In the High Court of Punjab and Haryana, at Chandigarh

Regular First Appeal No. 11 of 2021 (O&M)

Date of Decision: 07.07.2022
Reserved On: 07.05.2022

Haryana State Industrial and Infrastructure Development Corporation Limited

... Appellant(s)

Versus

Suraj Mal and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ashwani Kumar Chopra, Senior Advocates
with Mr. Pritam Singh Saini and Mr. Vidul Kapoor,
Advocates, for the HSIIDC.

Mr. Shailendra Jain, Senior Advocate
with Mr. Satyendra Chauhan and Mr. Jagtar Singh, Advocates.

Mr. Jagtar Singh, Mr. Karan Nehra, Ms Sandeep Kaur,
Mr. Abhay Josan,Mr. Harvinder Thakur, Mr. Sushil K. Sharma,
Mr. M.L.Sharma, Mr. Varun Gupta, Mr. J.S.Yadav,
Mr. Gulshan Nandwani, Mr. Himanshu Sharma and
Mr. Amit Jain, Advocates, for the landowners.

Mr. Shivendra Swaroop, Assistant Advocate General,
and Ms. Vibha Tewari, Assistant Advocate General,
Haryana.

Anil Kshetarpal, J.

1. Introduction and Background

1.1 This batch of appeals/cross appeals (details whereof are on the foot of the judgment) calls into question the correctness of the award passed by the Reference Court (hereinafter referred to as "the RC") on 17.03.2020. The notification under Section 4 and 6 of the Land Acquisition Act, 1894 Act (hereinafter referred to as "the 1894 Act") and the awards passed by the

Land Acquisition Collector (hereinafter referred to as "the LAC") as also by the RC are common. The learned counsel representing the parties are *ad idem* that this batch of appeals can be decided by a common judgment.

1.2 The relevant particulars, for the purpose of decision of the present case, are as under:-

S.NO.	TITLE	DETAILS
1.	Date of Notification under Section 4 of the 1894 Act.	29.09.2005
2.	Date of Notification under Section 6 of the 1894 Act.	15.12.2005
3.	Purpose of Acquisition.	For construction of Express Highway connecting NH-1, 10, 8 and 2.
4.	Location, area and nature of the acquired land	Proposing to acquire the land measuring 283 kanals and 7 marlas of land located in village **Dingerheri**, Tehsil Tauru, District Mewat.
5.	Number and Date of the Award of the Land Acquisition Collector.	No.5 dated 26.05.2006 acquiring the lands comprised in Rectangle No. 8, 9, 14, 15, 16, 17, 22, 23 and 69 min.
6.	Amount assessed by the Land Acquisition Collector.	₹12,50,000/- per acre.
7.	Amount determined by the Reference Court.	The RC, vide award dated 17.03.2020, has assessed the market value of the acquired land @ ₹17,50,000/- per acre while relying upon its award with respect to the land in village Dhulawat which was sought to be acquired vide notification dated 11.12.2007. The RC has also awarded the damages for severance of the land @ 50% of the market value.

1.3 The Haryana State Industrial and Infrastructure Development Corporation Limited (hereinafter referred to as "the HSIIDC") as well as the landowners have filed these appeals.

1.4 On the applications filed under Section 18 of the 1894 Act, the LAC referred the matter to the RC for assessment of the market value of the acquired land. It was claimed that the market value of the acquired land is approximately ₹1,00,00,000/- per acre and the LAC did not take into consideration the location, nature and the vicinity of the acquired land. It is claimed that the National Highway No.8 and 10 are at a distance of only 6 Kms., whereas, the Industrial Model Town, Manesar (hereinafter referred to as "the IMT") is 10 kms. away from the acquired land. The Gurugram city is only 20 kms. away from the village. Several industries, residential sectors, commercial institutions, farm houses and poultry farms surround the village. It is also claimed that there is a pucca road leading to the land in question and the LAC has failed to take notice of the fact that the acquired land is located near Tauru city and there existed tube-wells, rooms, barbed wire fencing, underground water pipe lines, valuable trees etc. The LAC also failed to take into consideration that the State Government has already acquired the land in the revenue estates of villages Manesar, Kasan etc. and these areas are located near the acquired land. The landowners also claim that the townships, namely Pataudi, Sohna, Tauru, Nuh, Bhiwari, Manesar and Gurugram city are within a distance around 5 to 30 kms. from the acquired land and the land has great potential for residential and commercial development. There exist several petrol pumps, markets, resorts, golf courses, factories, farm houses and commercial and educational institutions in Manesar, Pachgaon, Pataudi, Tauru, Bhiwari, Sohna, Nuh, Gurugram and Palwal. Per contra, the HSIIDC took a stand that the LAC has already awarded excessive compensation, therefore, there is no scope for redetermination. It is stated that the IMT, Manesar is at a significant distance. Moreover, the acquired land is not *chahi* (giving two crops in a year) land in nature.

1.5 On examination of the pleadings, the RC has framed the following issues:-

> *"1) What was the market value of the acquired land on the date of notification under Section 4 of Land Acquisition Act? OPP.*
>
> *2) Relief"*

2. Evidence Produced by the Parties

2.1 In oral evidence, the landowners have examined the following witnesses:

Sr. No.	Name of the Witness	Particulars of the Witness
1.	PW.1 Mohd. Aasam	Registration Clerk, to the office of Sub Registrar, Tauru.
2.	PW.2 Chet Ram	Petitioner.
3.	PW.3Raj Kumar	Petitioner.
4.	PW.4 Birender Gaur	Clerk, to the office of District Town Planner, Nuh.
5.	PW.5 Haseen Ahmad	Draftsman.
6.	PW.6 Shri Satpal Malik	Petitioner.
7.	PW.7 Suresh Kumar	Halqa Patwari.
8.	PW.8 Subash	Registration Clerk.

2.2 In documentary evidence, the landowners have also produced the following documents:

Sr. No.	Exhibit Number	Description of the document
1.	Exh.P1	Sale deed Vasika No.248 dated 8.5.2008
2.	Exh.P2	Sale deed Vasika No.249 dated 8.5.2008
3.	Exh.P3	Sale deed Vasika No.250 dated 8.5.2008
4.	Exh.P4	Sale deed Vasika No.1224 dated 15.9.2005
5.	Exh.P5	Sale deed Vasika No.2008 dated 28.12.2005

Sr. No.	Exhibit Number	Description of the document
6.	Exh.P6	Sale deed Vasika No.1409 dated 26.7.2006
7.	Exh.P7	Sale deed Vasika No.1220 dated 4.7.2011
8.	Exh.P8	Sale deed Vasika No.1467 dated 2.8.2006
9.	Exh.P9	Sale deed Vasika No.848 dated 20.7.2005
10.	Exh.P10	Sale deed Vasika No.850 dated 20.7.2005
11.	Exh.P11	Sale deed Vasika No.1357 dated 21.7.2006
12.	Exh.P12	Sale deed Vasika No.3189 dated 29.1.2007
13.	Exh.P13	Geo-referenced base map of Tauru
14.	Exh.P14	K.M.P. Global Corridor site plan
15.	Exh.P15	Application to Tehsildar, Tauru
16.	Exh.P16	Western Resort Country Club
17.	Exh.P17	DLF Gold and Country Club
18.	Exh.P18	Surjivan Resort
19.	Exh.P19	Surjivan Resort
20.	Exh.P20	Surjivan Resort
21.	Exh.P21	Surjivan Resort
22.	Exh.P22	ITC Grand Bharat
23.	Exh.P23	ITC Grand Bharat
24.	Exh.P24	Tarudhan Valley Golf Resort
25.	Exh.P25	Tarudhan Valley Golf Resort
26.	Exh.P26	Tarudhan Valley Golf Resort
27.	Exh.P27	Tarudhan Valley Golf Resort
28.	Exh.P28	Tarudhan Valley Golf Resort
29.	Exh.P29	Tarudhan Valley Golf Resort
30.	Exh.P30	Map
31.	Exh.P31	Aks Sizra of village Dingerheri
32.	Exh.P32	Sale deed Vasika No.3025 dated 29.3.2019
33.	Exh.P32 (Marked twice)	Draft Development Plan 2021 A.D
34.	Exh.P33	Site Plan of the acquired land of village Dingerheri
35.	Exh.P34	Sale deed Vasika No.848 dated 20.7.2005
36.	Exh.P35	Sale deed Vasika No.1524 dated 26.10.2005
37.	Exh.PX	Certified copy of award dated 5.2.2020
38.	Exh.PY	Certified copy of award dated 24.2.2020

2.3 On the other hand, in oral evidence, the HSIIDC has examined the following witnesses:

Sr. No.	Name of the Witness	Particulars of the Witness

1.	RW.1 Deen Mohammad	Patwari.
2.	RW.2 Subash	Registration Clerk.

2.4 In documentary evidence, the HSIIDC also produced the following documents:-

Sr. No.	Exhibit Number	Description of the document
1.	Exh.R1	Sale deed Vasika No.1760 dated 28.2.2005
2.	Exh.R2	Sale deed Vasika No.949 dated 11.8.2005
3.	Exh.R3	Sale deed Vasika No.845 dated 20.7.2005
4.	Exh.R4	Sale deed Vasika No.1308 dated 8.11.2004
5.	Exh.R5	Judgment dated 13.6.2009
6.	Exh.R6	Proceedings of the Divisional Level Committee's Meeting for fixation of Market rate of the acquired land
7.	Exh.R7	Collector rate for the year 2005-06
8.	Exh.R8	Sale deed Vasika No.698 dated 29.6.2005
9.	Exh.R9	Sale deed Vasika No.1619 dated 9.11.2005
10.	Exh.R10	Sale deed Vasika No.1645 dated 18.8.2006
11.	Exh.R11	Sale deed Vasika No.1126 dated 5.9.2005
12.	Exh.R12	Sale deed Vasika No.1491 dated 23.12.2004
13.	Exh.R13	Sale deed Vasika No.1409 dated 14.10.2005
14.	Exh.R14	Sale deed Vasika No.2123 dated 10.1.2006
15.	Exh.R15	Sale deed Vasika No.73 dated 10.4.2006
16.	Exh.R16	Sale deed Vasika No.74 dated 10.4.2006
17.	Exh.R17	Sale deed Vasika No.2120 dated 10.1.2006
18.	Exh.R18	Sale deed Vasika No.2121 dated 10.1.2006
19.	Exh.R19	Sale deed Vasika No.1738 dated 28.8.2006
20.	Exh.R20	Sale deed Vasika No.1758 dated 25.11.2005
21.	Exh.R21	Sale deed Vasika No.1211 dated 14.9.2005
22.	Exh.R22	Collector rate for the year 2004-05
23.	Exh.R23	Collector rate for the year 2005-06
24.	Exh.R24	Collector rate for the year 2006-07
25.	Exh.R24 (Marked twice)	Aks Sizra of village Dingerheri.

3. On a careful reading of the judgment passed by the RC, it is evident that after rejecting all the sale deeds produced by the respective parties including Ex.R1 and Ex.R2, the RC proceeded to rely upon the RC's award dated 12.09.2012 in ***LA case No.21 of 2009/2011 titled as "Jitender***

etc. Vs. State of Haryana etc.” passed while assessing the market value of the acquired land in village Dhulawat as on 11.12.2007. At the outset, it must be noticed that the aforesaid judgment of the RC dated 12.09.2012 is not a part of the record of the RC which was requisitioned. The learned counsel representing the parties have admitted that this document is not part of the Court file.

4. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book as well as the record of the Reference Court, which was requisitioned.

5. The learned senior counsel representing the HSIIDC contends that the RC has committed the following errors:

i) The sale deeds (Ex.R1 and Ex.R2) have wrongly been ignored on the ground that these sale deeds reflect a price lower than the amount assessed by the LAC, in view of the bar under Section 25 of the 1894 Act.

ii) The RC has erred in relying upon its previous judgment with respect to the acquisition of land in village Dhulawat, in the absence of evidence to prove that the acquired lands of the villages, namely Dhulawat and Dingerheri were comparable. It has also been contended that the judgment passed by the RC dated 12.09.2012 has not been produced by any of the parties in evidence.

6. Per contra, the learned counsel representing the landowners pray for enhancement of the market value on the ground that the RC has committed an error in overlooking the evidence produced by the parties.

7. **Issues which arise for adjudication**

7.1 In view of the aforesaid respective arguments of the learned counsel representing the parties, the following issues require adjudication:

i) What was the appropriate market value of the acquired land on 29.09.2005 i.e. the date of notification under Section 4 of the 1894 Act?

ii) Is it appropriate to rely upon the assessment made by the RC with respect to the acquisition of a different parcel of land by a separate notification under Section 4 of the 1894 Act, which was issued after a period of more than 2 years from the notification under Section 4 of the 1894 Act in the present case, more particularly when neither the copy of the judgment passed by the Court while deciding the cases arising from the separate notification is made a part of the record nor there is evidence to prove the comparative location of respective parcels of the acquired land through these notifications?

iii) What should be the compensation for severance in case the land remaining with the owner stands bifurcated in more than two or more parcels due to the acquisition of the land for the construction of a highway?

8. At this stage, it may be appropriate to note that the RC has compiled the information with regard to exemplar sale deeds produced by both the parties, correctness whereof is not disputed by the learned counsel representing the parties. Hence, the same is extracted as under:-

Sr. No.	*Exhibit No.*	*Vasika No.*	*Dated*	*Sale Consideration (In Rs.)*	*Land Sold (K M S)*	*Rate per acre*	*Village*
1.	*P1*	*248*	*8.5.2008*	*3,23,43,750*	*34-10-0*	*75,00,000*	*Jhamuwas*
2.	*P2*	*249*	*8.5.2008*	*1,87,50,000*	*20-0-0*	*75,02,400*	*Jhamuwas*
3.	*P3*	*250*	*8.5.2008*	*93,27,750*	*9-19-0*	*74,99,698*	*Jhamuwas*
4.	*P4*	*1224*	*15.9.2005*	*12,00,000*	*1-6-0*	*73,84,615*	*Tauru*
5.	*P5*	*2008*	*28.12.2005*	*6,70,000*	*1-1-0*	*51,04,761*	*Tauru*
6.	*P6*	*1409*	*26.7.2006*	*65,00,000*	*3-8-0*	*1,52,94,117*	*Tauru*
7.	*P7*	*1220*	*4.7.2011*	*10,18,87,500*	*66-0-0*	*1,23,50,000*	*Tauru*
8.	*P8*	*1467*	*2.8.2006*	*3,49,87,500*	*62-4-0*	*45,00,000*	*Fatehpur*
9.	*P9*	*848*	*20.7.2005*	*38,56,250*	*1B-10B-0B*	*41,13,333*	*Gangani*
10.	*P10*	*850*	*20.7.2005*	*18,96,875*	*0B-12B-0B*	*50,58,333*	*Gangani*
11.	*P11*	*1357*	*21.7.2006*	*55,00,000*	*1B-12B-0B*	*55,00,000*	*Gangani*
12.	*P12*	*3189*	*29.1.2007*	*1,00,09,632*	*2B-7B-0B*	*68,15,068*	*Gangani*
13.	*P32*	*3025*	*29.3.2019*	*17,28,000*	*0-12-0*	*2,30,40,000*	*Tauru*
14.	*P34*	*848*	*20.7.2005*	*38,56,250*	*1B-10B-0B*	*41,13,333*	*Gangani*
15.	*P35*	*1524*	*26.10.2005*	*3,00,000*	*0-3-0*	*1,60,00,000*	*Tauru*
16.	*R1*	*1760*	*28.2.2005*	*9,50,000*	*33-12-0*	*2,26,190*	*Dingerheri*
17.	*R2*	*949*	*11.8.2005*	*4,83,000*	*17-10-0*	*2,20,800*	*Dingerheri*
18.	*R3*	*845*	*20.7.2005*	*6,60,000*	*24-0-0*	*2,20,000*	*Gudhi*
19.	*R4*	*1308*	*8.11.2004*	*12,10,000*	*43-18-0*	*2,20,501*	*Gudhi*
20.	*R8*	*698*	*29.6.2005*	*7,58,875*	*53-1-0*	*1,14,439*	*Sabras*
21.	*R9*	*1619*	*9.11.2005*	*4,20,000*	*4-13-0*	*7,22,580*	*Tauru*
22.	*R10*	*1645*	*18.8.2006*	*6,00,000*	*8-0-0*	*6,00,000*	*Goyala*
23.	*R11*	*1126*	*5.9.2005*	*60,000*	*3-8-0*	*1,41,176*	*Bissar Akbarpur*
24.	*R12*	*1491*	*23.12.2004*	*60,000*	*2-0-0*	*2,40,000*	*Sabras*
25.	*R13*	*1409*	*14.10.2005*	*2,31,875*	*5-6-0*	*3,50,000*	*Tauru*
26.	*R14*	*2123*	*10.1.2006*	*4,50,000*	*6-7-0*	*5,66,929*	*Tauru*
27.	*R15*	*73*	*10.4.2006*	*17,11,000*	*10-19-0*	*12,50,045*	*Goyala*
28.	*R16*	*74*	*10.4.2006*	*71,50,000*	*72-0-0*	*7,94,444*	*Goyala*
29.	*R17*	*2120*	*10.1.2006*	*5,00,000*	*9-13-0*	*4,14,507*	*Goyala*
30.	*R18*	*2121*	*10.1.2006*	*58,000*	*0-19-0*	*4,88,421*	*Dingerheri*
31.	*R19*	*1738*	*28.8.2006*	*4,00,000*	*8-3-0*	*3,92,688*	*Gudhi*
32.	*R20*	*1758*	*25.11.2005*	*3,96,000*	*7-11-0*	*4,19,602*	*Gudhi*

33.	*R21*	*1211*	*14.9.2005*	*2,35,000*	*6-17-0*	*2,74,452*	*Sabras*

9. Discussion by this Court:

Issue No. (I)

9.1 On a careful perusal of the aforementioned tabulated compilation, it is evident that the landowners have not produced any comparable sale exemplar to prove that the market value of the acquired land assessed by the LAC does not reflect the correct market value. The learned counsel representing the landowners have submitted that the town of Tauru, located nearby and the Court should have relied upon the sale deeds (Ex.P4 to Ex.P7).

9.2 During the consolidation of the land holdings in the villages/revenue estate under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 1953, the total land of the village is divided into Rectangles which consists of 25 acres of land each. Each Rectangle is assigned a numerical number starting from 1. As per the practice, which is uniformly followed, Rectangle No.1 is assigned to North Eastern Corner of the village and the assigned number increase in a strip of land having depth, equivalent to 5 acres towards South Eastern boundary of the village, then the assigned numbers keep increasing from the South Eastern side of the village towards the North Eastern side, again, in a strip of land having depth of 5 acres abutting the previous strip of land towards the Western side of the previous strip of land. (In other words, the assigned Rectangle numbers increase in spiral manner similar to the numbers assigned to each box in the game of Snakes and Ladder).

9.3 It would be noted here that the acquired land is comprised in rectangle numbers noticed in the relevant particulars in para 1.2. The sale deed (Ex.R1) is with respect to more than 4 acres of land, which forms a part of the land comprised in rectangle No.4 and 5. The land has been sold @ ₹2,26,180/- per acre on 28.02.2005, whereas, the notification under Section 4 of the 1894 Act was published on 29.09.2005. Furthermore, on a careful perusal of sale deed dated 11.08.2005 (Ex.R2), it is evident that 17 kanals and 10 marlas of land out of the land comprised in rectangle Nos. 17, 18 and 20 has been sold @ ₹ 2,20,000/- per acre. This is hardly 1½ month before the issuance of notification under Section 4 of the 1894 Act. The parcels of the land sold through Ex.R1 and R2, respectively, are with respect to parcels of land in close proximity with the acquired land. The rectangle is a unit of agricultural land measuring 5 X 5 acres equivalent to 25 acres. These sale deeds are relevant in deciding the issue No.(i) i.e. the appropriate market value of the acquired land on the date of notification under Section 4 of the 1894 Act i.e. 29.09.2005.

9.4 Now, let us examine the evidence produced by the landowners except the sale deeds. On a careful perusal of the tabulated information compiled, which has been extracted above in para 8 the landowners have relied upon Ex.PX (certified copy of award dated 05.12.2020) and Ex.PY (certified copy of the award dated 24.02.2010). These two awards are with respect to the acquisition of the land in villages Goela and Rewasan. In the absence of evidence to prove that the acquired land located in the aforesaid two villages was comparable with the acquired land in village Dingerheri, the RC has correctly refused to rely upon the same. This Court also does not find any error in the order passed by the RC on this ground.

9.5 However, the RC has erred on the following grounds:

i) The sale deeds (Ex.R1 and Ex.R2) produced by the HSIIDC have wrongly been ignored on the ground that Section 25 of the 1894 Act bars the Court from taking into account the sale deeds which reflect a price lower than the amount assessed by the LAC. This matter is no longer *res integra*. Reliance in this regard can be placed on ***Lal Chand vs. Union of India, (2009) 15 SCC 769***. Thus, the RC has committed an error in ignoring the aforesaid sale deeds, particularly when it has already been held that the only prohibition on the enabling power of the Court is to award an amount lesser than the amount assessed by the LAC.

ii) The RC has relied upon its own award dated 12.09.2012 (*Jitender etc. Vs. State of Haryana etc.*) with respect to the acquisition of land in village Dhulawat. The RC has relied upon the same without noticing that such judgment is not a part of the record. The Court has relied upon the same merely on the ground that the acquired land of village Dhulawat has almost similar surroundings and accessibility as that of the acquired land of village Dingerheri. The Court has held that both the villages are similarly situated at around 5 to 15 kms. away from the National Highway No.248 and both the villages are located on the interior belt of villages. Thus, the RC has

> committed an error in relying upon a document which has not been produced by any of the parties. On a perusal of the record sent by the RC, it is evident that there is no reference to the award dated 12.09.2012. In fact, the date of assessment in these cases and the case arising from acquisition of land in village Dhulowal are also different.

9.6 As regards the first argument of the learned counsel representing the landowners, it would be noted that the RC has already held that the sale exemplars of the town of Tauru are not reliable because the acquired land is located in a village, whereas Tarau is a small town. Furthermore, the sale exemplars (Ex.P4 and Ex.P5) are with respect to very small pieces of land, whereas the sale exemplars (Ex.P6 and Ex.P7) are post the date of notification under Section 4 of the 1894 Act.

9.7 Before proceeding to reassess the market value of the acquired land, the Court is required to come to a definite conclusion that there is some material evidence which proves that the assessment of the market value made by the LAC is erroneous. In the present case, a long narrow strip of land has been acquired for the construction of a national highway. Hence, the reliance being placed by the learned counsel representing the landowners on the award passed by the RC with respect to the acquired land in villages Goela and Rewasan is misplaced. In the present case, it is evident that there is no evidence produced by the landowners on the basis whereof, the Court can proceed to enhance the market value of the acquired land from what was offered by the LAC.

9.8 Keeping in view the aforesaid discussion, this Court comes to a conclusion that the RC has erred in enhancing the market value of the acquired land from ₹12,50,000/- to ₹ 17,50,000/-. Therefore, the appropriate market value of the acquired land on the date of notification under Section 4 of the 1894 Act i.e. 29.09.2005 is ₹12,50,000/- as assessed by the LAC. Hence, the issue No.(i) stands answered.

Issue No. (ii)

9.9 It is well settled that before the Court relies upon some documentary evidence so as to assess the market value, the Court is required to see as to whether such document is part of the file or not. The Court is also required to see as to whether the land sold through the sale deed is comparable with the acquired land or not. In the absence of such finding, it is not safe to rely upon the same. As already noticed, the landowners have failed to produce any sale instance of the acquired land located in village Dingerheri.

9.10 As per the Indian Evidence Act, 1872 (hereinafter referred to as "the 1872 Act"), the judgments of the Courts are relevant only in accordance with Section 40, 41, 42 and 43 of the 1872 Act. Section 40 of the 1872 Act provides that a previous judgment which operates as bar to a second suit or trial is relevant. Section 41 of the 1872 Act provides that the judgments, orders or decrees of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, are relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant. Section 42 of the 1872 Act is in the nature of a residuary provision, which provides that the judgments, which are not relevant under Section 41, but they relate to the matters of public nature which are relevant to the inquiry, shall be relevant, but shall not be a conclusive proof of the fact which they state. Section 43 of the 1872 Act provides that all other judgments, except those mentioned in Section 40 to 42 of the 1872 Act shall be irrelevant unless the existence of such judgment is a fact in issue or is relevant under some other provision of the 1872 Act. If we analyze the judgment passed by the RC on 12.09.2012, it is obvious that a previous judgment is not relevant and does not fall within the scope of Section 40, 41, 42 or 43 of the 1872 Act. Furthermore, as per the observations made by the RC, the aforesaid judgment is with respect to notification issued on 11.12.2007, which is more than 2 years after the notification under Section 4 of the 1894 Act was issued vide notification dated 29.09.2005. The aforesaid assessment made by the Court shall not be relevant for assessing the market value of the acquired land on 29.09.2005. Moreover, there is no evidence to prove that the acquired land of village Dhulawat was comparable with the acquired land in the present case. Thus, the second issue is answered in negative.

Issue No. (iii)

9.11 The third issue which arises for consideration has already been noticed above. A narrow strip of land has been acquired for constructing an express highway. The landowners have claimed damages for severance/bifurcation of their land into two or more parcels. It has been projected that due to acquisition of the narrow strip of land, the remaining land of certain landowners is located on both the sides of expressway. The RC, after relying upon the judgments passed in ***State of Haryana v. Rajinder Kumar 2000 (1) LACC 360*** and ***Smt.Bindu Garg v. State of Haryana 1999 (2) RCR (Civil) 261*** has assessed the damages on account of severance @ 50%. It would be noted here that there is no clarity as to whether such amount @ 50% is with respect to the acquired land or unacquired land. Moreover, the Court has not analyzed the evidence to prove the damages, if any, suffered by the landowners. The RC has committed an error in blindly following the judgment passed by the Court without analyzing its facts. In ***Rajinder Kumar's case*** *(supra)*, the land was acquired for construction of a railway over-bridge. The market value of the acquired land located adjacent to the railway over-bridge was substantially reduced due to difficulty in accessing the unacquired remnant land. In that context, the Court awarded 50% compensation for the remaining unacquired land. Similarly, in ***Smt.Bindu Garg's case*** *(supra)*, the Court found that the remaining unacquired land has been rendered completely inaccessible and has resulted in complete loss. In that context, the Court awarded 50% of the market value on account of damages suffered due to severance of the unacquired land. In the present case, no evidence to assess the quantum of damages, on account of severance, has been led. The judgments relied upon by the RC were not applicable. However, this Court cannot overlook that the landowners must have suffered some amount of damages or loss on account of severance or the bifurcation of the unacquired land into two or more parcels. With respect to similar acquisition of land for the same expressway i.e. Kundali-Maneser-Palwal Expressway, this Court, in

HSIIDC vs. Rattan Singh and Others (RFA-5620-2013, decided on 05.10.2021), held as under:-

> *"The next issue which requires adjudication is regarding the proper and appropriate compensation/damages for the severance of the land in two parts. Clause (3) of Section 23 of the Land Acquisition Act, 1894, enables the Court to order the payment of the damage sustained by the person on account of severance from other land. In the present case, the acquisition of the aforementioned land is for the construction of the express highway. A long strip of land has been acquired. In the cases arising from village Mehndipur, the official of the HSIIDC has himself admitted that the land of various owners stands divided in two independent unconnected parcels due to the compulsory acquisition of the land. Although, the land owners have failed to lead any evidence to prove the extent of loss/damage suffered by them, even in that case, it is clear cut/indisputable that the owners would have difficulty in accessing the parcels of separate land across the road. Some of the land owners may have been left with only a small portion on one side of the road, whereas remaining part is on the other side of the road. In any case, it would become uneconomical and hard to cultivate and irrigate a small piece of land which is left on the one side of the Road. It may be noted here that in the appeals arising from the reference applications of the acquisition of the land located at village Daboda Khurd, the reference court has assessed the*

damages for severance of the land to the extent of 20% with regard to market value of the acquired or unacquired land whichever is less. The State or the HSIIDC have not filed any appeals. In other words, they have accepted the judgments. The HSIIDC has filed appeals in the cases arising from the acquisition made at village Mehndipur, where surprisingly the same Presiding Judge has ordered the 50% of the market value of the acquired land towards the severance charges. In this case, Chand Singh appeared as PW1 on behalf of the land owners. He did not depose about the loss suffered by the owners on account of severance of the unacquired land. However, when Bhagwan Singh Rana deposed on behalf of HSIIDC, he admitted that Smt. Bala, Balraj, Dharam Singh, Kapoor Singh, Dilbagh Singh, Ram Singh, Priti Singh and Munshi etc. have suffered loss on account of the fact that their unacquired/remaining land stands sundered due to the construction of the road (Expressway). In other words, these owners are now left with unacquired land which is in two separate independent parcels. They will be required to make special arrangements for irrigation and cultivation of land in the both the parcels of land situated on both the sides of the road which will be a hardship to them. Hence, the Court cannot deprive the owners from damages on account of the severance, merely because the owners have failed to lead any evidence to prove the extent of loss/damages suffered by them.

However, there is no evidence to prove that the owners have suffered damages to the extent of 50% of the market value of the acquired land. Furthermore, there is no appeal by the State and the HSIIDC in the appeals arising from the acquisition made at village Daboda Khurd.

Keeping in view the aforesaid facts, the appeals filed by the HSIIDC are allowed to the extent that the owners of villages Mehendipur shall also be entitled to the damages for severance of the land to the extent of 20% of the market value of the acquired or unacquired land whichever is less. However, the Executing Court is directed to ascertain as to whether the land of a particular owner stood bisected or not, before ordering the payment of damages for the severance of the land.

The learned counsel representing the owners have relied upon the judgments passed in ***Narender Kaur and Gurbachan Singh (supra).*** *In both the judgments, the Court after coming to a conclusion that some part of the acquired land is virtually lost as it is rendered inaccessible and uneconomical, assessed the severance charges at @ 50%. As already noticed in this case, no such evidence has been led by the landowners to prove that fact. In these cases, it has come on record that the unacquired land of certain owners stands separated/bisected into two different parcels due to construction of the road".*

9.12 Following the aforesaid view, the landowners shall also be entitled to damages for severance on the same lines. Thus, the third issue is also substantially answered.

9.13 Further, this Court affirm the observation of the RC that damages for severance or the compensation on account of severance shall only be granted in regard to the land comprised in khasra numbers, which have been severed on account of acquisition and the remnant land is less than an acre.

10. <u>Decision</u>:

10.1 Therefore, in view of the aforesaid discussion, the award passed by the RC is set aside and the market value as assessed by the LAC is maintained, except the modification in the amount of damages on account of severance of the land.

10.2 Consequently, the appeals filed by the HSIIDC are allowed, whereas, that of the landowners shall stand dismissed. The miscellaneous application(s) pending, if any, in all the appeals, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 07, 2022
"DK"

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No

Sr. No.	Case No.	Party's Name
1.	RFA No.4 of 2021	Haryana State Industrial and infrastructure Development Corporation Limited, Sector 6, Panchkula (HSIIDC) through its AGM. Versus Smt Bimla Devi and others
2.	RFA No.5 of 2021	Haryana State Industrial and infrastructure Development Corporation Limited, Sector 6, Panchkula (HSIIDC) through its AGM. Versus Janak Raj and others
3.	RFA No.6 of 2021	Haryana State Industrial and infrastructure Development Corporation Limited, Sector 6, Panchkula (HSIIDC) through its AGM.

		Versus Partap Singh deceased through LRs and others
4.	RFA No.11 of 2021	Haryana State Industrial and infrastructure Development Corporation Limited, Sector 6, Panchkula (HSIIDC) through its AGM. Versus Suraj Mal and others
5.	RFA No.12 of 2021	Haryana State Industrial and infrastructure Development Corporation Limited, Sector 6, Panchkula (HSIIDC) through its AGM. Versus Raj Kumar and others
6.	RFA No.13 of 2021	Haryana State Industrial and infrastructure Development Corporation Limited, Sector 6, Panchkula (HSIIDC) through its AGM. Versus Smt Shanti Devi and others
7.	RFA No.14 of 2021	Haryana State Industrial and infrastructure Development Corporation Limited, Sector 6, Panchkula (HSIIDC) through its AGM. Versus Mehtab Singh and others
8.	RFA No.15 of 2021	Haryana State Industrial and infrastructure Development Corporation Limited, Sector 6, Panchkula (HSIIDC) through its AGM. Versus Ramotar @ Leelya and others
9.	RFA No.16 of 2021	Haryana State Industrial and infrastructure Development Corporation Limited, Sector 6, Panchkula (HSIIDC) through its AGM. Versus Ram Kala and others
10.	RFA No.17 of 2021	Haryana State Industrial and infrastructure Development Corporation Limited, Sector 6, Panchkula (HSIIDC) through its AGM. Versus Raj Kumar and others
11.	RFA No.18 of 2021	Haryana State Industrial and infrastructure Development Corporation Limited, Sector 6, Panchkula (HSIIDC) through its AGM. Versus Sushil Kumar and others
12.	RFA No.19 of 2021	Haryana State Industrial and infrastructure Development Corporation Limited, Sector 6, Panchkula (HSIIDC) through its AGM. Versus Sushil Kumar and others
13.	RFA No.20 of 2021	Haryana State Industrial and infrastructure Development Corporation Limited, Sector 6, Panchkula (HSIIDC) through its AGM. Versus Har Lal and others
14.	RFA No.21 of 2021	Haryana State Industrial and infrastructure Development Corporation Limited, Sector 6, Panchkula (HSIIDC) through its AGM. Versus Madan Lal and others
15.	RFA No.22 of 2021	Haryana State Industrial and infrastructure

		Development Corporation Limited, Sector 6, Panchkula (HSIIDC) through its AGM. Versus Chet Ram and others
16.	RFA No.23 of 2021	Haryana State Industrial and infrastructure Development Corporation Limited, Sector 6, Panchkula (HSIIDC) through its AGM. Versus Ram Kala and others
17.	RFA No.1543 of 2021	Ram Kala through his LRs Versus State of Haryana and others
18.	RFA No.1544 of 2021	Ram Kala through his LRs Versus State of Haryana and others
19.	RFA No.1224 of 2021	Ram Kala through his LRs Versus State of Haryana and others

(Anil Kshetarpal)
Judge

July 07, 2022
"DK"