sale deed Ex.P6/B was ₹4,25,00,000/- per acre, but gone on to hold that the value had thereafter come down. It is also pertinent to notice that vide sale deed dated 23.08.2007 (Exp6/B) land was sold in favour of M/s Puri Construction Pvt. Ltd. The Reference Court as such was justified to discard the said sale deed which was disproportionate as such in the

RFA No.4775 of 2014 (O&M) and other connected appeals alongwith cross-objections

-4-

market value in comparison to the other sale deeds, which showed more steady market value. Rather a perusal of Ex.P6 would go on to show that it was for land measuring 82 kanals (10.25 acres) which was sold @ ₹2,45,00,000/- per acre and the land as such was purchased by M/s Sahara India Real Estates Pvt. Ltd.

5. The chart would further go on to show that vide Ex.P10, the market value was hovering around ₹4 crores per acre on 16.07.2008 which was for 42 kanals of land, whereas on 08.05.2008 (Ex.P3/A) and 17.07.2008 (Ex.4/A), the market value was also hovering around ₹3 crores per acre.

6. Resultantly, this Court is of the opinion that the said sale exemplars Ex.P3/A, Ex.P4/A and Ex.P10 would be more safe to rely and were reasonable chunks of land measuring 4 kanals, 8 kanals 10 marlas and 42 kanals were sold and would depict the correct market value and the land value cannot be taken less than ₹3 crores per acre.

7. Counsel for the landowners though has relied upon the earlier award passed for the notification dated 25.01.2008 wherein market value had been fixed @ ₹1,84,00,000/- awarded on 30.07.2013. It is further argued that 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 fixed the market value @ ₹4,78,05,588/- per acre, which was reduced by the Apex Court to ₹4,06,34,749/- by granting 15% cut in **Civil Appeal No.11814-11864**

RFA No.4775 of 2014 (O&M) and other connected appeals alongwith cross-objections

-5-

of 2017 'State of Haryana Vs. Ram Chander and another' decided on 05.09.2017. The relevant portion of the judgment passed in **RFA No.4475 of 2012 (supra)** read as under:-

“Since the area sold by way of sale-deed No.26822 dated 23.3.2007 (Ex.P13) was measuring 82 Kanals 1 Marla, which was more than 10 acres and was also disclosing highest market price at the rate of Rs.4,78,05,588/- per acre, this was the only sale-deed which ought to have been made the basis for assessing the market value of the acquired land. Learned reference court took this sale-deed into consideration only for the purpose of taking average market price, which was totally illegal. Once area sold vide this sale-deed Ex.P13 was more than 10 acres, no cut was warranted to be imposed on account of the smallness of land sold through the sale-deed relied upon.

Similarly, since land acquired from this village was also situated in the already developed area and no further development, as such, was required to be carried out by the authorities of the State, with a view to achieve the purpose of acquisition in the instant case, no cut could have been imposed on account of development costs as well. Since the learned reference court has failed to appreciate this material aspect of the matter as well as law laid down by the Hon'ble Supreme Court in the cases referred to hereinabove, the twin findings i.e., for taking the average market price as well as imposing cut thereon, recorded by the learned reference court in para 31 of the impugned award, cannot be sustained and the same are hereby set aside. Consequently, the land owners of village Choma are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.4,78,05,588/- per acre, from the date of notification under Section 4 of the Act.”

8. However, the said argument as such is not liable to be accepted, as there is a mistake in calculation of the market value by the Coordinate Bench. The price was fixed by assessing the market value @ ₹4,78,05,588/- per acre. The said sale exemplar was Ex.P6. The chart which had been made above would further go on to show that the market value would only come to ₹2,45,00,000/-, since only 10 acres of land had been sold @ ₹25,12,78,125/-. There seems to be an mathematical error and, therefore, the argument raised by the counsel for the landowners that the same should be made the basis for enhancement is not justified. This error was committed when the table was prepared by the Reference Court, which was wrongly accepted by the Coordinate Bench at that point of time and the State did not point out the error apparent.

9. The Apex Court in '**Manoj Kumar & others Vs. State of Haryana & others**', 2018 (2) RCR (Civil) 815 has held that awards are relevant piece of evidence, but not to be blindly followed and are not binding as precedents. It has been held that in case there is a mistake it is not to be followed on the ground of parity and an illegality cannot be perpetuated and better evidence can be adduced. 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

RFA No.4775 of 2014 (O&M) and other connected appeals alongwith cross-objections

-7-

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.”

10. The said view has also been laid down in '**Loveleen Kumar and others Vs. State of Haryana and others'** 2018 (7) Scale 596.

11. Accordingly, this Court is of the opinion that keeping in view the above sale deed at Serial No.10 dated 16.07.2008 (Ex.P10), which was for 42 kanals 8 marlas in favour of M/s Natureville Promoters Pvt. Ltd., the market value would work out @ ₹4 crores. No cut is liable to be imposed on the same, keeping in view the size of the sale exemplar which is for over 5 acres. Even otherwise the acquisition is for cutting out roads and the issue of development cut would not arise in view of the law laid down in '**Nelson Fernandes and others Vs. Special Land Acquisition Officer, South Goa and others'**, 2007 (9) SCC 447, '**C.R. Nagaraja Shetty Vs. Special Land Acquisition Officer and Estate**

RFA No.4775 of 2014 (O&M) and other connected appeals alongwith cross-objections

-9-

Officer and another', 2009 (11) SCC 75 and 'Himmat Singh and others Vs. State of M.P. and another', 2013 (16) SCC 392. The relevant portion of the said judgment read as under:-

“8. The High Court has directed the deduction of Rs.25/- per square feet. Unfortunately, the High Court has not discussed the reason for this deduction of Rs.25/- per square feet nor has the High Court relied on any piece of evidence for that purpose. It is true that where the lands are acquired for public purpose like setting up of industries or setting up of housing colonies or other such allied purposes, the acquiring body would be entitled to deduct some amount from the payable compensation on account of development charges, however, it has to be established by positive evidence that such development charges are justified. The evidence must come for the need of development contemplated and the possible expenditure for such development. We do not find any such discussion in the order of the High Court. As if this is not sufficient, when we see the judgment of the Principal Civil Judge (Sr. Division), Bangalore, Rural District, Bangalore in Reference proceedings, we find that there is no deduction ordered for the so-called development charges. We are, therefore, not in a position to understand as to from where such development charges sprang up. The Learned Counsel appearing on behalf of the respondents was also unable to point out any such evidence regarding the proposed development. We cannot ignore the fact that the land is acquired only for widening of the National Highway. There would, therefore, be no question of any such development or any costs therefor. In the reported judgment in **Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others in 2007 (2) RCR (Civil) 508 : 2007 (2) RAJ 463 : 2007 (9) SCC 447**, this Court has

discussed the question of development charges. That was a case, where, the acquisition was for laying a Railway line. This Court found that the land under acquisition was situated in an area, which was adjacent to the land already acquired for the same purpose, i.e., for laying Railway line. In paragraph 29, the Court observed that the Land Acquisition Officer, the District Judge and the High Court had failed to notice that the purpose of acquisition was for Railways and that the purpose is a relevant factor to be taken into consideration for fixing the compensation. The Court relied on judgment in **Viluben Jhalejar Contractor Vs. State of Gujarat reported in 2005 (2) RCR (Civil) 492 : 2005(4) SCC 789**, where it was held that the purpose for which the land is acquired, must also be taken into consideration in fixing the market value and the deduction of development charges. Further, in paragraph 30, the Court specifically referred to the deduction for the development charges and observed:-

"30. We are not, however, oblivious of the fact that normally 1/3rd deduction of further amount of compensation has been directed in some cases. However, the purpose for which the land is acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways..... In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise."

The Court made a reference to two other cases, viz., **Hasanali Khanbhai & Sons Vs. State of Gujarat 1995 (3) RRR 283 : 1995 (5) SCC 422** and **Land Acquisition Officer Vs. Nookala Rajamallu reported in 2004 (1) RCR (Civil) 293 2003(12) SCC 334** respectively, where, the deduction by way development charges, was held permissible. The situation is no different in the present case. All that the acquiring body has to achieve is to widen the National Highway. There is no

further question of any development. We again, even at the cost of repetition, reiterate that no evidence was shown before us in support of the plea of the proposed development. We, therefore, hold that the High Court has erred in directing the deduction on account of the developmental charges at the rate of Rs.25/- per square feet out of the ordered compensation at the rate of Rs.75/- per square feet. We set aside the judgment to that extent. The claimant would, therefore, be entitled to the compensation at the rate of Rs.75/- per square feet with all the statutory benefits like solatium under Section 23(2), 12% interest under Section 23 (1-A) on the enhanced market value and interest at 9% and 15% as provided under Section 34 of the Act for one year and the rest of the period from the date of taking possession till the date of payment of the compensation awarded in favour of the claimant. With this, we partly allow the appeal and modify the order of the High Court.”

12. The argument that the sale deeds as are builder sale deeds and, therefore, a 50% cut should be imposed upon them is not liable to be accepted in the facts and circumstances as the land of village Choma was also subject matter of acquisition and only 15% reduction as such had been made by the Apex Court on an earlier occasion **Civil Appeal No.11814-11864 of 2017 'State of Haryana Vs. Ram Chander and another'** decided on 05.09.2017, on account of the development having taken place.

13. It is also pertinent to take into consideration that for adjoining village Pawala Khusarpur a sum of ₹4,78,79,070/- per acre is being granted in **RFA No.7824 of 2013 'Vivek Kumar Vs. State of Haryana and others'** for the same set of acquisition. Village Choma is

relatively better placed due to its location closer towards Delhi and, therefore, keeping in view the overall lay out plan and the location of the village, it would not be fair as such to grant lesser compensation for village Choma which is better located in comparison to the village Pawala Khusarpur also.

14. Accordingly, keeping in view 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% for the intervening period of two years is granted on ₹4,00,00,000/- per acre. The relevant portion of the said judgment read as under:-

“11. Primarily, the increase in land prices depends on four factors - situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during the nineties. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-

urban areas and increases in market value of lands in the rural areas. Therefore if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same.”

15. Resultantly, the market value for village Choma is assessed @ ₹5,01,76,000/- per acre alongwith all statutory benefits.

16. Accordingly, the appeals and cross-objections filed by the landowners are allowed and appeals filed by the State are dismissed.

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

NOVEMBER 01, 2019

Naveen

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No