

In the High Court of Punjab and Haryana, at Chandigarh

**Regular First Appeal No. 145 of 2021 (O&M)
And Other Connected Appeals**

Date of Decision: 11.07.2022

Reserved On: 07.05.2022

Haryana State Industrial and Infrastructure Development Corporation
Limited

... Appellant(s)

Versus

Jan Mohammad 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. 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 (detail whereof is at the foot of the
judgment) has been filed by the Haryana State Industrial and Infrastructure
Development Corporation Limited (hereinafter referred to as “the HSIIDC”)
as well as the landowners, while questioning the correctness of the common

judgment passed on 02.03.2020, 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. Hence, the learned counsel representing the parties is *ad idem* that this batch of appeals can be conveniently disposed of 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 295 kanals and 18 marlas of land located in village Khor , Tehsil Nuh, District Mewat.
5.	Number and Date of the Award of the Land Acquisition Collector.	No.10 dated 09.06.2006.
6.	Amount assessed by the Land Acquisition Collector.	₹12,50,000/- per acre.
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 <i>Om Parkash v. State of Haryana and Others (Regular First Appeal No. 3552 of 2010)</i> , 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,	Vide judgment dated 16.03.2020, the RC has re-determined the

S.NO.	TITLE	DETAILS
	after remand.	market value of the acquired land @ ₹17,50,000/- per acre while observing that the landowners who have suffered damages due to severance of their land shall be entitled to 50% of the market value if their remnant unacquired land is less than 1 acre.

1.3 This Court has already disposed of a sufficiently large number of identical cases in which the same issues have been decided. Hence, certain amount of reproduction is inevitable.

1.4 The pleadings of the landowners as well as HSIIDC with respect to location of the acquired land and its potential are common with the cases arising from village Dingerheri. The same have been noticed in *Haryana State Industrial and Infrastructure Development Corporation Limited v. Suraj Mal and Others (Regular First 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”

1.5 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.”

1.6 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) Whether petitions are time barred? OPR.*
- 3) Relief”.*

1.7 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, issued after a period of more than 1½ 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, the landowners, in order to prove their case, have examined the following witnesses:-

Sr. No.	Name of the Witness	Particulars of the Witness
1.	PW3 Devinder Singh	Halqa Patwari
2.	PW4 Haseen Ahmad	Draftsman
3.	PW5 Jaikam Khan	Registration Clerk
4.	PW6 Jan Mohammad	Petitioner

2.2 In documentary evidence, the landowners have also produced the following documents, apart from the sale deeds, a tabulated compilation of which is incorporated in para 3 of the judgment:-

Sr. No.	Exhibit Number	Description of the document
1.	Exh.P5	Aks Sizra of village Khor
2.	Exh.P6	Site plan of the acquired land of village Khor
3.	Exh.PX	Certified copy of Award dated 5.2.2020

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

Sr. No.	Name of the Witness	Particulars of the Witness
1.	RW.1 Jaikam Khan	Registration Clerk

2.4 In documentary evidence, the HSIIDC, has also produced the following document(s), apart from the sale deeds, a tabulated compilation of which is incorporated in para 3 of the judgment:-

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

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.	P7	1483	26.10.1999	32000	4M	12,80,000	Rupaheri
2.	P8	447	03.05.2001	53000	5M	16,96,000	Rupaheri
3.	P9	713	23.06.2003	2,30,000	300 Square Yards	37,10,667	Rewasan
4.	P10	580	16.05.2007	26,50,000	11K-12M	18,27,586	Rewasan
5.	P11	3427	24.11.2005	50,00,000	1000 Sq. Yards	2,42,00,000	Rozka Meu
6.	P12	576	16.05.2007	6,00,000	1K-2M	43,63,636	Rewasan
7.	R1	5466	01.03.2007	7,00,000	11K-4M	5,00,000	Khor
8.	R2	5457	01.03.2007	7,00,000	1K-4M	5,00,000	Khor
9.	R3	2157	11.10.2004	1,05,000	4K-10M	1,86,667	Khor
10.	R4	617	14.06.2000	1,60,000	5K	2,56,000	Khor
11.	R5	1701	19.07.2005	3,87,500	20K	1,55,000	Khor
12.	R6	1702	19.07.2005	1,94,000	8K-4M	1,89,268	Khedi Kankar
13.	R7	5115	09.03.2006	10,98,750	43K-19M	2,00,000	Khedi Kankar
14.	R8	2186	12.10.2004	1,55,000	8K	1,55,000	Khedi Kankar
15.	R9	2187	12.10.2004	2,61,562	13K-10M	,154,999	Khedi Kankar
16.	R10	2536	16.09.2005	11,43,750	45K-15M	2,00,000	Khedi Kankar
17.	R11	2810	06.10.2005	22500	150 Square Yards	7,26,000	Rupaheri
18.	R12	2970	18.02.2005	1,80,000	8K	1,80,000	Khalilpur
19.	R13	2319	01.09.2005	14,13,000	40K-7M	2,80,149	Khalilpur

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. The RC has recorded the following reasons for determining the market value of the acquired land:-

- i) The assessment made by the LAC is contradicted by the evidence led by the HSIIDC as the sale consideration of all the sale deeds of village Khor (Ex.R1 to Ex.R6) fall in the range of ₹1,55,000/- to ₹5,00,000/- per acre.

However, there is no reason as to why the LAC assessed the amount @ ₹12,50,000/- per acre.

- ii) The minutes of the meeting of the Divisional Level Price Fixation Committee held on 26.04.2006 do not show any application of mind with reference to the sale instances.
- iii) The sale deeds (Ex.R1 to Ex.R13) being below the amount awarded by the LAC cannot be relied upon in view of Section 25 of the 1894 Act.
- iv) After rejecting all the sale deeds produced by the parties, the RC proceeded to assess the market value of the acquired land on the basis of the judgment passed 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.
- v) The landowners shall be entitled to compensation for severance of the land if the landowners are left with less than 1 acre of unacquired land on account of compulsory acquisition.

5. 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.

6. The learned counsel representing the HSIIDC contended that the RC has committed an error in refusing to take into consideration the sale

deeds (Ex.R1 to Ex.R4) on the ground that it is barred under Section 25 of the 1894 Act. He submits that the RC has wrongly interpreted the provision of Section 25 of the 1894 Act. He further contended that the RC has also erred in relying upon the RC's award dated 12.09.2012 in *L.A. 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, located in village Dhulawat. The learned counsel has contended that neither the aforesaid award is a part of the record nor the same is with respect to the contemporaneous period. He further submitted that there is no evidence that the acquired land in village Dhulawat is comparable with the acquired land of village Bahadri. He further contends that the RC has also committed an error in assessing the compensation for the severance of the land in the absence of evidence led in this regard by the landowners.

7. Per contra, the learned counsel representing the landowners have defended the judgment and prayed for enhancement of the amount.

8. Determination of Issues

Issue No.(i)

8.1 From a bare perusal of the tabulated compilation in para 3 of this judgment, it is evident that the landowners have not produced any sale instance of village Khor. Further, the sale instances (Ex.P10, Ex.P11 and Ex.12) are post the date of notification under Section 4 of the 1894 Act. The RC has observed that the sale instance Ex.P11 is with respect to the developed or industrial or residential plots at village Rojka Meo. Hence, the

RC has, itself, found that none of the sale deeds produced by the landowners

are reliable for the purpose of assessing the market value of the acquired land. The RC has committed error in overlooking the sale instances (Ex.R1 and Ex.R13) produced by the HSIIDC. Section 25 of the 1894 Act does not debar the Court from taking into account the sale deeds reflecting an amount lower than the amount offered by the LAC. The only prohibition is to the effect that the Court should not award an amount which is lesser than the amount awarded by the LAC. This issue is no longer *res integra* in view of the judgment of the Supreme Court in ***Lal Chand vs. Union of India (2009) 15 SCC 769***. The sale deeds (Ex.R3 to Ex.R5) clearly show that the per acre price of the land is not more than ₹2,56,000/-. Even after the issuance of notification under Section 4 of the 1894 Act on 29.09.2005, the price of the land did not rise beyond ₹5,00,000/- per acre.

8.2 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 RC has erred in interfering in the market value assessed by the LAC. Hence, the issue No.(i) stands answered.

Issue No.(ii)

8.3 The next reason assigned by the RC while relying on the award dated 12.09.2012 in the ***Jitender's case (supra)*** is also erroneous because neither the aforesaid award is a part of the record. Furthermore, it is not even relevant in the facts of the present case in view of the discussion by this Court in ***Haryana State Industrial and Infrastructure Development Corporation Limited v. Bhagwan Singh alias Gaddar and Others***

portion is extracted 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.

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

Issue No. (iii)

8.5 As regard the issue No.(iii), the matter has already been discussed, in detail, while deciding the matter in the cases arising from

village Dingerheri in in *Haryana State Industrial and Infrastructure Development Corporation Limited v. Suraj Mal and Others (supra)*, which is extracted as under, so as to avoid repetition:-

*“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”.*

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.”

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

9. Decision

9.1 Consequently, the appeals filed by the HSIIDC are allowed. While setting aside the judgment passed by the RC the market value assessed by the LAC @ ₹12,50,000/- is maintained. The award passed by the RC with respect to the award of damages on account of severance of the land is also modified in the aforesaid manner.

9.2 With the observations made above, all the appeals are disposed of.

9.3 The miscellaneous application(s) pending, if any, in all the appeals, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 11, 2022
“DK”

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

Sr. No.	Case No.	Party’s Name
1.	RFA No.147 of 2021	HSIIDC vs. Hamid Hussain (deceased) thr Lrs. and ors.
2.	RFA No.148 of 2021	HSIIDC vs. Abdul @ Abdulla Khan and ors.
3.	RFA No.149 of 2021	HSIIDC vs. Isab and ors.
4.	RFA No.150 of 2021	HSIIDC vs. Abdul Majid and ors.
5.	RFA No.153 of 2021	HSIIDC vs. Iashak and ors.

Sr. No.	Case No.	Party’s Name
6.	RFA No.154 of 2021	HSIIDC vs. Sarif and ors.
7.	RFA No.155 of 2021	HSIIDC vs. Sahbdeen and ors.
8.	RFA No.156 of 2021	HSIIDC vs. Nazeer Ahmad (deceased) through LRs. and ors.
9.	RFA No.157 of 2021	HSIIDC vs. Ismail and ors.
10.	RFA No.158 of 2021	HSIIDC vs. Mahtab and ors.
11.	RFA No.159 of 2021	HSIIDC vs. Hanif and ors.

July 11, 2022

“DK”

(Anil Kshetarpal)

Judge