IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No. 4850 of 2014 and other connected matters
Date of decision: 07.02.2020

Ajit Singh and others ...Appellant(s)

Versus

Chief Manager, Projects, MDPL, HPCL and others
...Respondent(s)

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

Present: Mr. Sanjay Mittal, Advocate,
for the appellants.

Mr. Raman Sharma, Advocate,
for HPCL.

Ms. Vibha Tewari, AAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

1. This judgment shall dispose of 20 appeals i.e. RFA Nos. 10805, 10810, 4850 to 4867 of 2014, as common questions of facts and law are involved in all the appeals. Reference is being made to ***RFA No. 4850 of 2014, Ajit Singh and others vs. Chief Manager, Projects, MDPL, HPCL and others.***

2. The present set of appeals filed by the land owners are directed against the awards of the Reference Court dated 30.08.2013 and 16.07.2014 whereby, the land which was acquired vide notification dated 16.11.2005 for the construction of the Oil Instalment of the Hindustan Petroleum Corporation Ltd. has been assessed at Rs.13,96,200/- per acre alongwith all statutory benefits. The Land Acquisition Collector, vide his award dated 12.01.2006, had granted Rs.12,50,000/- per acre for the land which is situated in four villages. The details of acquisition is as under:-

Sr. No.	Village	Area
1.	Assauda Todran	20 acres 3 kanals
2.	Jakhoda	7 acres 3 kanals 3 marals
3.	M.P. Majra	4 kanals 4 marlas
4.	Lahori Tahdil	4 kanals 13 marlas

3. The Reference Court, Jhajjar enhanced the compensation on the basis of the State Government policy, which had fixed the market value between 2 years dated 28.04.2005 and 06.05.2007 to hold that Rs.12,50,000/- had been fixed as a minimum floor price of the land by the Government of Haryana by the first policy and whereas by the second policy, land price had been revised to Rs.16,00,000/-. Keeping in view the difference of Rs.3,50,000/- inter se the two policies, the monthly enhancement was calculated to be Rs.14,286/-. Since the award was pronounced on 12.01.2006 after a gap of 10 months and 7 days from 05.03.2005, the effective date of the first policy dated 28.04.2005, the enhancement was granted of Rs.1,46,195/-. The said enhancement was done on the basis of the principle laid down in ***RFA No. 7450 of 2011, Om Parkash and others vs. State of Haryana and others,*** decided on 30.03.2012.

4. Counsel for the land owners has, thus, pressed for further enhancement on various grounds submitting that there was a sale exemplar in the close vicinity which show the potentiality of the land as such whereby, land had been sold in the range of Rs.1,00,00,000/- to Rs.1,56,00,000/- though admittedly, it was post notification by one year of village Jakhoda also. Reliance is also placed upon sale deed Ex.P-Y dated 15.04.2005 of Assauda Todran whereby land was sold @ Rs.37,33,333/- per acre which was for 1 kanal 10 marlas of land sold at Rs.7,00,000/-. Stress

is accordingly laid for enhancement keeping in view the potentiality of the land as such and its location.

5. Application for additional evidence has also been filed under Order 41 Rule 27, CPC in RFA No. 10805 of 2014 wherein, the judgment of this Court in ***RFA No. 564 of 2014, Mahavir and others vs. State of Haryana and another*** decided on 12.02.2016 (Annexure A-1) has been referred to wherein, market value was assessed at Rs.42,62,625/- for the notification dated 29.09.2005 whereby 126 acres 1 kanal 10 marlas of land of the revenue estate of village Assauda Todran had been acquired alongwith additional land of village Mandothi. The said acquisition was for the purpose of construction of the Express Highway known as Kundli-Manesar-Palwal by HSIDC. It is submitted that the amount was reduced by 25% by the Apex Court in ***SLP No. 16063 of 2016, Jag Mahender and another vs. State of Haryana and others*** (Annexure A-2) decided on 21.09.2017. The argument, thus, raised is that two months prior approximately for the same revenue estate of village Assauda Todran, the value of the land had been assessed at Rs.32,62,500/- and, therefore, the market value as such is to be assessed in the same band width and the judgments (Annexures A-1 and A-2) having been rendered after the award of the Refernce Court dated 30.08.2013 and being not available on an earlier occasion, are liable to be taken into consideration. The site plan has also been annexed alongwith the said application for additional evidence in the form of *Aksh Shijra* of the said village Assauda Todran.

6. The application has also been opposed on the ground that there is no parity with the land acquired for KMP and there is a distance as such of approximately one kilometer from the land which was the subject matter

of the acquisition of KMP.

7. Keeping in view the fact that the judgment of this Court and the Apex Court were passed on subsequent date after the award of the Reference Court, the application for additional evidence is liable to be allowed as it is a relevant piece of evidence and is of the same revenue estate. The application falls within the para meters of Order 41 Rule 27 and would also be helpful for this Court to pronounce judgment as per the said provisions. Reference can also be made to the judgments of the Apex Court in ***Wadi vs. Amilal and others, 2002 (2) PLJ 230; K.R. Mohan Reddy vs. M/s. Net Work Inc Rep Tr. MD, 2007 (10) SCR 872; North Eastern Railway Administration, Gorakhpur vs. Bhagwan Dass (D) through L.Rs., 2008 (8) SCC 511*** and ***UOI vs. K.V. Lakshman and others, 2016 (13) SCC 124*** regarding this aspect.

8. In the opinion of this Court, the Reference Court has not done complete justice while deciding the matter and has not taken into consideration the site plan and the location of the land to assess its potentiality. The sale deeds though, which have been produced by the land owners are of a period 9 years earlier or post notification and only Ex.PY dated 15.04.2005 would be of relevance. The chart as such of the sale deeds produced by both the parties are as under:-

<u>Sale instances relied upon by landowners</u>

Sr. No.	Exhibit	Date	Village/ Town	Extent	Consideration	Value per acre	
1	Ex.PW2/1	31.05.05	Sakhol	05 K - 07M	16,17,875	25,00,000	
2	Ex.PW6/1	07.05.96	Sakhol	07 K- 12M	10,92,500	11,50,000	Ex.P-12
3	Ex.PW6/2	07.05.96	Sakhol	06K - 07M	9,12,813	11,50,000	Ex.P2
4	Ex.PW6/3	07.05.96	Sakhol	13K - 08M	19,26,250	11,50,000	Ex.P3
5	Ex.PW6/4	24.05.96	Sakhol	21K - 09M	29,06,896	10,84,157	Ex.P4
6	Ex.PW6/5	24.05.96	Sakhol	21K - 08M	29,06,896	10,86,000	Ex.P5
7	Ex.PW6/6	24.05.96	Sakhol	08K - 03M	11,05,344	10,85,000	Ex.P6 & 8
8	Ex.PW6/7	24.05.96	Sakhol	21K - 09M	29,06,896	10,84,157	Ex.P7

9	Ex.PW6/8	07.10.96	Sakhol	08K - 00M	11,50,000	11,50,000	Ex.P8A
10	Ex.PW6/9	22.11.06	Jakhoda	07K - 08M	96,56,889	1,04,39,880	Ex.P9
11	Ex.PW6/10	22.11.06	Jakhoda	05K - 02M	98,84,800	1,55,05,568	Ex.P11
12	Ex.P10	22.11.06	Jakhoda	04K - 17M	94,59,200	1,56,02,804	
13	EX-PY	15.04.05	Assauda Todran	01K - 10M	7,00,000	37,33,333	

Sale Instances Relied upon by State

Sr. No.	Exhibit	Date	Village/ Town	Extent	Consideration	Value per acre	Location in rough
1	Ex.R-1	16.06.05	Assauda Todran	09K - 00M	3,50,000	3,11,111	
2	Ex.R-2	17.02.06	Assauda Todran	03K - 15M	2,90,000	6,18,667	
3	Ex.R-3	19.06.06	Assauda Todran	16K - 05M	10,00,000	4,92,307	
4	Ex.R-4	16.07.04	Assauda Todran	16K - 10M	11,34,500	5,50,060	
5	Ex.R-5	02.06.04	Jakhoda	17K- 12M	4,70,000	2,13,636	

9. Mr. Raman Sharma, Advocate, appearing for the Corporation on the other hand, has justified the award as such and submitted that there is no case made out for enhancement. The land of KMP was situated at a distance and, therefore, the onus as such lay upon the land owners and in the absence of any sale deed as such for the said village as on the date of Section 4 notification, the sale deeds post the same Exs.PW-6/9, PW-6/10 and P-10 are liable to be discarded. It is also further pointed out that the sale deeds are falling on NH-10 leading from Delhi to Rohtak.

10. A perusal of the petition under Section 18 of the Land Acquisition Act, 1894 (in short 'the Act') filed before the Reference Court in the main case i.e. Ajit Singh and others vs. HPCL and another Bearing LAC No. 84 of 2007 would go on to show that a claim was that there were large number of residential colonies, industrial areas and factories in the neighbourhood and land was being sold @ Rs.2,500/- per square yard. The land was in close vicinity of the revenue estate of Sankhol, Bahadurgarh and

development had taken place from 1992 onwards till 1998 and till 2003 and the land price had gone up. Facilities of petrol pumps, schools, hospitals, bus stands, railway stations etc. were available in the adjoining area. It was also averred that the land is situated on the NH-10. Resultantly, compensation at Rs.5,000/- per square yard was prayed for.

11. The respondent-Corporation, in its reply, denied the potentiality of the land and reference to the land prices. It also denied that the land was situated on NH-10. It was stated that villages Sankhol and Bahadurgarh were located at different places and were different revenue estate.

12. Raj Singh appeared as PW-1 and submitted his affidavit in affirmative and denied the suggestion that the acquired land did not fall in the NCR and was not situated near the NH-10. He also denied the suggestion that the acquired land was not abutting the industrial units. PW-2 and PW-3 proved sale deed Exs.PW-2/1 and deposed that their land was about 2 kilometers from the acquired land. Gaje Singh-Patwari of village Jakhoda appeared as PW-4, in his cross examination, admitted that the distance between NH-10 and the acquired land was about 6-7 acres. PW-5 Sanjay Kumar-Patwari proved Ex.P-5/A, which showed the land at red point. It was stated that the land was levelled and plain and having sweet ground water. Village Assauda Todran was surrounded by Jakhoda, Mandhoti, Sankhol, Brahi and the boundaries of the villages are abutting the agricultural land of village Assuada Todran. The express highway was also near the land acquired and so was the railway station. There was fun town, water park, Swastik Pipe Factory, NH-10, Assuada-Sonepat road, HSIIDC Complex was near to the land acquired which had come into existence prior to 16.11.2005. The exact distance between the acquired land and the

HSIIDC, he could not tell but voluntarily stated that the approximate distance of fun town was 500 meters, express highway was about 750 meters and Swastik Pipe Factory was about 500 meters. The HSIIDC Complex was about 1-1/2 kilometers away.

13. PW-8/B Jaibir Singh proved the site plan and denied the suggestion that the site plan was not according to the spot. He, in his evidence, had stated that the acquired land had been shown in red colour and the road and rasta which connects the acquired land with the NH-10 has been shown in green colour. It was stated that he had shown only the prominent big reputed industrial units, commercial establishments in his site plan which had been running and functioning prior to the date of the notification under Section 4 of the Act. He also stated that he had shown the distance from the acquired land and he had inspected and visited the acquired land before preparing the site plan, which was correct as per the site.

14. Ram Roop, the land owner appeared as PW-9 and gave the distances as such of the industrial establishments which were present and the distances of the prominent establishments around. The National Highway was stated to be 60 meters away and the fun town 200 meters away as was the distance of the Platinum Resort. The KMP Super Express was 250 meters approximately and the factory of Parle Biscuits Ltd. and M/s. Surya Roshni Pvt. Ltd were between 1500 to 1525 meters. The Omaxe City, Bahadurgarh was stated to be 1.5 kilometers whereas M/s. Somani Pilkingtons Ltd. was 1.5 kilometers approximately. He also tendered certified copy of judgment Ex.PW-9/B dated 29.09.2009, Surat Singh vs. State of Haryana. He denied the suggestion that the acquired land was not

near the National Highway and that it was not near the KMP Express. Gajraj Singh PW-11 was also cross examined to the same extent to deny the suggestion regarding the location of the land. He stated that 237 acres 6 kanals and 16 marlas of land had been acquired vide award dated 20.01.2004 for the development of Sector 16 and 17 of village Jakhoda. In cross examination, he denied that the land was not situated near the National Highway and the Railway station. PW-10, Satbir Singh, the Clerk from the office of the Sub Registrar proved the sale deeds. He admitted that in the first award, 250 acres of land was acquired and in the next award, 16 and 17 acres of the land was acquired. The quality of the land was same and he also denied that the industries mentioned in para no. 13 are not situated near the acquired land or that it was not near Sector-6 HUDA Complex, Omax Residential Complex and Sun City Industrial Complex.

15. PW-12, Randhir Singh, Patwari also stated that the land was close to the under construction KMP Express Way, Assaudan-Kharkhoda-Sonepat Road, Assauda Police Station, bus stop near police post, bank petrol pump, hotels. The Assaudan Railway Station, Fun Town were prevalent establishments which had come in existence prior to 16.11.2005.

16. RW-1 Bhagwan Dass, Manager HPCL admitted that he had visited the acquired site about 7 years back from the date of examination dated 11.05.2011 but he also admitted that there was LPG Bottling Plant just abutting and adjoining the land acquired even before 16.11.2005. He voluntarily stated that the Engineering Department had made a survey before the acquisition of the land, which was suitable for the purpose of receipt, storage and distribution. He admitted that village Sankhol was the

first village from Bahadurgarh and then came Jakhoda. It was stated that the plant was 2 kilometers from the National Highway and he denied that the National Highway was very near to the land acquired. He was recalled for cross examination and denied the suggestion that the land of village Jakhoda and Kasar had been acquired for industrial sectors 16 and 17, which was about 350 meters away. He admitted that Swastik Pipe Ltd. was situated near the acquired land. He denied the presence of the other factories including Somany Pilkilsons, M/s. Parle Biscuits Pvt. Ltd, Platinum Resort etc. and that they were all functioning before the Section 4 notification. In his third cross examination, he admitted that the LPG Bottling Plant was established prior to the Oil Storage Plant established on the acquired land. The main gate of the Oil Storage Plant had been constructed on the acquired land of the petitioners and was open on the main Assaudan-Kharkhoda-Sonepat road. Question was put to him whether the HPCL is situated between the NH-10 on the south side and the Assauda-Kharkhoda-Sonepat road on the west side or towards Bahadurgarh road. He admitted that the acquired land was situated between NH-10 and the Assauda-Kharkhoda-Sonepat road on the west side and he volunteered that it was far away from the National Highway.

17. RW-2 Dhanpat Rao also admitted that the land mentioned in the sale deeds (Exs.R-1 to R-5) did not join the acquired land of the petitioners. He admitted that the land of the petitioners was situated between NH-10 and the Delhi-Rohtak Railway Line prior to Assauda turn towards Jakhoda.

18. Keeping in view the above evidence and perusal of the site plan authenticates the potentiality of the land. It shows that beyond the land,

HPCL had an earlier establishment and on the left, there was HP Gas, which was abutting Sonepat-Kharkhoda road. The acquired land had access vide the green path which was parallel to the unit M/s. Larson and Toubro Ltd. The path opens onto the NH-10, which is going from Delhi to Rohtak and then crosses the Kundli-Manesar Expressway which, as per the site plan, was at a distance of 250 meters. On the highway itself, the petrol pumps, colleges in the form of Haryana Institute of Technology, PGDM College, water works, hostel and the police post, Assauda had been shown apart from Haryana High School, Assauda Todran. On the northern side, the railway line was present and the Railway Station, Assauda on the other side.

19. The said site plan shows the potentiality of the land as such and its location to correlate it to the land of the said village, which was the subject matter of the notification dated 29.05.2005 whereby, the land had been acquired for the KMP Expressway whose market value has been assessed at Rs.32,62,500/- just two months earlier to the present Section 4 notification. The said award is a relevant piece of evidence and is the best exemplar as such. The Apex Court in ***Manoj Kumar and others vs. State of Haryana and others, 2018 (2) RCR 815*** has held that such awards can be relied upon if the relevancy as such can be shown. The relevant portion reads thus:-

> *"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."*

20. A perusal of the judgment of this Court (Annexure A-1) would also go on to show that the Co-ordinate Bench of this Court had relied upon the sale deed dated 06.06.2002 whereby, land measuring 8 kanals had been sold of village Assauda Todran. This Court had also noticed that the village Assauda Todran was situated just on the NH-10 Delhi-Rohtak-Hisar road and that there was a petroleum plant, M/s. Parle Biscuit Factory, Somani Tiles Factory, Hindustan Sanitary Wares and Surya Tube Factory near the acquired land which are also locatable on the site plan and reference has been made by witnesses also. Resultantly, the market value had been fixed at Rs.42,62,625/- and the land owners were given the benefit of 50% increase only for the difference of 3 years on cumulative basis. On account of the cut as such not having been imposed by this Court, the Apex Court had reduced the valuation by 25%. The relevant portion of the order of the Apex Court in *Jag Mahender's case (supra)* reads thus:-

> *"Considering the aforesaid aspect, we deem it appropriate to modify the determination made by the High Court to the extent that we deduct 25% of the area from the sale deed (P3), its value comes to Rs.22,50,000/- per acre, and then adding 15% appreciation on flat basis for three years, confined to the facts of this case. The amount comes to Rs.32,62,500/- per acre. Along with the amount of compensation awarded at the aforesaid rate the amount to carry the statutory benefits. The amount which has not been paid so far be paid within a period of three months from today.*
>
> *The appeals filed by the State are allowed to the aforesaid extent, and that by the landowners are also*

accordingly disposed of."

21. In view of the above facts and keeping in view the cumulative and the location of the land, this Court is of the opinion that the only disadvantage which this land suffers is that it is closer to the railway line in comparison to the other tracts of land. However, as noticed, it is surrounded by the industrial units of the Oil Corporations, which has led to its acquisition.

22. Resultantly, this Court is of the opinion that a 20% cut as such on the amount as assessed by the Apex Court would be an appropriate cut to be applied keeping in view the location of the land and the market value works out to Rs.26,10,000/- per acre.

23. To be fair to Mr. Sharma, he has relied upon the sale deeds as such produced by the Corporation (Exs.R-1 to R-5). The said sale deeds, as per the chart, would go on to show that the land has obviously been sold at a very paltry rate ranging between Rs.2,13,636/- to Rs.6,18,667/- for the revenue estates of the concerned villages, which is far below than the award of the Land Acquisition Collector which was Rs.12,50,000/-. The market value, as noticed by the Reference Court, also goes on to show that the floor rates have moved upto Rs.16,00,000/- in the year 2007. Keeping in view the provisions of Section 25, this Court is of the opinion that the said sale deeds would be of not much relevance to assess the market value and would not depict the correct market value of the area, keeping in view the discussion which shows the potentiality of the land.

24. It is also to be noticed that the witness patwari has admitted that the sale deeds do not relate to the land in close vicinity of the land which has been acquired and, therefore, also keeping in view the said fact, the said

sale deeds would be of no relevance. Ex.PY as such, though relied upon, is also liable to be discarded keeping in view the fact that it was only tendered in evidence and though it is admissible under Section 51-A but the location of the said land was never proved either on the site plan or by producing the vendor or the vendee.

25. Another methodology as such also to assess the market value and to justify the cause of enhancement is that Ex.PW-9/B was the award pertaining to the notification dated 24.01.2001 whereby, the Reference Court had granted sum of Rs.14,56,000/- per acre for village Jhakhoda and the present acquisition is of 16.11.2005 more than 4-1/2 years later.

26. This Court in ***RFA No. 3787 of 2009, Gaje Singh and others vs. State of Haryana and another,*** decided on 06.11.2015 for the land falling in village Jhakhoda in Sector 17 has assessed the market value at Rs.14,60,000/- upto the depth of 2 acres from the road and Rs.11,00,000/- for the rest of the land. If the difference of 4 years and 10 months is kept in consideration and even 12% enhancement is granted, the market value would move upto Rs.19,03,958/- per acre. However, keeping in view the fact that the land which is acquired for the KMP express way is in close vicinity and keeping in view the site plan Ex.PW-8, this Court is of the opinion that the land acquired for the KMP express in the said award is a more relevant piece of evidence to assess the market value and, therefore, the Court falls back on the same to assess the market value at Rs.26,10,000/- per acre with all statutory benefits. It is relevant to notice that for the KMP award also, the Collector had awarded the sum of compensation at Rs.12,50,000/- which has also been awarded in the present case.

27. Resultantly, the appeals of the land owners are allowed.

07.02.2020 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No