

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

RFA No. 3754 of 2017
Date of decision: 11.12.2019

Anita Devi

.... Appellant(s)

Versus

Land Acquisition Collector and others

.... Respondent(s)

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

Present: Mr. Sandeep Sharma, Advocate,
for the land owners.

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

G.S.SANDHAWALIA, J.

The present appeal has been filed by the land owner under Section 54 of the Land Acquisition Act, 1894 (in short 'the Act') against the award of the Reference Court, Gurugram dated 15.05.2017 for village Tigra whereby, the market value of the land acquired vide notification dated 24.06.2008 was fixed at Rs.4,688/- per square yard (Rs.2,25,93,120/- per acre). The Reference Court had relied upon Ex.C-1, the award of Minder vs. State of Haryana dated 14.02.2017 for the notification dated 12.12.2008 for village Nangli Umarpur to fix the market value, which was the adjoining village but on the Southern side away from the heart of Gurugram.

The notification in question under Section 4 was issued on 24.06.2008 and vide Award No. 42 dated 12.08.2009, the land measuring 0.21 acres had been acquired for the development and utilization of land for sector roads 58 to 67, Gurgaon. The Land Acquisition Collector had fixed the market value at Rs. 1 crore per acre. The Reference Court had the benefit of sale deed Ex.P-1 dated 06.09.2007 whereby, land measuring 25

kanals 3 marlas was sold for Rs.25,15,00,000/-. Similarly, vide another sale deed dated 22.12.2006, land measuring 1 kanal 2 marlas was sold for Rs.1,09,72,500/-.

Counsel for the land owner accordingly has submitted that once there was a sale deed Ex.P-1 whereby land had been sold @ Rs.8 crores per acre, the same should have been relied upon rather than fall back upon the award Ex.C-1. It is, thus, submitted that the market value should be enhanced primarily keeping the same in mind.

A perusal of the record would go on to show that the claim in the petition filed under Section 18 of the Act is that the land had great potential value of the best location. It abutted the Golf Course Road, Golf Course Extension Road and Sohna-Gurgaon road. It was surrounded by posh colonies like Vatika City, ABW Builders Commercial Complex, D.T. Mall, Mega Mall, Sahara Mall etc. The Bristol 5 Star Hotel was 5 kms away from the acquired land and, therefore, entitlement of Rs.80,000 to 90,000/- per square yard was prayed for. The stand of the State was that adequate compensation had been granted and the ground that the award as such had not taken into account the relevant market value, was baseless.

The land owner PW-1-Anita Devi was cross questioned as to whether she had sold or purchased any piece of land @Rs.20 crores per acre. It was admitted that at the time of acquisition, the land was agricultural in nature. No other witness as such was examined apart from documents submitted. The respondents also did not examine any other

witness.

A perusal of Ex.C-1 which was relied upon and is award titled as 'Minder Vs. State' and would go on to show that the site plan Ex.P-21 had been relied upon to come to the conclusion that villages Tigra and Nangli Umarpur were located close to each other and Badshahpur was located at a distance and on the Gurgaon-Sohna Road, which is N.H. No. 248-A. It was noticed that the Land Acquisition Collector had passed awards in favour of Tigra, Nangli Umarpur at Rs.1 crore and for Nangli Umarpur, Rs.4,688/- per square yard (Rs.2,25,93,120 per acre) had been awarded by the Reference Court.

The reading of Ex.C-1 would go on to show that market value was fixed @ Rs.4688/- per sq.yard on account of an earlier award (Ex.P-48). Accordingly, the Reference Court came to the conclusion that Ex.P-47, an award passed in respect of the Village Badshahpur could not be taken as a guiding factor. The said village being situated on the National Highway No.248A, which was the Gurgaon-Sohana road. Since villages Tigra and Nangli Umarpur were similarly situated and therefore, since the LAC had also awarded the same amount of compensation, reliance was placed upon the said award.

Resultantly, for Tigra, since on an earlier occasion, Rs.4,688/- per square yard had been awarded for Nangli Umarpur, the adjoining village on the southern side, the market value had been maintained at that level. A perusal of Ex.P-1, which has been relied upon, would go on to show that it is the sale deed in favour of a builder

namely M/s. Splendor Landbase Ltd.

Counsel for the landowners is well justified to submit that blind reliance upon the award for Village Nangli Umarpur should not have been placed upon once there was a sale deed available for Tigra. It was submitted that the sale deed (Ex.P-1) was on the southern end of Tigra adjoining the land of Nangli Umarpur. Tigra was, thus, better situated than Nangli Umarpur being on the northern side and closer to developed portion of Gurgaon and the market value had to vary since Village Nangli Umarpur was situated below the Southern Peripheral Road.

Reliance can be placed upon the judgment of the Apex Court in *Manoj Kumar & others Vs. State of Haryana & others 2018 (2) RCR (Civil) 815* in this context that once there were sale deeds available, reliance upon the award would not be justified. The parties, as such, cannot be prejudiced on account of lack of evidence led in an earlier case and once they have been able to show higher sale deeds. The potentiality and the market value of which is higher, they would be entitled to higher market value. The award as such being not common inter se the parties and therefore, not binding upon other landowners and therefore, would only be a relevant piece of evidence which aspect was lost sight of by the Reference Court. Relevant portion of the judgment read as under:

“14. 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.”

Even otherwise, this Court, for the sale deeds of builders, has been consistently applying a 50% cut as such on account of the over keenness of the builders to acquire properties at any rate and to build land

banks having the capacity to hold on and wait for the prices to rise and exploit the market. If such a cut as such is applied on Ex.P-1, the amount is to increase than what has been awarded by the Reference Court to somewhere to the tune of Rs.4,00,000/- per acre.

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 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.

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.”

However, no State appeals have been filed. It is also to be noticed that for the Village Ullahwas on the south-eastern side, the appeals have been allowed. A sum of Rs.2 crores per acre has been fixed as market value for the same set of notification in RFA-7271-2013 titled *Dharampal & others Vs. State of Haryana & others*. If the site plan is examined in true perspective, the land of Tigra is situated in a more potential location as such for which only the additional amount of compensation of Rs.25,93,120/- has been awarded.

In such circumstances, this Court is of the opinion that the scope for enhancement is much more as Ex.P-1 has wrongly been ignored. Further, perusal of Mark A, which is **LAC No. 753 of 2010**, *Smt. Meena Aggarwal vs. State of Haryana* decided on 23.01.2014 wherein, land was acquired of village Nangli Umarpur, for the same notification, the market value has been fixed at Rs.4,424/- per squareyard (Rs.2,14,12,160/- per acre). If one is to examine the site plan, Tigra is situated on the northern side of Nangli Umarpur and would, thus, get

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more market value being closer to the heart land of Gurgaon town. In **RFA-3546-2016-Meena Aggarwal** (supra), for Village Nangli Umarpur, the market value has been enhanced to Rs.2.71 crores per acre. It is in such circumstances, compensation as such which has been granted by the Reference Court by relying upon the earlier award Ex.C-1 is less for the potential of the land. For Village Ghata, the adjoining village on the eastern side, this Court in RFA-3625-2014 titled *M/s Base Exports Pvt. Ltd. Vs. State of Haryana & another*, has maintained the market value at Rs.3,06,75,920/- per acre, which would be a relevant piece of evidence also. Accordingly, the present appeal is liable to be allowed.

The evidence on record would go on to show that PW-1 had admitted that land was agricultural in nature. Due to the location of the land of Ex.P-1 it has a peculiar advantage as it is situated abutting the Southern Peripheral Road. It is also to be noticed that the said land measuring 25 kanals 3 marlas was sold on 06.09.2007 and licence was also obtained from the District Town Planning Department for usage as commercial purposes on 15.05.2008 by M/s Splendor Landbase Ltd., which has come on record in a connected matter in **RFA-4617-2014** titled *Balvinder Uppal Vs. State of Haryana & others* wherein the said document has been exhibited. The potentiality of the land of Ex.P-1, therefore, is immense on account of its peculiar features and location and therefore, the claim for further enhancement, for the period of one year, is not liable to be granted. Keeping in view the fact that the sale exemplar is in a more advantageously placed location, abutting the Southern

Peripheral Road, the market value, as such, is further liable to be reduced more than the 50% cut, which is normally applied to a builder sale deed. In **Chandershekhar (D) through LRs & others Vs. Land Acquisition Collector & another (2012) 1 SCC 390**, the Apex Court held that the cut on all accounts can go up to 75%. The amount of cut, thus, would work out to Rs.4,80,00,000/- per acre, by applying a 60% cut.

Resultantly, the present appeal is allowed and the market value is assessed @ Rs.3,20,00,000/- per acre (Rs.6,611.57 per sq.yard) for village Tigra, with all statutory benefits.

11.12.2019	(G.S. SANDHAWALIA)
sailsh	JUDGE
Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No