In the High Court of Punjab and Haryana, at Chandigarh

Regular First Appeal No. 217 of 2021 (O&M)

Date of Decision: 07.07.2022
Reserved On: 09.5.2022

Haryana State Industrial and Infrastructure Development Corporation Limited

... Appellant(s)

Versus

Razzak 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 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 judgment dated 05.05.2020, 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. Hence, the learned counsel representing the parties are *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 119 kanals and 9 marlas of land located in village **Rupaheri**, Tehsil Tauru, District Mewat.
5.	Number and Date of the Award of the Land Acquisition Collector.	No.12 dated 09.06.2006 acquiring the lands comprised in Rectangle No. 5, 6, 7, 8, 13, 14, 20, 21, 23 and 24
6.	Amount assessed by the Land Acquisition Collector.	₹12,50,000/- per acre.
7.	Amount determined by the Reference Court.	The RC, on 26.02.2010, in the first round, dismissed the applications under Section 18 of the 1894 Act, on 26.02.2010. However, the High Court remanded the case back to the RC for fresh decision.
8.	Date of re-decision of the RC and the amount re-assessed, after remand.	Vide judgment dated 27.02.2020, the RC has assessed the market value of the acquired land @ ₹21,44,849/- per acre.

1.3 The pleadings of the landowners, while showing potentiality of the acquired land are common with the cases arising from village Dingerheri, which is 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) Whether the present petitions are not maintainable in the present form? OPR.

3) Whether the petitions are bad for non-joinder and mis-joinder of necessary parties? OPR.

4) Whether petitions are time barred? OPR.

3) 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) 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. <u>Evidence Produced by the Parties</u>

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.	PW.1 Rojdar	Petitioner
2.	PW.2 Sarfraz	Petitioner
3.	PW.3 Fakruddin	Petitioner
4.	PW.4 Razzak	Petitioner
5.	PW.5 Jaikam Khan	Registry Clerk
6.	PW.6 Hari Singh	Halqa Patwari
7.	PW.7 Hasin Ahmad	Draftsman

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

Sr. No.	Exhibit Number	Description of the document
1.	Exh.P11	Aks Sizra of village Rupaheri
2.	Exh.P12	Site plan of village Rupaheri
3.	Exh.P13	Jamabandi of village Rupaheri for the year 2004-05
4.	Exh.P20	Final Development Plan of Sohna
5.	Exh.P21	Certified copy of judgment dated 5.2.2020

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

Sr. No.	Name of the Witness	Particulars of the Witness
1.	RW.1 Deen Mohammad	Patwari.
2.	RW.2 Jaikam Khan	Registry Clerk

2.4 The HSIIDC has also produced the following documents in its documentary evidence:-

Sr. No.	Exhibit Number	Description of the document
1.	Exh.R15	Aks Sizra/Site plan of village Rupaheri

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*	*198*	*25.4.2008*	*1,82,000*	*0-10-0*	*29,12,000*	*Kanwarsika*
2.	*P2*	*2415*	*09.09.2005*	*9,50,000*	*500 sq yards*	*91,96,000*	*Rojka Meo*
3.	*P3*	*3427*	*24.11.2005*	*50,00,000*	*1000 sq yards*	*2,42,00,000*	*Rojka Meo*
4.	*P4*	*1185*	*30.07.2008*	*1,76,96,250*	*42-18-0*	*33,00,000*	*Hirmathla*
5.	*P5*	*1483*	*26.10.1999*	*32,000*	*0-4-0*	*12,80,000*	*Rupaheri*
6.	*P6*	*447*	*30.05.2001*	*53,000*	*0-5-0*	*16,96,000*	*Rupaheri*
7.	*P7*	*3427*	*24.11.2005*	*50,00,000*	*1000 sq yards*	*2,42,00,000*	*Rojka Meo*
8.	*P8*	*713*	*23.06.2003*	*2,30,000*	*0-10-0*	*36,80,000*	*Rewasan*
9.	*P9*	*780*	*24.05.2007*	*3,25,000*	*0-13-0*	*40,00,000*	*Rewasan*
10.	*P10*	*576*	*16.05.2007*	*6,00,000*	*1-2-0*	*43,63,636*	*Rewasan*
11.	*R1*	*1006*	*8.6.2005*	*1,20,000*	*3-7-0*	*2,86,567*	*Bahadri*
12.	*R2*	*2187*	*12.10.2004*	*1,43,500*	*13-10-0*	*85,037*	*Kherli Kankar*
13.	*R3*	*2118*	*18.8.2005*	*4,50,467*	*27-18-0*	*1,24,696*	*Kherli Kankar*
14.	*R7*	*2810*	*6.10.2005*	*22,500*	*0-5-0*	*7,20,000*	*Rupaheri*
15.	*R8*	*2688*	*27.09.2005*	*40,000*	*1-14-0*	*1,88,235*	*Khor*
16.	*R9*	*2325*	*2.9.2005*	*60,000*	*0-18-0*	*5,33,333*	*Khor*
17.	*R10*	*3215*	*10.11.2005*	*3,00,000*	*8-0-0*	*3,00,000*	*Rewasan*
18.	*R11*	*3078*	*11.03.2005*	*4,00,000*	*12-6-0*	*2,60,162*	*Rewasan*

Sr. No.	*Exhibit No.*	*Vasika No.*	*Dated*	*Sale Consideration (In Rs.)*	*Land Sold (K M S)*	*Rate per acre*	*Village*
19.	*R12*	*1721*	*13.7.2005*	*15,62,000*	*47-3-0*	*2,65,026*	*Indri*
20.	*R13*	*2970*	*20.10.2005*	*37,500*	*1-10-0*	*2,00,000*	*Kherli Kankar*
21.	*R14*	*567*	*16.5.2007*	*1,25,000*	*1-19-0*	*5,12,820*	*Bahadri*

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 The RC while refusing to take into consideration the sale deed (Ex.R1 to Ex.R14) held that the sale price reflected in these sale transactions is lower than the amount offered by the LAC which is prohibited under Section 25 of the 1894 Act. While examining the sale deeds produced by the landowners, the RC found that the sale deeds (Ex.P5 and Ex.P6) are more than four years prior to 29.09.2005 the date of notification under Section 4 of the 1894 Act, whereas, the sale deed (Ex.P2) pertains to the plot of land in a developed industrial area located in village Rojka Meo. The RC relied upon the sale deed No. 713 dated 23.06.2003 (Ex.P8) with respect to a plot measuring 10 marlas located in village Rewasan to assess the market value of the acquired land. The RC also noticed that this is with respect to sale deed of a small parcel of land measuring 303 square yards and village Rewasan is located on the National Highway, whereas village Rupaheri is located in the interiors from the National Highway. Thus, the parcel of land sold through sale deed (Ex.P8) is not comparable, but the RC proceeded to rely upon the same while applying 50% cut in order to rationalize the price.

Thereafter, the RC added 12% per year cumulative escalation for the time gap between the sale deed dated 23.06.2003 and 29.09.2005 and arrived at a figure of ₹23,80,943/-. At the first stage, the RC applied a deduction of 50%, then applied 12% cumulative escalation per year for a period of 2 years 3 months and 6 days. Thereafter, the RC applied the development cut of 10% and arrived at a market value of the acquired land at ₹21,44,849/- per acre. The RC, also, awarded compensation for severance @ 50% if the unacquired remnant land left with the owner is less than an acre.

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

4.3 The learned senior counsel representing the HSIIDC has contends that the RC has erred in relying upon the sale deed (Ex.P8) despite observations that the sale deed does not pertain to a comparable parcel of land. He further contends that the RC has, also, erred in awarding 50% compensation for severance without any evidence in this regard.

4.4 On the other hand, the learned senior counsel representing the landowners contends that the RC has erred in applying 50% deduction at the initial stage and then 10% cut at the subsequent stage, particularly when both the villages i.e. Rewasan and Rupaheri are located adjacent to each other.

4.5 Firstly, the Bench proceeds to analyze the reasons recorded by the RC. The first reason, while ignoring the sale deeds (Ex.R1 to Ex.R14), is a result of misreading Section 25 of the 1894 Act, which only debars the Court from awarding an amount lower than the amount offered by the LAC.

However, there is no prohibition in taking into account the sale deeds produced by the parties which reflect a price lower than the amount offered by the LAC in evidence . This matter 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***. Hence, the first reason assigned by the RC is erroneous.

4.6 As regards the reliance placed by the RC on the sale deed No. 713 dated 23.06.2003 (Ex.P8) with respect to the land measuring 10 marlas located in village Rewasan, it may be noted that the RC, itself, has found that village Rewasan is located on the national highway, whereas the land located in village Rupaheri is in the interiors from the National Highway. In other words, it is located away from the National Highway. The RC, also, noticed that it is a small parcel of land. In fact, on a careful perusal of sale deed (Ex.P8) it is evident that it relates to a *gair mumkin gait*, which is not with respect to an agricultural land. The land sold is either a part of the residential area of the village or is located nearby. In these circumstances, the RC has erred in relying upon the sale instance which is not at all comparable. For assessing the market value on the basis of comparable sale deeds, the Court is required to look for the comparable sale deeds of contemporaneous period. Once the Court itself had found that the said sale deed is of 303 square yards residential/commercial plot, which is not an agricultural land, the Court erred in relying upon the same.

4.7 On a careful perusal of the tabulated compilation, it is evident that the parties have failed to produce any evidence of comparable sale deed to enable the Court to arrive at a definite finding. It is not necessary that in each and every case, the Court must re-assess the market value even in the absence of evidence. 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.

<u>Issue No. (ii)</u>

4.8 With regard to the compensation for severance, no evidence has been led by the parties except producing the layout plan which shows that a few parcels of the land stand bifurcated due to the acquisition of a narrow strip of land for the purpose of constructing an express highway. The RC has relied upon the judgment 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***. This matter has been discussed, in detail, in the cases arising from village Dingerheri, the relevant portion 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* ***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."

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

5. <u>Decision</u>

5.1. Consequently, the result is inevitable. The landowners are held entitled to severance charges @ 20% of the compensation on account of severance of the land in accordance with the discussion in the cases relating to village Dingerheri. The market value offered by the LAC is maintained. The appeals filed by the HSIIDC are allowed, whereas, the solitary appeal filed by the landowner stands dismissed.

5.2 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.218 of 2021	Haryana State Industrial and Infrastructure Development Corporation Limited v. Bashir and others
2.	RFA No.219 of 2021	Haryana State Industrial and Infrastructure Development Corporation Limited v. Mohd. Altaf (deceased) through his LRs. And others
3.	RFA No.220 of 2021	Haryana State Industrial and Infrastructure Development Corporation Limited v. Mustkim and others
4.	RFA No.221 of 2021	Haryana State Industrial and Infrastructure Development Corporation Limited v. Chhote Khan and others
5.	RFA No.222 of 2021	Haryana State Industrial and Infrastructure Development Corporation Limited v. Sharif (deceased) through his LRs. and others
6.	RFA No.223 of 2021	Haryana State Industrial and Infrastructure Development Corporation Limited v. Rahis Mohd. (deceased) through his LRs and others
7.	RFA No.224 of 2021	Haryana State Industrial and Infrastructure Development Corporation Limited v. Noor Mohd. And others
8.	RFA No.225 of 2021	Haryana State Industrial and Infrastructure Development Corporation Limited v. Mubin and others
9.	RFA No.226 of 2021	Haryana State Industrial and Infrastructure Development Corporation Limited v. Israil (deceased) through his LRs. and others

Sr. No.	Case No.	Party's Name
10.	RFA No.227 of 2021	Haryana State Industrial and Infrastructure Development Corporation Limited v. Rozdar (deceased) through his LRs. and others
11.	RFA No.228 of 2021	Haryana State Industrial and Infrastructure Development Corporation Limited v. Fakruddin and others
12.	RFA No.229 of 2021	Haryana State Industrial and Infrastructure Development Corporation Limited v. Noor Mohd. And others
13.	RFA No.1393 of 2021	Mohd. Altaf (deceased) through his LRs. and others v. State of Haryana & others

(Anil Kshetarpal)
Judge

July 07, 2022
"DK"