

In the High Court of Punjab and Haryana, at Chandigarh

Regular First Appeal No. 73 of 2021 (O&M)

Date of Decision: 11.07.2022

Reserved On: 07.05.2022

Haryana State Industrial and Infrastructure Development Corporation
Limited

... Appellant(s)

Versus

Kuldeep Singh 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. Gulshan Nandwani, Advocate
for the respondent No.1.

Mr. Shivendra Swaroop, Assistant Advocate General,
and Ms. Vibha Tewari, Assistant Advocate General,
Haryana, for the respondent No.2 to 4.

Anil Kshetarpal, J.

1. Introduction and Background

1.1 This appeal has been filed by the Haryana State Industrial and Infrastructure Development Corporation Limited (hereinafter referred to as “the HSIIDC”), while questioning the correctness of the judgment dated 17.03.2020, passed by the Reference Court (hereinafter referred to as “the RC”). The notification under Section 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as “the 1894 Act”) and the award passed by the

Land Acquisition Collector (hereinafter referred to as “the LAC”) as also the RC are common.

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 31 kanals and 19 marlas of land located in village Gudhi , Tehsil Tauru, District Mewat.
5.	Number and Date of the Award of the Land Acquisition Collector.	No.6 dated 26.05.2006 for acquiring the lands comprised in Rectangle No. 4.
6.	Amount assessed by the Land Acquisition Collector.	₹12,50,000/- per acre along with all the statutory benefits.
7.	Amount determined by the Reference Court.	The RC, in the first round, dismissed the application under Section 18 of the 1894 Act. However, the High Court, in Om Parkash v. State of Haryana and Others (Regular First Appeal No. 3552 of 2010) , vide judgment dated 31.01.2019 remitted back the matter to the RC for fresh decision.
8.	Date of re-decision of the RC and the amount re-assessed, after remand.	Vide judgment dated 17.03.2020, the RC has assessed the market value of the acquired land @ ₹17,50,000/- per acre along with all the statutory benefits.

1.3 The pleadings of the parties with regard to location of the acquired land and its potential are common with the cases arising from village Dingerheri in **Haryana State Industrial and Infrastructure**

Appeal No. 11 of 2021, decided on 07.07.2022), which are extracted as under:-

“On the applications filed under Section 18 of the 1894 Act, the LAC has 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 land in question to other landmark places. It is claimed that the National Highway No.8 and 10 are at a distance of only 6 Kms. The Industrial Model Town, Manesar (hereinafter referred to as “the IMT”) is 10 kms. away from the village. 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”

1.4 The HSIIDC has also taken the same stand as in the pleadings in the case of village Dingerheri, which are extracted as under:-

“Per contra, the HSIIDC took a stand that the LAC has already awarded excessive compensation, therefore, there is no scope for re-determination. It is stated that the IMT, Manesar is at a significant distance. Moreover, the acquired land is not chahi (not giving two crops in a year) land in nature.”

1.5 The RC, on appreciation of the pleadings, has culled out 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”.*

1.6 In the considered view of this Court, the following issues need determination:-

- i) What was 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?
- 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 of 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?

2. Evidence Produced by the Parties

2.1 In oral evidence, Sh.Kuldeep Singh, the respondent-landowner, has appeared before the RC as PW.1 and produced the following documents:

Sr. No.	Exhibit Number	Description of the document
1.	Exh.P9	Application to Tehsildar Tauru
2.	Exh.P10	Best Western Resort Country Club
3.	Exh.P14	Aks Sizra of village Gudhi

2.2 On the other hand, in oral evidence, the HSIIDC, has examined Sh.Subash, Registration Clerk as RW.1 and produced the following documents:

Sr. No.	Exhibit Number	Description of the document
1.	Exh.R14	Aks Sizra of village Gudhi

3. The RC has compiled a tabulated information of the various sale exemplars produced by both the parties, which 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	1224	15.9.2005	12,00,000	1-6-0	73,84,615	Tauru
2.	P2	2008	28.12.2005	67,00,000	1-1-0	51,04,761	Tauru
3.	P3	1409	26.7.2006	65,00,000	3-8-0	1,52,94,117	Tauru
4.	P4	1220	4.7.2011	10,18,87,500	66-0-0	1,23,50,000	Tauru
5.	P5	1467	2.8.2006	3,49,87,500	62-4-0	45,00,000	Fatehpur
6.	P6	848	20.7.2005	38,56,250	1B-10B-0	41,13,333	Gangani
7.	P6 (marked twice)	850	20.7.2005	18,96,875	0B-12B-0	50,58,333	Gangani
8.	P7	1357	21.7.2006	55,00,000	1B-12B-0	55,00,000	Gangani
9.	P8	3189	29.1.2007	1,00,09,632	2B-7B-0	68,15,063	Gangani
10.	P11	848	20.7.2005	38,56,250	1B-10B-0	41,13,333	Gangani

<i>Sr. No.</i>	<i>Exhibit No.</i>	<i>Vasika No.</i>	<i>Dated</i>	<i>Sale Consideration (In Rs.)</i>	<i>Land Sold (K M S)</i>	<i>Rate per acre</i>	<i>Village</i>
11.	P12	1524	26.10.2005	3,00,000	0-3-0	1,60,00,000	Tauru
12.	P13	960	28.8.2010	25,00,000	1-10.5-0	1,31,14,754	Tauru
13.	R1	1211	14.9.2005	2,35,000	6-17-0	2,74,452	Sabras
14.	R2	1271	22.9.2005	28,16,000	45-1-0	5,00,066	Beri Nisfi
15.	R3	2123	10.1.2006	4,50,000	6-7-0	5,66,929	Tauru
16.	R4	1758	25.11.2005	3,96,000	7-11-0	4,19,602	Gudi
17.	R5	1606	08.11.2005	5,00,000	8-0-0	5,00,000	Hassanpur
18.	R6	1507	07.08.2006	1,00,000	0-16-0	10,00,000	Kalwari
19.	R7	3330	15.02.2007	19,25,000	15-8-0	10,00,000	Jhamuwas
20.	R8	1126	05.09.2005	60,000	3-8-0	1,41,176	Bissar Akbarpur
21.	R9	3242	05.02.2007	55,000	0-8.5-0	10,35,294	Kalwari
22.	R10	1491	23.12.2004	60,000	2-0-0	2,40,000	Sabras
23.	R11	1409	14.10.2005	2,31,875	5-6-0	3,50,000	Tauru
24.	R12	1738	28.08.2006	4,00,000	8-3-0	3,92,683	Gudi
25.	R13	2033	30.12.2005	2,40,000	7-11-0	2,54,304	Jhamuwas

Note: The correctness of the above extracted tabulated compilation of the sale deeds by the RC, has not been disputed by the learned counsel representing the parties.

4. Discussion and Analysis

Issue No. (i)

4.1 On a careful analysis of the judgment passed by the RC, it is evident that the RC refused to take into consideration the sale exemplars (Ex.R1 to Ex.R13) as they reflect an amount which is lower than the amount offered by the LAC on the basis of wrong interpretation of Section 25 of the 1894 Act. The RC has also observed that the assessment made by the LAC is contradicted by the evidence led by the HSIIDC. The RC further held that the Divisional Level Price Fixation Committee did not consider the sale deeds. Moreover, the RC also refused to take into account the sale exemplars produced by the landowners on the ground that these relate to different

village Gudhi was produced by the landowners.

4.2 Thereafter, the RC relied upon the award passed by the RC on 12.09.2012 while deciding the *LA case No.21 of 2009/2011 titled as Jitender etc. Vs. State of Haryana etc.* with respect to the acquisition of the land vide notification dated 11.12.2007 under Section 4 of the 1894 Act concerning the land located in village Dhulawat.

4.3 Heard the learned counsel representing the parties, at length and with their able assistance, perused the judgment passed by the RC as well as the record of the RC, which was requisitioned.

4.4 The learned senior counsel representing the HSIIDC contends that the RC has committed an error in overlooking the sale deeds produced by the HSIIDC while misinterpreting Section 25 of the 1894 Act. While elaborating, he submits that Section 25 of the 1894 Act does not debar the Court from taking into account the sale deeds which reflect a price lower than the amount offered by the LAC. He further submits that the RC has erred in relying upon the assessment made in the *Jitender's case (supra)* as in the aforesaid case the assessment was required to be made as on 11.12.2007, whereas, in the present case, it is to be made as on 29.09.2005. He further submits that there is no evidence to prove the comparative location of the acquired land in village Dhulawat and village Gudhi.

4.5 Per contra, the learned counsel representing the landowners have supported the judgment passed by the RC.

4.6 On the analysis of the reasons recorded by the RC, it is evident that it has overlooked the fact that a narrow strip of land in as many as 15 villages was sought to be acquired by a common notification under Sections

the acquired land in all these 15 villages. Furthermore, the Court is not required to go into the fact that the LAC has awarded an exorbitant rate because Section 25 of the 1894 Act puts an embargo in this regard. In the opinion of this Court, the first observation made by the RC is erroneous.

4.7 As regards the second observation, the RC is correct. The Divisional Level Price Fixation Committee was expected to examine the sale deeds before recommending the amount payable to the landowners.

4.8 The next reason assigned by the RC while refusing to take into consideration the sale deeds (Ex.R1 to Ex.R13) is a result of wrong interpretation of Section 25 of the 1894 Act. The Court is entitled to take into account all the sale deeds produced by the parties which are comparable sale deeds of contemporaneous period. Section 25 of the 1894 Act only debars the Court from reducing the amount offered by the LAC or fixing the market value of the acquired land which is lower than the market value assessed by the LAC. This issue is no longer *res integra* in view of the judgment passed by the Supreme Court in ***Lal Chand vs. Union of India (2009) 15 SCC 769***.

4.9 The RC has correctly held that the landowners have failed to produce sale deeds of village Gudhi. In fact, the sale exemplars (Ex.P2 to Ex.P5) are post the date of notification under Section 4 of the 1894 Act i.e. 29.09.2005. The sale deed (Ex.P1) is with respect to the parcel of land located in village Tauru and it is with respect to a very small portion of the land. Similarly, two sale deeds (marked as Ex.P6) are with respect to a very small parcel of the land which is, ordinarily, not purchased for agricultural purposes. The sale exemplars (Ex.P7, Ex.P8 and Ex.P13) are again post the

and Ex.P12) are with respect to very small parcel of the land.

4.10 The RC has erred in overlooking the sale exemplars (Ex.R1 to Ex.R13). The sale exemplar (Ex.R4) is a sale instance of 7 kanals and 11 marlas of land sold on 25.11.2005 @ ₹4,19,602/- per acre. In other words, even subsequent to the date of notification under Section 4 of the 1894 Act, the price of the land per acre did not rise beyond ₹4,19,602/-. This conclusion of the Court gets reinforced on a careful perusal of the sale deed dated 28.09.2006 (Ex.R12) with respect to the land measuring 8 kanals and 3 marlas which has been sold @ ₹3,92,683/- per acre.

4.11 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, which requires no interference. Hence, the issue No.(i) stands answered.

Issue No. (ii)

4.12 The RC has further erred in relying upon the award passed by it in the *Jitender's case (supra)* with respect to the acquisition of land in village Dhulawat which was sought to be acquired vide notification under Section 4 of the 1894 Act dated 11.12.2007, particularly when the sale deeds (Ex.R4 and Ex.R12) are with regard to the parcels of the land of the same village. Furthermore, the judgment in the *Jitender's case (supra)* is neither a part of the Court file nor it has been proved to be of a comparable parcel of land. In the aforesaid case, the date of assessment of the compensation for the acquisition of the land is also different which is in fact approximately

10 years after the date of notification under Section 4 of the 1894 Act in the

present case. Hence, the reliance placed by the RC is erroneous.

4.13 This issue has elaborately been discussed in the cases arising from the acquisition in village Dingerheri in ***Haryana State Industrial and Infrastructure Development Corporation Limited v. Suraj Mal and Others*** (*supra*) and the relevant portion whereof reads as under:-

“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.

4.13 For the reasons recorded above, the issue No. (ii) stands substantially answered.

Issue No.(iii)

4.14 As regards the severance charges, the matter has also been elaborately discussed while deciding the case of village Dingerheri in ***Haryana State Industrial and Infrastructure Development Corporation Limited v. Suraj Mal and Others*** (*supra*), the relevant discussion is extracted as under:-

*“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 **HSI IDC 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”.*

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.”*

4.15 For the reasons recorded above, the issue No. (iii) stands substantially answered.

5. Decision

5.1 Consequently, in view of the aforesaid discussion, this appeal is allowed and the award passed by the RC, which suffers from material errors, is set aside. The award passed by the LAC is upheld while dismissing the application under Section 18 of the 1894 filed by the landowners.

5.2 The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 11, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No