IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

373 **RFA No.796 of 2015 and other connected appeals**
Decided on : 06.03.2020

The State of Haryana and others
... Appellants

Versus

Tek Chand
... Respondents

Ist Notification Dated 22.03.2010	
Appeals filed by the Landowners	**Appeals filed by the State**
RFA Nos. 5990 to 5998 of 2014 RFA Nos.498, 499, 1371, 1372, 1518 to 1521, 1550, 2736 and 5068 of 2017 & RFA No.4694 of 2018	**RFA Nos.796 to 805 of 2015 and RFA Nos.341 to 353, 404 to 406 of 2017**

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

Present: Mr. Sudeep Mahajan, Addl. AG, Haryana.
Mr. Abhinash Jain, AAG, Haryana.

Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate,
Mr. Pavan Malik, Advocate,
Mr. Ashish Gupta, Advocate,
Ms. Bhanvi Sood, Advocate for
Mr. Aditya Jain, Advocate,
Mr. Kamal Mor, Advocate and
Mr. Rajiv Sharma, Advocate, for the landowners.

G.S. Sandhawalia, J. (Oral)

The present order shall dispose off above referred 47 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 31.03.2014 and 08.08.2016 passed by the Reference Courts, Mewat at Nuh.

Facts of 1st Award dated 31.03.2014

2. Vide the first Award while deciding 10 references, lead case of which was **LA Case No.645 of 2012 'Tek Chand Vs. The State of Haryana and others'** the Reference Court had enhanced the compensation from ₹38 lakhs per acre as awarded by the Land Acquisition Collector (for short 'the LAC') to ₹1,69,40,000/- per acre (₹3500/- per square yard). The land was acquired vide notification dated 01.08.2011 issued under Section 4 of the Act, situated in village Nuh, measuring approximately 7.62 acres for the construction of New Express Road leading from Gurgaon-Alwar Road to Medical College, Nalhar, Nuh. For the purpose of convenience, it will be called the first set of cases.

3. The basis of enhancement was Ex.P39 (wrongly referred as Ex.P39, but as per record Ex.P40), sale deed dated 08.07.2011, whereby land situated in village Nuh, measuring 15 marlas had been sold @ ₹2,42,00,000/- per acre. A 30% cut had been put on the same to grant the enhancement, as noticed above.

Facts of 2nd Award dated 08.08.2016

4. Similarly, vide the second Award dated 08.08.2016, the Reference Court while deciding 16 references lead case of which was **LA Case No.1099 of 2014 'Smt. Upsana Jain Vs. The State of Haryana and others'**, for the land measuring 13.24 acres which falls in village Nalhar, which was acquired vide the even date notification i.e.

01.08.2011, for the same purpose, had enhanced the market value from ₹20 lakhs per acre as awarded by the LAC to ₹1,08,00,000/- per acre (₹2231/- per square yard approximately).

5. The basis of enhancement was Ex.P20, sale deed dated 27.07.2011, whereby a plot situated in village Nuh, measuring 16 marlas was sold @ ₹2,16,00,000/- per acre. A 50% cut was put on the same to arrive at the abovesaid market value. The said sale deed is also exhibited in the first set of cases as Ex.P40 (wrongly referred as Ex.P39).

<u>Reasoning for enhancement</u>

6. In the first set of cases, the Reference Court ignored various sale deeds Exs.P22 to P38 on the ground that they were prior in time, as the first one was executed on 09.08.2010 and the last one was exhibited on 29.06.2011 and preferred the sale deed which was closest in proximity in time and also highest in value. It was also noticed that the land as such was adjacent to the municipal limits of Nuh and three acres away from District Courts, Nuh, as per the statement of Draftsman, PW-4 Khushal Sharma, which showed that municipal limit was 165 feet away from the acquired land and new Sabji Mandi was 300 meter from the acquired land. Resultantly, a finding was recorded that the land was of high potentiality. The average of 40 sale deeds was also kept in mind, to note that average rate would come to ₹2,38,35,138.44 and it was held that ₹38,00,000/- per acre as awarded by the LAC was not justified.

7. Similarly, in the second set of cases, the earlier Award dated

31.03.2014 passed in **Tek Chand (supra)** was not taken into consideration, even though it was of the adjoining village. However, the sale deeds of the adjoining village Ex.P25 was taken into consideration, for the reasons best known to the Reference Court, which is an apparent contradiction. The Award passed in **Tek Chand's case (supra)** (Ex.P23) was rejected on the ground that the land pertaining to the said Award was situated on the road and the topographical condition and nature of the land would be different. Similarly, Ex.P26 was ignored on the ground that the acquired land was situated in village Khedli Kankar, which was situated near Rozka Meo and was at a distance of about 15 Kms from the acquired land. Resultantly, by noticing 30% deduction had been made in **Tek Chand's case (supra)**, a 50% cut was applied on Ex.P20 to fix the market value.

8. Counsel for the State is well justified to submit that the methodology, which has been adopted by two Reference Courts is perverse on the face of it and cannot be upheld in any manner.

9. Admittedly, in the first set of cases **Tek Chand (supra)** as many as 20 sale deeds were exhibited and the site plan Ex.P43 was also proved on record by examining the Draftsman, PW-4 Khushal Sharma. The sale deeds Exs.P22 to P41 were produced on record by the Registry Clerk, PW-2 Jaikam Khan, who in his cross-examination stated that he had no personal knowledge about the facts of the case and the sale deeds were not registered in his presence. The Draftsman as such apart from showing the distance from the municipal limits, Rasta and the Sabji

Mandi, had never depicted the distance of the sale deeds which were relied upon by the landowners. He had produced on record Akshajra as Ex.P42, but neither on the said Akshajra the sale deeds had been depicted to show the distance from the acquired land.

10. Admittedly, the sale deeds are within the municipal limits. It is a matter of record that the sale deed (Ex.P40) is situated within the municipal limits and, therefore, it could not be said to be a sale deed, which would be a relevant sale exemplar and, therefore, reliance upon the same was not justified in any manner.

11. Counsel for the landowners could not also demonstrate that what was the distance of Ex.P40 from the acquired land. The law is well settled that the onus to prove the market value is always on the landowners. Reliance can be placed upon the judgments of the Apex Court passed in **Civil Appeal Nos.16967-71 of 1996 'Manipur Tea Co. Pvt. Ltd. Vs. Collector of Hailakandi', 'Basant Kumar and others VS. Union of India and others', (1996) 11 SCC 542**, **'Gafar & others Vs. Moradabad Development Authority' (2007) 7 SCC 614** and **'Special Land Acquisition Officer Vs. Karigowda and others', 2010 (5) SCC 708.** The relevant portion of the judgment passed in **Karigowda (supra)** reads as under:-

> "21. We may notice that Part III provides for procedure and rights of the claimants to receive compensation for acquisition of their land and also states various legal remedies which are available to them under the scheme of the Act. Under Section 18 of the Act, the Reference Court determines

the quantum of compensation payable to the claimants. Section 23 provides guidelines, which would be taken into consideration by the court of competent jurisdiction while determining the compensation to be awarded for the acquired land. Section 24 of the Act is a negative provision and states what should not be considered by the court while determining the compensation. In other words, Sections 23 and 24 of the Act provide a complete scheme which can safely be termed as statutory guidelines and factors which are to be considered or not to be considered by the Court while determining the market value of the acquired land. These provisions provide a limitation within which the court has to exercise its judicial discretion while ensuring that the claimants get a fair market value of the acquired land with statutory and permissible benefits. Keeping in view the scheme of the Act and the interpretation which these provisions have received in the past, it is difficult even to comprehend that there is possibility of providing any straitjacket formula which can be treated as panacea to resolve all controversies uniformly, in relation to determination of the value of the acquired land. This essentially must depend upon the facts and circumstances of each case. It is settled principle of law that, the onus to prove entitlement to receive higher compensation is upon the claimants. In the case of **Basant Kumar and Ors. v. Union of India and Ors. [(1996) 11 SCC 542]**, this Court held that the claimants are expected to lead cogent and proper evidence in support of their claim. Onus primarily is on the claimant, which they can discharge while placing and proving on record sale instances and/or such other evidences as they deem proper, keeping in mind the method of computation for awarding of compensation which they rely upon. In this very case, this Court stated the principles of awarding compensation and placed the matter beyond ambiguity, while also capsulating the factors regulating the discretion of the Court while awarding the compensation. This principle was reiterated by this Court even in the case of **Gafar v. Moradabad Development Authority [(2007) 7 SCC 614]** and the Court held as under:

> "As held by this Court in various decisions, the burden is on the claimants to establish that the amounts awarded to them by the Land Acquisition Officer are inadequate and that they are entitled to more. That burden had to be discharged by the claimants and only if the initial burden in that behalf was discharged, the burden shifted to the State to justify the award."

Thus, the onus being primarily upon the claimants, they are expected to lead evidence to revert the same, if they so desire. In other words, it cannot be said that there is no onus whatsoever upon the State in such reference proceedings. The Court cannot lose sight of the facts and clear position of documents, that obligation to pay fair compensation is on the State in its absolute terms. Every case has to be examined on its own facts and the Courts are expected to scrutinize the evidence led by the parties in such proceedings."

12. The Reference Court had failed to take into consideration the directions which had been issued by this Court in **RFA No.686 of 1991 'Lokeshwar Dutt Vs. The State of Haryana and another'** decided on 16.08.2010 and in the case of **'Smt. Maya and others Vs. State of Haryana and others', (2013) 3 RCR (Civil) 518.** The relevant portion of the judgment passed in **Lokeshwar Dutt (supra)** reads as under:-

> Not only that, in number of cases, the applications are filed by the land owners for producing additional evidence, which, in fact, should be part of the evidence to be led by the land owners/State at the very first instance. In many cases, the court, in the interest of justice, had to ask

> the State or the party to produce on record the site plan showing the exact location of the acquired land, sale deeds etc. to avoid injustice to either of the party. This unnecessarily delays the disposal of cases. The basic things, which should be brought on record to enable the court to determine fair value of the acquired land is the notification under Section 4 of the Act, copy of the award, site plan to the scale, showing the acquired boundary vis-a-vis its location such as its closeness to the city, village, highway, internal road with all its positive and negative factors. Another important fact is that such a plan should have the status as on the date of issuance of notification under Section 4 of the Act, the date being crucial for the purpose of determination of fair value of the acquired land. **It would be appropriate if the sale instances sought to be produced by the land owners or the State are pointed out on the site plan to be produced on record by either of the party. In the absence of which it is difficult to locate the same and consider its true value. The site plan, which should be taken on record, should be on butter paper or cloth, as it is seen in a number of cases that when the appeals are heard after 15-20 years, the site plans, which are quite big and may be on thin tracing paper, are torn out making it difficult for the parties to refer to the same and also for the court to consider.**"

13. It has, thus, been held that the site plan as such should be exhibited to show the location of the land which is acquired and the distances of the sale exemplars which are to be relied upon by the landowners. It is a well known phenomena that the land which is situated within municipal limits, which is a developed portion is of a different

potential commanding a different market value, than the land which is agricultural in nature, as it has facilities of electricity, sewerage and roads. It is admitted fact that the present land is beyond the municipal limits and, therefore, did not have the same advantages of the sale exemplar (Ex.P39), which had been relied upon. Therefore, the Reference Court fell into a serious error as such to rely upon the same by not taking into consideration the distance of the sale exemplar to find out whether it had the same potentiality and the market value, before fixing the market value of the acquired land.

14. This Court in the case of **Smt. Maya and others (supra)** has issued various directions as such, keeping in view the law laid down by the Apex Court that the site plan showing location of the entire acquired land and also the surrounding area is also to be produced by the State, so that the fair value of the acquired land properly assessed by the Reference Court.

15. Though the certified copies of sale deeds may be accepted under Section 51A of the Act, but it has been held by the Constitutional Bench of the Apex Court in **'Cement Corporation Of India Ltd vs Purya & Ors', (2004) 8 SCC 270** that for assessing the market value, the vendor and vendee should be examined as such, so that they can be cross-examined on account of the peculiar factors, which may arise on account of the value as such of the sale exemplar. The landowners never produced the vendor or the vendee of the said sale deed, so that they could be cross questioned, as to the location of the sale deeds and reasons

for the high value of the sale deeds could be put to them. Blind reliance upon Ex.P39 (wrongly referred as Ex.P40) is not justified in the facts and circumstances.

16. In the second set of cases, the situation of the land is not much different, rather the landowners could not have a better case, as admittedly the land was situated further away from the main road and falling in village Nalhar. Neither any sale deed of the village Nalhar had been produced by the landowners, which would be clear from the chart, whereby as many as 19 sale deeds were produced on record belonging to Nuh, including the one which had been relied upon in **Tek Chand's case (supra)**. The State had produced as many as 22 sale deeds of Nalhar and not only the distance as such of the said sale deeds from the acquired land was mentioned, but even the site plan Ex.P24 was exhibited, whereby the distances were depicted.

17. The Reference Court did not even touch the said sale deeds or the site plan (Ex.P24) and the chart of the sale deeds (Ex.R23), on the basis of which the District Rate Fixation Committee had fixed the rate, though it was under a bounden duty to assess the market value, even if the market value of the sale deeds was below than what had been awarded by the LAC. Reliance can be placed upon the judgment of the Apex Court passed in **'Lal Chand Vs. Union of India 2009' (15) SCC 769** that the sale deeds of the State have also to be kept into consideration, even if they are below than the amount awarded by the

LAC. The relevant portion of the said judgment reads as under:-

> "23. The High Court also rejected Ex.R3 to R7 relied upon by the respondents, solely on the ground that the prices therein were lower than the market value offered by Land Acquisition Collector and therefore, they had to be excluded under section 25 of the LA Act. Section 25 provides that the amount of compensation awarded by a reference court shall not be less than the amount awarded by the Collector under section 11. We fail to see how the said section has any relevance in regard to determination of market value as contrasted from award of compensation. If the sale deeds relied on by the respondents showed a particular market value, they cannot be ignored merely because the Collector had awarded compensation at a higher rate in regard to the acquired land. All that section 25 requires is that courts should not award an amount which is less than what is awarded by the Land Acquisition Collector, even if the evidence may show a lesser market value. So, the bar under section 25 of the LA Act is not in regard to determination of a market value, which is less than what was awarded by the LAO. The bar is only upon the reference court (or any higher court) reducing the compensation awarded by the Land Acquisition Collector. The fact that the Land Acquisition Collector has awarded compensation at a particular rate does not mean that the sale deeds which are otherwise reliable, cannot be relied upon to find out what was the real market value. Further the very assumption that all awards made by the Collector were at a rate higher than what was disclosed by the sale deeds (Ex.R3 to R7) is also not correct. The Land Acquisition Collector awarded a sum of Rs.2600 to Rs.3800 per bigha in regard to acquisitions under notifications dated 13.2.1981 and 20.2.1981, Rs.6500 in regard to acquisition under notification dated 13.3.1981.

> These amounts were certainly lower than the market value shown by Ex.R3 to R7. Even in regard to the acquisition under notification dated 13.12.1981, the award by the Collector at Rs.7,000/- and Rs.9000/- were lower than the value disclosed by Ex.R3 to R7. As noticed above, these sale deeds show that the market value was around Rs. 9000 per bigha in February to June 1981 and 10,000 to 11,000 per bigha between July, 1981 and November, 1981. The Land Acquisition Officer awarded Rs. 10,840 (which is more than the price shown by Ex.R3 to R7) in regard to only some lands acquired under the December, 1981 acquisition. Be that as it may. As the sale deeds (Ex.R3 to R7) relate to sales of lands in Rithala Village, they cannot be excluded from consideration merely on the ground that what has been awarded by the Land Acquisition Collector was higher in regard to some of the acquired lands. We accordingly find that the ground on which the High Court excluded the sale deeds Ex.R3 to R7 is not sound. The question whether these deeds (Ex.R3 to R7) should be excluded on any other relevant ground will be considered later."

18. Another apparent error, which is the Award passed in the case of **Tek Chand (supra)** was ignored by the Reference Court by itself recording that the potentiality and the value of the land might vary, but the sale deed as such Ex.P20, which was relied upon was also of Nuh, on which 50% cut had been put. Similarly, neither any site plan was produced on record to show the location and distance of sale deed Ex.P20, from the land which was acquired. The same issue would face the landowners of Nalhar regarding the onus which was upon them, as discussed above, in the first set of case.

19. The statements of the witnesses produced by the landowners

would go on to show that the Medical College was about 3 Kms from the Nuh and it is a matter of record that it was situated in village Nalhar, and, therefore, the value away from the road would continue dipping. Even PW-5 Deena in his cross-examination admitted that his land was at a distance of 3 Kms from Bus Stand and the land was vacant and there was no construction and it was 2 Kms from the main Alwar-Delhi Road. The LAC also had awarded ₹20 lakhs per acre in comparison to ₹38 lakhs per acre awarded for the first set of cases.

20. The Awards of the Reference Court in such circumstances, suffers from various illegalities, which cannot be supported and are not sustainable. Keeping in view the fact that the land has been acquired under the principle of *eminent domain* and it is a settled principle that litigation under Section 18 of the 1894 Act cannot held to be a adversial type of litigation and the landowners are always entitled for the correct market value, this Court proposes a remand, though it has been opposed by the State that the landowners are taking advantage of the high statutory rate of interest, which they would be entitled to, in case they succeed in remand.

21. In the opinion of this Court, it would be appropriate in such circumstances to remand the matters to the Reference Court, so that the Reference Court re-decides the same and fixes the appropriate market value, keeping in mind the above observations.

22. It is also made clear that since the onus is upon the landowners, they be given an adequate opportunity to produce relevant

sale exemplars. Thus, they are also entitled to lead additional evidence by way of bringing on record an appropriate site plan showing the distance of the sale exemplars which they had produced on record, from the acquired land, so that the Reference Court can fix the market value as on the date of Section 4 notification, in accordance with the provisions of Section 23 and 24 of the Act.

23. The amount of compensation which the landowners have received in view of the interim orders, shall not be recovered by the State, till the final determination of the issue, as it would led to unnecessarily litigation and cause hardship to the landowners. However, the Reference Court shall take the said factum in mind while finally deciding the same.

24. Accordingly, keeping in view the above discussion the present appeals are disposed off and the matters are remanded to the Reference Court. The Reference Court shall re-decide the issue within a period of six months from the date the parties put in appearance before the District Judge, Mewat at Nuh which is fixed as 30.03.2010 The District Judge may kept the matters with himself or assign them to the appropriate Court.

25. Disposed off.

(G.S. SANDHAWALIA)
JUDGE

MARCH 06, 2020
Naveen

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