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

402 **RFA No.3946 of 2016 and other connected cases**
Decided on : 06.02.2020

State of Haryana and another

... Appellants

Versus

Smt. Chando Devi and others

... Respondents

Ist Notification Dated 22.03.2010	
Appeals filed by the Landowners	**Appeals filed by the State**
RFA Nos.7370 and 7371 of 2015 RFA Nos.171 to 184, 407, 408, 639, 663 of 2016	RFA No.3946 of 2016 RFA Nos. 786, 869 to 885, 922 of 2017

2nd Notification Dated 25.04.2011	
Appeals filed by the Landowners	**Appeals filed by the State**
RFA Nos.3429 to 3432 of 2016	RFA No.3209 to 3213 of 2016

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

Present: Mr. Sudeep Mahajan, Addl. AG, Haryana.
Ms. Vibha Tewari, AAG, Haryana.

Mr. R.A. Sheoran, Advocate,
Mr. Parmod Parmar, Advocate,
Mr. Vikrant Rana, Advocate and
Mr. Surinder Singh, Advocate for the landowners.

G.S. Sandhawalia, J. (Oral)

The present order shall dispose off above referred 49 appeals filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act'), by both landowners and the State, which are directed against the Awards dated 17.07.2015 and 11.08.2015 passed by the Reference Court, Bhiwani.

2. In the appeals arising out of the Award dated 17.07.2015, which are pertaining to the first notification dated 22.03.2010 issued under Section 4 of the Act, the land was acquired measuring 169 kanals 14 marlas (20 acres approximately) falling in village Kapoori, Tehsil Dadri, District Bhiwani. The public purpose was for the construction of S.S. Tanks for Water Supply Scheme Dadri Town.

3. The Land Acquisition Collector (LAC) vide Award dated 03.06.2011 awarded a sum of ₹15 lakhs per acre. The Reference Court had enhanced the compensation to ₹25 lakhs per acre alongwith all statutory benefits. Reliance was placed upon the sale deeds Ex.P2 measuring 10 marlas and Ex.P4 measuring 2 marlas, whereby land had been sold in the range of ₹36,30,000/- and ₹19,60,000/- per acre, but wrongly calculated at ₹39,52,666/- per acre. The sale deeds were executed on 11.03.2010 & 10.02.2009 and were of the same village. Reliance was placed upon the report of the Divisional Committee headed by the Commissioner, Hisar Division, Hisar (Ex.RW1/C) dated 04.12.2010, wherein the market value of the land had been assessed @ ₹25 lakhs per acre for Nehri-Chahi land and ₹19 lakhs per acre for Barani land.

Facts of the 2nd notification

4. Similarly, by the notification dated 25.04.2011 issued under Section 4 of the Act land measuring 41 kanals 8 marlas was acquired for

the public purpose for construction of the Disposal and Sewerage Treatment Plant (STP) of Charkhi-Dadri Town at village Kapoori. The Collector had awarded a sum of ₹18 lakhs per acre which was ₹3 lakhs more for the land, which had been enhanced to ₹30 lakhs per acre by the Reference Court vide Award dated 11.08.2015, which is also subject matter of appeal by both landowners and the State.

5. The reasoning given in the said award was also that on an earlier occasion land had been valued @ ₹15 lakhs per acre and thereafter within one year the value has increased to ₹18 lakhs per acre and also keeping in view the Award dated 17.07.2015 of the earlier acquisition dated 22.03.2010, main case of which was **LAC No.351 of 2012 'Smt. Chando and others Vs. State of Haryana and another'**, which was taken on record as Mark X, the market value was accordingly enhanced to ₹30 lakhs per acre.

6. Counsel for the landowners has primarily relied upon the other sale deeds out of which Ex.P6 is common in both the set of appeals for the two notifications to claim further enhancement whereby land measuring 26 kanals vide sale deed dated 25.04.2011 had been sold @ ₹85 lakhs per acre to Radha Swami Satsang Bias. Similarly reliance upon the sale deed dated 02.12.2008 (Ex.P7) is also placed upon to submit that the market value was in the range of ₹40 lakhs per acre whereby 5 kanals 12 marlas had been sold. The relevant sale deeds are as under:-

Sr. No.	Exbt.	Date	Area	Sale consideration	Rate Per Acre
1.	P1	20.10.2009	200 sq.yds, Village Kapoori	Rs.80,000/-	Rs.19,36,000/-
2.	P2	11.03.2010	300 sq. yds Village Kapoori	Rs.2,25,000/-	Rs.36,30,000/-
3.	P3	21.07.2009	1 kanal (600 sq.yards) Village Kapoori	Rs.2,40,000/-	Rs.19,20,000/-
4.	P4	10.02.2009	2 marlas Village Kapoori	Rs.24,500/-	Rs.19,60,000/-
5.	P5	15.02.2010	7 marlas Village Kapoori	Rs.1,07,000/-	Rs.24,45,714/-
6.	P6	25.04.2011	6 kanals Village Kapoori	Rs.63,75,000/-	Rs.85,00,000/-
7.	P7	02.12.2008	5 K 12 M Village Kapoori	Rs.28,45,000/-	Rs.40,64,285/-.

7. The Reference Court has rightly ignored the sale deed dated 25.04.2011 (Ex.P6) in favour of Radha Swami Satsang Beas which is a religious Trust on the ground that such sale exemplars would not be safe sale exemplar to fall back upon for assessing the market value. It is well known that sale exemplars are usually executed in favour of religious trusts who have various income tax exemptions also in their favour and, therefore, would not depict the correct market value as such. Even otherwise for the first notification dated 22.03.2010, the said sale exemplar is post acquisition being executed on 25.04.2011 and would not be relevant as such.

8. For the reasons given above, for the second notification also, keeping in view the wide variation of the valuation, it would not be a safe exemplar, as obviously it is a shored up market price and cannot be relied upon as a safe exemplar as such, keeping in view the other sale exemplars which are not even of half the value in comparison.

9. Similarly, sale deed dated 02.12.2008 (Ex.P7) is outrightly liable to be rejected on the ground that it was a sale of an industrial unit by way of auction proceedings. The law is settled on this issue and does need any further dilation and the Apex Court time and again has held that the auction sale deeds usually have an element of competition amongst themselves and therefore, cannot be reliable exemplars. Reference can be made to the judgment of the Apex Court passed in **'Bhim Sain Vs. State of Haryana' (2003) 10 SCC 529**, wherein it has been held that the prices fetched after full development cannot be basis for fixing compensation in respect of agricultural land.

10. This Court in **'Tara Devi Vs. State of Haryana and another' 2005 (3) PLR 606** also rejected the argument for fixing the market value on the basis of plot sold by HUDA. The relevant paragraph of the said judgment reads as under:-

> "15. The appellants have placed reliance upon the sale of plots by HUDA at the rate of Rs. 1,172/- per sq. yard in Sector 25 in the month of January, 1994. It has been contended that the aforesaid price should be taken into consideration for assessing the market value in the present proceedings. However, in my considered view, the aforesaid sale price of the plots of HUDA cannot be taken to be reflecting the market value of the acquired land at the time of notification inasmuch as the aforesaid plots were sold by HUDA after developing the same externally as well as internally. Various amenities have been provided. Roads have been laid down. Parks have been developed. In the face of the other material available on the record the said sale price could

not be taken into consideration for determining the market value."

11. In **'Lal Chand Vs. Union of India 2009' (15) SCC 769** wherein DDA brouchers were sought to be relied upon to fix the market value, was rejected on the ground that allotment rates and auction rates in regards to the plots in a developed lay out plan cannot be a good sale exemplar. The relevant part of the said judgment reads as under:-

> "11. Third factor : Some development authorities allot plots on freehold basis, that is by way of absolute sale. Some development authorities like DDA allot plots on leasehold basis. Some have premium which is almost equal to sale price, with a nominal annual rent, whereas others have lesser premium, and more substantial annual rent. There are standard methods for determining the annual rental value with reference to the value of a freehold property. There are also standard methods for determining the value of freehold (ownership) rights with reference to the annual rental income in regular leases. But it is very difficult to arrive at the market value of a freehold property with reference to the premium for a leasehold plot allotted by DDA. As the period of lease is long, the rent is very nominal, some times there is a tendency among public to equate the lease premium rate (allotment price) charged by DDA, as being equal to the market value of the property. However, in view of the difficulties referred to above, it is not safe or advisable to rely upon the allotment rates/auction rates in regard to the plots formed by DDA in a developed layout, in determining the market value of the adjoining undeveloped freehold lands. The DDA brochure price has therefore to be excluded as being not relevant."

12. Similarly, in **'Ranvir Singh and others Vs. Union of India' 2005 (12) SCC 59** and **'Raj Kumar and others Vs. Haryana State and**

others' 2007 (7) SCC 609 the same view was taken. Apart from the said judgments in **'K.R.Mohan Reddy Vs. M/s Net Work Inc Rep. th. M.D. 2007 (10) SCR 872, 'Karnataka Housing Board Vs. Land Acquisition Officer, Gadag and others' 2011 (2) SCC 246** and **'Wazir & another Vs. State of Haryana', 2019 (1) RCR (Civil) 702** also the basis of fixing the market value on account of auction sale was rejected.

13. A perusal of the sale deed (Ex.P7) would go on to show that the land was sold by Haryana Financial Corporation and was property of M/s Punjab Cotton Factory Kanina Road, Village Kapoori and which had been mortgaged as primary security. The only relevance of the sale deed as such is that it is situated on the Kanina Road whereas admittedly the land in question is also situated on the same road, which has come on record by way of evidence both by oral and by way of site plans including Ex.PW5/B and there is no dispute as such. It only shows that the land is well located and has certain potentiality.

14. The claim of the landowners is also that the land had immense potential, as it was situated within the limits of Charkhi-Dadri town and the said fact has also come on record in the evidence of the witnesses, which was in the tune to the specific averments made in the petition under Section 18. Even the Reference Court has recorded that the land is situated on a District road which leads from Charkhi Dadri to Kanina and the land of village Kapoori touches Charkhi Dadri township.

15. PW-4 Vijay from the office of the District Town & Planning

Office, Bhiwani proved Ex.PW4/A which showed the delimitation of the urban area. PW-5 Dalip Patawari produced the site plan Ex.PW5/B which showed that the part of the land was adjacent to Dadri to Chiriya Road and some of the land was adjacent to Tikan Kalan approach road.

16. PW-7 Surender Kumar Patwari stated that the land was adjacent to the Dadri-Kanina Road and 2-3 acres away from village Kapoori. Radha Swami Satsang Bhawan was situated opposite the acquired land about 3-4 acres. Boundary line of the city Dadri and village Kapoori touched each other. The canal on the Chiriya Road was one acre away from the acquired land towards city Dadri. PW-8 Naresh Kumar, J.E, deposed that the road was a major District Road No.124 of Haryana.

17. RW-1, P.K. Bansal, SDE, in his cross-examination has also stated that the abadi of Kapoori was ½ Km away from the acquired land which is adjacent to the Dadri-Kanina Road.

18. Thus, apparently, the land has substantial potential and as noticed above there was also an industrial unit on the same road which is in consonance with the pleadings.

19. In such circumstances, this Court is of the opinion that sale deed dated 11.03.2010 (Ex.P2) as such would be of relevance as the said sale deed was closer in point of time to the Section 4 notification and also highest in market value, which is to be taken into consideration as per the settled principles, as has been laid down by the Apex Court in

'Mehrawal Khewaji Trust (Regd.), Faridkot and others Vs. State of Punjab and others' 2012 AIR (SC) 2721. The relevant portion of the said judgment reads as under:-

> "14) This Court in Anjani Molu Dessai vs. State of Goa and Another, (2010) 13 SCC 710, after relying upon the earlier decisions of this Court in M. Vijayalakshmamma Rao Bahadur (supra) and Hansraj (supra) held in para 20 as under:
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> > "20. The legal position is that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bona fide transaction, will be considered." Again, in para 23, it was held that "the averaging of the prices under the two sale deeds was not justified."
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> 15) It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation."

20. Counsel for the State is well justified to contend that keeping in view the size of the acquisition which was of 28 acres and the sale exemplar Ex.P2 is of 12 marlas only (300 square yards), the cut as such is liable to be imposed on account of the smallness of the sale exemplar.

This Court is of the opinion that if a 30% cut is put on ₹36,30,000/-, the market value would come to ₹25,41,000/- per acre.

21. The reasoning of the Reference Court whereby reliance has been placed upon the report of the Divisional Committee headed by the Commissioner, Hisar Division, Hisar (Ex.RW1/C) to enhance the market value is without any basis. The said Divisional Committee as such does not have any statutory authority to fix the market value and, therefore, the Reference Court was not justified in falling back on the assessment of the said report of the Divisional Committee and ignoring the sale exemplars. Reliance can be placed upon the judgment of the Apex Court passed in **Lal Chand (supra).** The relevant portion of the said judgments read as under:-

> "16. It should however be noted that as contrasted from the assessment of market value contained in non-statutory Basic Value Registers, the position may be different, where the guideline market values are determined by Expert Committees constituted under the State Stamp Law, by following the detailed procedure laid down under the relevant rules, and are published in the State Gazette. Such state stamp Acts and the Rules thereunder, provide for scientific and methodical assessment of market value in different areas by Expert Committees. These statutes provide that such committees will be constituted with officers from the Department of Revenue, Public Works, Survey & Settlement, Local Authority and an expert in the field of valuation of properties, with the sub-registrar of the sub-registration district as the member secretary. They also provide for different methods of valuation for lands, plots, houses and other buildings. They require

determination of the market value of agricultural lands by classifying them with reference to soil, rate of revenue assessment, value of lands in the vicinity and locality, nature of crop yield for specified number of years, and situation (with reference to roads, markets etc.). The rates assessed by the committee are required to be published inviting objections/suggestions from the members of public. After considering such objections/suggestions, the final rates are published in the Gazette. Such published rates are revised and updated periodically. When the guideline market values, that is, minimum rates for registration of properties, are so evaluated and determined by expert committees as per statutory procedure, there is no reason why such rates should not be a relevant piece of evidence for determination of market value. One of the recognised methods for determination of market value is with reference to opinion of experts. The estimation of market value by such statutorily constituted expert committees, as expert evidence can therefore form the basis for determining the market value in land acquisition cases, as a relevant piece of evidence. It will be however open to either party to place evidence to dislodge the presumption that may flow from such guideline market value. We however hasten to add that the guideline market value can be a relevant piece of evidence only if they are assessed by statutorily appointed Expert Committees, in accordance with the prescribed assessment procedure (either street-wise, or road-wise, or area-wise, or village-wise) and finalised after inviting objections and published in the Gazette. Be that as it may. We have referred to this aspect only to show that there are different categories of Basic Valuation Registers in different states and what is stated with reference to the stamp law in Andhra Pradesh or Uttar Pradesh, may not apply with reference to other states where state stamp laws have prescribed the procedure for determination of market value, referred to above."

22. Similarly, reliance was wrongly placed upon a sale deed Ex.P4, which was a sale exemplar of only 2 marlas and by wrongly calculating the price per acre, when larger sale deeds were readily available.

23. Resultantly, the appeals pertaining to the first notification dated 22.03.2010 of the landowners are allowed to that extent and the market value is fixed @ ₹25,41,000/- per acre alongwith all statutory benefits and those of the State are dismissed.

24. Coming to the second notification dated 25.04.2011, the basis of the Award is only the earlier enhancement and the corresponding increase as such and the land as such stated to be adjacent to the land which had been acquired vide earlier notification. The only sale deed as noticed which has been relied upon by the landowners is the same sale deed of Radha Swami Satsang Beas. For the reasons given above, this Court is of the opinion that the said sale deed cannot be taken into consideration. Since, this Court has fixed the market value @ ₹25,41,000/- per acre for the earlier notification dated 22.03.2010, this Court is of the opinion that the market value can be assessed by applying the principle of cumulative increase, keeping in view the location of the land and in view of principles laid down by the Apex Court in **'Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another' 2008 (14) SCC 745**.

25. Resultantly, if a 12% increase is granted on ₹25,41,000/- for

the time gap of one year, the market value would come to ₹28,45,920/- per acre. Resultantly, the State appeals pertaining to the second notification dated 25.04.2011 are allowed to that extent and those of the landowners are dismissed. The market value is fixed @ ₹28,45,920/- per acre alongwith all statutory benefits.

26. Accordingly, the present appeals are disposed off in the above said terms.

(G.S. SANDHAWALIA)
JUDGE

FEBRUARY 06, 2020
Naveen

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No