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

382 **RFA No.7324 of 2014 and other connected appeals**
Decided on : 28.08.2019

Zile Singh-II

...Appellant

Versus

State of Haryana and another

... Respondents

Appeals filed by the landowners	Appeals filed by the State
RFA No.7324, 7713 to 7760, 8215 to 8224, 8320 to 8327, 8412 to 8422, 8424 to 8426, 8638, 8659, 8741 to 8750, 8968, 8974, 8991, 9038, 9045, 9049, 9067, 9282 to 9286, 9433, 9608 to 9618, 9637, 9638, 9714, 9726, 9730, 9739, 9826, 9836, 9837, 10432, 10433, 10434, 10808 **of 2014** RFA No.49, 63, 68, 544, 555, 762, 763, 1326 to 1331, 2186, 2187, 3102, 3103, 3591, 6506, 6507, 6564, 7462 **of 2015** RFA No.699, 700, 4262 **of 2016** RFA No.728, 735, 736, 1059 to 1063, 1357, 2257 **of 2017** RFA No.554 to 557, 5219, 3226, 13587 **of 2018**	RFA No.162 to 169, 211 **of 2017** RFA No.2206, 3134, 3270 **of 2018**

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

Present: Mr. Shailendra Jain, Senior Advocate with
Mr. Sidharth Goyal, Advocate,
Mr. Nitin Jain, Advocate
Mr. Pawan Kumar, Senior Advocate with
Mr. Surya Kumar, Advocate,
Mr. Rozer Kumar Aggarwal, Advocate,
Mr. Mani Ram Verma, Advocate,
Mr. Ajay Jain, Advocate,
Mr. Vikas Mohan Gupta, Advocate,
Mr. Aditya Jain, Advocate,
Mr. Rajat Garg, Advocate
Mr. Ram Kumar Saini, Advocate,
Mr. Balraj Gujjar, Advocate,
Mr. I.S. Pabla, Advocate,
Ms. Anita Rani, Advocate for
Mr. Rose Gupta, Advocate,
Mr. Sandeep Kotla, Advocate,
Mr. Tara Chand Dhanwal, Advocate
for the landowners.

Mr. Sudeep Mahajan, Addl. AG, Haryana.
Mr. Abhinash Jain, AAG, Haryana.
Ms. Vibha Tewari, AAG, Haryana.

Mr. Ashish Gupta, Advocate
for the applicant/intervenor in RFA No.7324 of 2014.

G.S. Sandhawalia, J. (Oral)

The present order shall dispose of 184 appeals filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') by the landowners and the State against the Award dated 31.05.2014 passed by the Reference Court, Hisar, whereby the Reference Court decided 159 reference petitions and enhanced the market value to Rs.48,40,000/- per acre. Apart from the said award, vide subsequent Awards dated 08.08.2014, 07.10.2014, 13.11.2014, 01.10.2016, 14.02.2018, 13.03.2018 and 01.05.2018, Reference Courts have also enhanced the market value. The basis for enhancement as such was that Rs.805/- per square yard (Rs.38,96,200/- per acre) had been granted by this Court in **RFA No.1505 of 2003** decided on 26.04.2010, for the notification dated 12.06.1995

2. It is pertinent to notice that the notification under Section 4 of the Act was issued on 29.08.2005 followed by the notification under Section 6 of the Act dated 29.08.2006 for the land measuring 229.13 acres. The purpose of acquisition was for the development of Sectors 3, 5 and 6 in Hansi, District Hisar. Vide Award dated 03.08.2007, the Land Acquisition Collector awarded Rs.12 lakhs per acre for the land falling on the Delhi-Hisar Road and Rs.10 lakhs per acre upto two acres on Jind By-Pass road and Rs.8 lakhs per acre for all other land.

3. The matter has come before this Court on account of the remand order passed by the Apex Court dated 16.05.2018 in **'Loveleen Kumar and others Vs. State of Haryana and others' 2018 (7) SCC 492.** The reasoning for remand was that the Coordinate Bench of this Court in the present appeal Zile Singh had fixed the market value to Rs.4,173/- per square yard (Rs.2,01,97,320/- per acre) on the ground that there was a difference of 10 years 2 months between earlier acquisition dated 12.06.1995 and the present notification dated 29.08.2005. Resultantly, 15% cumulative increase was given on Rs.1342/- per square yard to take the market value to Rs.5564/- per square yard and thereafter, 25% cut was put. The same was done on the basis that for the notification of 1995, the Apex Court had enhanced the amount to Rs.1342/- from Rs.805/- per square yard in **'Ashrafi and others Vs. State of Haryana and others' (2013) 5 SCC 527.**

4. As noticed above, the Apex Court did not appreciate the methodology of enhancement, keeping in view the difference of the time gap, in view of the settled law in '**Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another' 2008 (14) SCC 745** that cumulative methodology of increase beyond period of 4 years is not permissible and not a safe method. Thus, the Apex Court in the remand order as such has sent this matter to this Court to decide on merits.

5. However, on a closer examination of the record, it is apparent that the sale deeds which had produced by both sides have not

been kept in mind at all. As noticed and discussed above, this Court would not have been chary as such from deciding the matter on merits, but it is to be noticed that this Court is a Court of first appeal. There is no foundation as such which has been laid by the Reference Court as to the location of the sale deeds which had been produced by the State to show that the market value is not in the range which had been granted.

6. Rather the chart on the site plan Annexure A-2 which has been produced alongwith an application for additional evidence i.e. **CM-3215-CI-2019 in RFA-7324-2014** in which notice was issued on 03.04.2019 to which no reply has been filed and which was ordered to be heard with the main case would go on to show that the market value of the land which was part of the land was much below to what had been even awarded by the Land Acquisition Collector.

7. A perusal of the sale deed dated 21.02.2005 (Ex.R21) which was of 2 kanals 17 marlas would go on to show that the land was sold for Rs.4,21,053/- per acre. The claimant has filed LAC No.162 of 2010, which is subject matter of appeal here in RFA No.8741 of 2014 for fixing the market value. The location of the said sale deeds has been depicted at point 'H' which is part of the acquired land as per the site plan now attached with the application for additional evidence. Similarly, sale deeds dated 14.06.2005 (Exs.R-13, R-19 and R-20) of 2 kanals and 2 kanals 8 marlas were sold for Rs.4 lakhs per acre two months before the date of acquisition. The said sale deeds have also been depicted at point A, F and G and are within the acquired land. Similarly, there is a sale

deed dated 30.12.2005 (Ex.R-15) of 2 kanals 15 marlas, which is shown at point B and the same is subject matter of LAC No.189 of 2010 out of which RFA No.7729 of 2014 has arisen, whereby land was sold post notification @ Rs.5,01,960/- per acre.

8. It is, thus, apparent that the Reference Court did not even take these sale deeds, which had been produced by the respondents, into consideration and did not examine them in the entirety, though there were as many as six site plans on record, by which the location of the land could have been identified. The site plans are Ex.P1, Ex.PW6/A, Ex.PW9/A, Ex.PW13/A, Ex.PD and Ex.P30, apart from the site plan produced by the State, Ex.R23. It is to be further noticed that apart from the award in question dated 31.05.2014, the Reference Courts on subsequent occasions as such also relied upon the Award dated 31.05.2014 and the decision of this Court dated 28.05.2016 passed in the case of **Zile Singh** and granted Rs.1000/- per square yard and Rs.4173/- per square meter. The State is also in appeal challenging the said awards granting Rs.4173/- per square meter.

9. Mr. Jain, though has raised an argument, once the State is not in appeal against the Award dated 31.05.2014, this Court should not remand the matter. But the fact remains that against an subsequent award, the State has approached this Court, whereby the Reference Court has relied upon on the earlier award and granted the same amount of compensation, as what has been granted by this Court i.e. Rs.4173/- per square meter.

10. The amount awarded by this Court has already been set aside by the Apex Court and as such the judgment of the Reference Court cannot stand as it had no independent legs. The Reference Court as noticed above only relied upon the judgment passed in appeal against the Award dated 31.05.2014. The provisions of Order 41 Rule 22 and 33 CPC as such would thus come into play in such facts and circumstances.

11. Reliance can be placed upon the judgments of the Apex Court passed in **'Ravinder Kumar Sharma Vs. State of Assam and others' 2000 (2) PLR 165** and in **'Anil Kumar Gupta Vs. Municipal Corporation of Delhi, 2000 (1) SCC 128.** In **Ravinder Kumar Sharma (supra)** it has been held that the respondent in an appeal without filing cross-objections can attack an adverse finding upon which a decree in part has been passed against the respondent, for the purpose of sustaining the decree to that extent and that there is no obligation to file cross-objections. Relevant portion of the said judgment reads as under:-

> "24. In our view, the opinion expressed by Mookerjee, J. of the Calcutta High Court on behalf of the Division Bench in Nishambhu Jena's case and the view expressed by U.N.Bachawat, J. in Tej Kumar's case in the Madhya Pradesh High Court reflect the correct legal position after the 1976 Amendment. We hold that the respondent-defendant in an appeal can, without filing cross-objections attack an adverse finding upon which a decree in part has been passed against the respondent, for the purpose sustaining the decree to the extent the lower court had dismissed the suit against the defendants-respondents. The filing of cross- objection, after the 1976 Amendment is purely optional and not mandatory. In other words, the law

as stated in Venkata Rao's case by the Madras Full Bench and Chandre Prabhuji's case by this Court is merely clarified by the 1976 Amendment and there is no change in the law after the Amendment.

25. The respondents before us are, therefore, entitled to contend that the finding of the High court in regard to absence of reasonable and probable cause or malice - (upon which the decree for pecuniary damages in B and C schedules was based) can be attacked by the respondents for the purpose of sustaining the decree of the High Court refusing to pass a decree for non-pecuniary damages as per the A schedule. The filing of cross-objections against the adverse finding was not obligatory. There is no res judicata. Point 1 is decided accordingly in favour of respondents-defendants."

12. In **'Pralhad and others Vs. State of Maharashtra and another' 2010 (10) SCC 458,** it was held as under:-

"17. Now, the only question which remains is whether the landowners, without filing an appeal before the High Court from the order of the Reference Court, are entitled to the aforesaid benefit on the basis of their application under Order 41 Rule 33 of Civil Procedure Code.

18. The provision of Order 41, Rule 33 of Civil Procedure Code is clearly an enabling provision, whereby the Appellate Court is empowered to pass any decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case may require. Therefore, the power is very wide and in this enabling provision, the crucial words are that the Appellate Court is empowered to pass any Order which ought to have been made as the case may require. The expression 'Order ought to have been made' would obviously mean an Order which justice of the case requires to be made. This is made clear from the

expression used in the said Rule by saying `the court may pass such further or other Order as the case may require.' This expression `case' would mean the justice of the case. Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law.

19. In fact, the ambit of this provision has come up for consideration in several decisions of this Court. Commenting on this power, Mulla (CPC, 15th Edition, pg. 2647) observed that this Rule is modelled on Order 59, Rule 10(4) of the Supreme Court of Judicature of England, and Mulla further opined that the purpose of this rule is to do complete justice between the parties.

20. In **Vanarsi vs. Ramphal, AIR 2004 SC 1989**, this Court construing the provisions of Order 41 Rule 33 of Civil Procedure Code held that this provision confers powers of the widest amplitude on the appellate court so as to do complete justice between the parties. This Court further held that such power is unfettered by considerations as to what is the subject matter of appeal or who has filed the appeal or whether the appeal is being dismissed, allowed or disposed of while modifying the judgments appealed against. The learned Judges held that one of the objects in conferring such power is to avoid inconsistency, inequity and inequality in granting reliefs and the overriding consideration is achieving the ends of justice. The learned Judges also held that the power can be exercised subject to three limitations: firstly, this power cannot be exercised to the prejudice of a person who is not a party before the Court; secondly, this power cannot be exercised in favour of a claim which has been given up or lost; and thirdly, the power cannot be exercised when such part of the decree which has been permitted to become final by a party is reversed to the advantage of that party. (See para 15 at pg. 1997). It has also been held by this Court in **Samundra Devi and others vs. Narendra Kaur and others, 2008 (4) RCR**

(Civil) 395 : 2008 (5) R.A.J. 441 : 2009 (1) AICJ 433 : (2008) 9 SCC 100 (para 21) that this power under Order 41, Rule 33 of Civil Procedure Code cannot be exercised ignoring a legal interdict."

13. The methodology of granting the benefit of enhancement from 1995 to 29.08.2005 and subsequent enhancement by this Court, as noticed has not been approved in **Loveleen Kumar's case (supra)**. A perusal of the awards which are now under challenge would go on to show that they suffer from same infirmities which have been noticed by the Apex Court qua the order in appeal passed by this Court. The Reference Court has not touched the issue on merits at all regarding the sale deeds, which had been exhibited and produced by the State, which are as under:-

Sr. No.	Ex.	Dated	Area	Sale Price Per acre
1.	R-21	21.02.2005	2 K 17 M	Rs.4,21,053/-
2.	R-13	14.06.2005	2 K 0 M	Rs.4,00,000/-
3.	R-19	14.06.2005	2 K 0 M	Rs.4,00,000/-
4.	R-20	14.06.2005	2 K 8 M	Rs.4,00,000/-
5.	R-22	15.09.2005	4 K 0 M	Rs.5,00,000/-
6.	R-15	30.12.2005	2 K 11 M	Rs.5,01,960/-
7.	R-16	31.01.2006	4 K 17 M	Rs.5,03,082/-
8.	R-17	13.07.2006	21 K 5 M	Rs.5,00,329/-
9.	R-18	06.09.2006	2 K 4 M	Rs.8,00,000/-

14. It is a settled principle that the issue of market value as such has to be decided on the basis of evidence on record and it is not an adversial form of litigation. The landowners as such have to be given the market value prevalent on the date of Section 4 notification, but that does not mean that the Reference Court is only to take into consideration the

earlier notification and not to take into consideration sale deeds produced by the landowners and the State. It is to be noticed that there is no discussion as such as to the sale deeds which have been brought on record pertaining from the period 1992 which was much earlier in point of time which were also of small size of area.

15. The Apex Court in the case of **'Manoj Kumar & others Vs. State of Haryana & others', 2018 (2) RCR (Civil) 815** has specifically held that blind reliance upon the earlier notifications is not to be done and the best exemplars are the sale deeds as such of the land which is in near vicinity. Counsel for the State has, thus, argued that the land which has been depicted on Ex.R23 would go on to show that it is the part of the acquired land and, therefore, in view of the specific evidence which is on record, it would be imperative for recording a categorical finding as what is the market value in view of the sale deeds which are on record and have not been touched. The relevant observations of the judgment passed in the case of **Manoj Kumar (supra)** read as under:-

> "14. In our opinion, the High Court could not have placed an outright reliance on the decision of Swaran Singh's case, without considering the nature of transaction relied upon in the said decision. The decision could not have been applied ipso facto to the facts of the instant case. In such cases, where such judgments/awards are relied on as evidence, though they are relevant, but cannot be said to be binding with respect to the determination of the price, that has to depend on the evidence adduced in the case. However, in the instant case, it appears that the land in Swaran Singh's case was situated just across the road as

observed by the High Court as such it is relevant evidence but not binding. As such it could have been taken into consideration due to the nearness of the area, but at the same time what was the nature of the transaction relied upon in the said case was also required to be looked into in an objective manner. Such decisions in other cases cannot be adopted without examining the basis for determining compensation whether sale transaction referred to therein can be relied upon or not and what was the distance, size and also bonafide nature of transaction before such judgments/awards are relied on for deciding the subsequent cases. It is not open to accepting determination in a mechanical manner without considering the merit. Such determination cannot be said to be binding. We have come across several decisions where the High Court is adopting the previous decisions as binding. The determination of compensation in each case depends upon the nature of land and what is the evidence adduced in each case, may be that better evidence has been adduced in later case regarding the actual value of property and subsequent sale deeds after the award and before preliminary notification under section 4 are also to be considered, if filed. It is not proper to ignore the evidence adduced in the case at hand. The compensation cannot be determined by blindly following the previous award/judgment. It has to be considered only a piece of evidence not beyond that. Court has to apply the judicial mind and is supposed not to follow the previous awards without due consideration of the facts and circumstances and evidence adduced in the case in question. The current value reflected by comparable sale deeds is more reliable and binding for determination of compensation in such cases award/judgment relating to an acquisition made before 5 to 10 years cannot form the safe basis for determining compensation.

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."

16. It is also to be noticed that in the close vicinity land measuring 12.73 acres had been sold post notification on 25.09.2007 (Ex.P2) for setting up of Judicial Complex at Hansi @ Rs.3200/- per square yard (Rs.1,54,88,000/- per acre) Similarly, on 21.10.2008 land measuring 15 acres had been sold to the Haryana State Agricultural Marketing Board (HSAMB) @ Rs.2246/- per square yard (Rs.1,08,70,640/- per acre)

17. A perusal of the statement of PW-2 Sushil Kumar, Clerk,

Executive Officer, HUDA, Hisar would go on to show that in cross-examination he stated that new allotment letter was also issued on 27.03.2009 (Ex.R1), whereby the HSAMB was allotted the land @ Rs.18,84,246/- per acre for setting up of New Fruit and Vegetable Market in Sector-5, Hansi. This aspect has also been ignored in the award under challenge.

18. Similarly, sale deed dated 28.08.2003 (Ex.PW4/A) for land measuring 4 kanals, which was a substantial chunk of land and purchased by Shri Alok Farsia, was also not kept into consideration and neither it was identified with the site plans to see the location and how far it was from the land which had been acquired. A perusal of the site plan would also go on to show that it was situated at a equal distance from the Bus Stand, which was in centre of Hansi, which is stated to be about 1½ Kms from the acquired land on the same main road and, therefore, would have been good sale exemplar as such to fall back on. However, only the earlier notification in question has been kept in mind, which as noticed is for a period of 10 years earlier in point of time.

19. It is in such circumstances, it would be appropriate that the Reference Court as such examines the issue threadbare and after examining the sale deeds produced from both sides comes to the conclusion that what is the correct market value. Even if the sale deeds produced by the the State may be below what has been awarded by the Land Acquisition Collector and in view of Section 25 of the Act, the amount cannot be reduced as such as what had been awarded by the Land

Acquisition Collector. But it would not mean that the Reference Court can ignore the sale deeds the sale deeds in entirety, specially since some of the portions of land of the sale deeds even produced by the State as such pertained to the acquired land itself. It is a settled principle that the market value of the acquired land by sale exemplars is the best piece of evidence of the correct market value and the compensation which is to be paid.

20. Needless to say that the observations which have been made above would not bind the Reference Court to the extent of fixing the market value as this Court has only come to the conclusion that the methodology as such which has been followed for assessing the market value was not justified, which has further been fortified by the Apex Court in the case of **Loveleen Kumar (supra)**.

21. It will be open to the parties to lead additional evidence and to produce better sale exemplars in support of their case including the State. It is not disputed that some of the landowners have received the amount varying from the rates awarded by the Reference Court and by this Court. Thus, it would not be appropriate for the State to initiate recovery proceeding during the pendency of the reference petitions, since it would cause extreme hardship and would also lead unnecessary litigation in case reference petitions are thereafter allowed in favour of the landowners as per the evidence which is yet to be led.

22. Accordingly, the appeals filed by the landowners against the Award dated 31.05.2014 and subsequent Awards dated 08.08.2014,

07.10.2014 and 13.11.2014 are dismissed and the appeals filed by the State against the Awards dated 01.10.2016, 14.02.2018, 13.03.2018 and 01.05.2018 are allowed The Awards dated 31.05.2014, 08.08.2014, 07.10.2014, 13.11.2014, 01.10.2016, 14.02.2018, 13.03.2018 and 01.05.2018 are set aside and the matter is remanded to the Reference Court for a fresh decision.

23. Accordingly, the parties shall put in appearance before the District Judge, Hisar on 01.10.2019. Needless to say that the acquisition being of 2005, the matter would be adjudicated upon within a period of six months, thereafter.

(G.S. SANDHAWALIA)
JUDGE

AUGUST 28, 2019
Naveen

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No