

In the High Court of Punjab and Haryana, at Chandigarh

Regular First Appeal No. 712 of 2021 (O&M)

Date of Decision: 10.05.2022

State of Haryana and Another

... Appellant(s)

Versus

Bina

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Shivendra Swaroop, Assistant Advocate General,
Haryana, for the appellant(s).

Mr. Brijender Kaushik, Advocate
for the landowners (In RFA No. 712, 714, 723, 1283, 2242,
2245, 2246, 2247, 2249, 2251, 2284 of 2021).

Mr. Pankaj Bali, Advocate
for Mr. Deepak Sharma, Advocate
for the landowners (In RFA No. 715, 717, 721, 722, 726, 734,
775 and 776 of 2021).

Mr. Pradeep Chhoker, Advocate
for the respondent No.1 and 2 (In RFA No. 731 of 2021).

Anil Kshetarpal, J.

1. This batch of appeals, details whereof are on the foot of the judgment, relate to the transitional period between the Land Acquisition Act, 1894 (hereinafter referred to as “the 1894 Act”) and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “the RFCTLARR Act, 2013”). Section 24 of the RFCTLARR Act, 2013 provides that while assessing the compensation for the acquired land during the transitional period, all the provisions of the RFCTLARR Act, 2013 relating to the

determination of compensation shall apply. Section 24 of the RFCTLARR Act, 2013 is extracted as under:-

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—(1)

Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act”.

2. It is evident that the authority (the Reference Court) despite noticing that the provisions of the RFCTLARR Act, 2013 shall govern the determination of the compensation, chose to look the other way. The Court proceeded to assess the market value of the acquired land in accordance with Section 23 of the 1894 Act. Prima facie, the following errors have been noted:-

- i) The Reference Court (hereinafter referred to as “the RC”) has overlooked Section 26(1) of the RFCTLARR Act, 2013. It provides for the assessment and determination of the market value of the acquired land by the Collector on the basis of the approach which determines the highest amount, out of the three approaches enlisted therein.
- ii) The RC has also erred in relying upon the sale deed (Ex.P5) dated 19.04.2012. The notification under Section 4 of the 1894 Act was issued on 03.05.2012. As per the Explanation-I of Section 26(1) of the RFCTLARR Act, 2013, the average sale price is to be determined taking into account the sale deeds or the registered agreement to sell, for the similar type of area

in the nearly village or nearly vicinity during the period immediately preceding three years of the year in which such acquisition of the land is proposed to be made. On a perusal of the explanation, it is evident that the expression used by the statute is “immediately preceding three years of the year in which such acquisition of the land is proposed to be made”. In other words, the sale deeds or the registered agreement to sell of the year in which such acquisition of the land is proposed to be made is required to be excluded from consideration. In the present case, the RC has proceeded to assess the market value of the sale deed (Ex.P5) which is hardly 14 days before the date of issuance of the notification under Section 4 of the 1894 Act. This matter has been discussed, in detail, in *State of Haryana and Another v. Rajbir and Another (Regular First Appeal No. 309 of 2021, decided on 19.04.2022)*.

- iii) It is evident that the sale deeds, produced by the State of Haryana, have not been considered and discussed at all. Thus, the judgment passed by the RC is a result of non-reading of material evidence. The State of Haryana has produced two sale deeds (Ex.R1 and Ex.R2), respectively, with respect to the various parcels of the land, located in village Barara. The acquisition, in the present case, is also with respect to village Barara.

Hence, the RC should have taken into consideration the sale deeds produced by the State of Haryana.

- iv) The RC has also brushed-aside the arguments of the learned counsel with regard to the multiplication of the market value assessed under Section 26(1) of the RFCTLARR Act, 2013, by a factor to be specified in the First Schedule. It is evident that in para 22, the Court, after noticing the arguments of the learned counsel representing the landowners, in this regard, proceeded to reject the argument on the ground that the landowners have neither pleaded nor led any evidence with regard to the distance of the acquired land from the Urban Area, Ambala Cantt. While assessing the market value, the Authority is required to adopt a pragmatic, holistic and humane approach. The landowners are placed in the shoes of a loser whose immovable property has been compulsorily taken away by the State, in exercise of its rights of expropriation (eminent domain). In these circumstances, the Courts are expected to rise above the adversarial system of litigation. If there was deficiency in the pleadings or evidence, the Court could have taken judicial notice of the same after taking relevant material or could have called upon the State to disclose the distance between the acquired land and the nearest urban area. Furthermore, the Court has also failed to assess the

compensation while taking into consideration the value of the assets attached to the land, as provided under Section 27 of the RFCTLARR Act, 2013.

4. Keeping in view the aforesaid facts, this Court is left with no choice but to remit the matter back to the RC to decide it afresh, after taking into account the provisions of the RFCTLARR Act, 2013. The method of assessment of the market value of the acquired land under the RFCTLARR Act, 2013 is significantly different from the method of assessment of the market value of the acquired land under the 1894 Act. It is expected that the RC would proceed to decide the matter while correctly interpreting and applying the provisions of the RFCTLARR Act, 2013. The parties, through their learned counsel, are directed to appear before the RC on 30.05.2022.
5. With the observations made above, all the appeals are disposed of.
6. The miscellaneous application(s) pending, if any, in all the appeals, shall stand disposed of.

(Anil Kshetarpal)
Judge

May 10, 2022
“DK”

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

Sr. No.	Case No.	Party’s Name
1.	RFA No.713 of 2021	State of Haryana and another Vs. Reshma Devi and others
2.	RFA No.714 of 2021	State of Haryana and another Vs. Sham Singh and others
3.	RFA No.715 of 2021	State of Haryana and another Vs. Smt. Sunita Devi
4.	RFA No.716 of 2021	State of Haryana and another Vs. Puran Chand

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5.	RFA No.717 of 2021	State of Haryana and another Vs. Smt. Manjit Devi
6.	RFA No.718 of 2021	State of Haryana and another Vs. Baldev Raj and another
7.	RFA No.719 of 2021	State of Haryana and another Vs. Smt.Parvesh Sharma
8.	RFA No.720 of 2021	State of Haryana and another Vs. Ram Gopal
9.	RFA No.721 of 2021	State of Haryana and another Vs. Vinod Kumar
10.	RFA No.722 of 2021	State of Haryana and another Vs. Dharam Singh Saini
11.	RFA No.723 of 2021	State of Haryana and another Vs. Krishan Lal
12.	RFA No.724 of 2021	State of Haryana and another Vs. Aimna Kumar
13.	RFA No.725 of 2021	State of Haryana and another Vs. Daljit Kaur
14.	RFA No.726 of 2021	State of Haryana and another Vs. Smt. Urmila Devi
15.	RFA No.727 of 2021	State of Haryana and another Vs. Ashish Bansal
16.	RFA No.728 of 2021	State of Haryana and another Vs.Vinit Bansal
17.	RFA No.729 of 2021	State of Haryana and another Vs. Banarsi Dass
18.	RFA No.730 of 2021	State of Haryana and another Vs.Tarun Bansal
19.	RFA No.731 of 2021	State of Haryana and another Vs. Smt. Sarita Devi and another
20.	RFA No.732 of 2021	State of Haryana and another Vs. Shiv Dayal
21.	RFA No.733 of 2021	State of Haryana and another Vs. Tarlochan Singh and another
22.	RFA No.734 of 2021	State of Haryana and another Vs. Rajpal
23.	RFA No.740 of 2021	State of Haryana and another Vs. Suraj Singh
24.	RFA No.773 of 2021	State of Haryana and another Vs. Jaharvir Goga Samiti
25.	RFA No.774 of 2021	State of Haryana and another Vs. Reena Devi and another
26.	RFA No.775 of 2021	State of Haryana and another Vs. Satwinder Kaur
27.	RFA No.776 of 2021	State of Haryana and another Vs. Mahinder Pal and another
28.	RFA No.1079 of 2021	Dharam Singh Saini Vs. State of Haryana and another
29.	RFA No.1080 of 2021	Vinod Kumar Vs. State of Haryana and another
30.	RFA No. 1081 of 2021	Satwinder Kaur Vs. State of Haryana and

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31.	RFA No.1082 of 2021	Rajpal Vs. State of Haryana and another
32.	RFA No.1383 of 2021	Smt. Sunita Devi Vs. State of Haryana and another
33.	RFA No.1539 of 2021	Mahinder Pal and another Vs. State of Haryana and another
34.	RFA No.1541 of 2021	Sham Singh and others Vs. State of Haryana and another
35.	RFA No.2242 of 2021	Ram Gopal Vs. State of Haryana and another
36.	RFA No.2243 of 2021	Krishan Lal Vs. State of Haryana and another
37.	RFA No.2244 of 2021	Reshma Devi and others Vs. State of Haryana and another
38.	RFA No.2245 of 2021	Shiv Dayal Vs. State of Haryana and another
39.	RFA No. 2246 of 2021	Ashish Bansal Vs. State of Haryana and another
40.	RFA No.2247 of 2021	Banarsi Dass Vs. State of Haryana and another
41.	RFA No.2248 of 2021	Puran Chand Vs. State of Haryana and another
42.	RFA No.2249 of 2021	Tarlochan Singh and another Vs. State of Haryana and another
43.	RFA No. 2250 of 2021	Jaharvir Goga Samiti Vs. State of Haryana and another
44.	RFA No.2251 of 2021	Aimna Kumar Vs. State of Haryana and another
45.	RFA No.2252 of 2021	Daljit Kaur Vs. State of Haryana and another
46.	RFA No.2253 of 2021	Tarun Bansal Vs. State of Haryana and another
47.	RFA No.2254 of 2021	Suraj Singh Vs. State of Haryana and another
48.	RFA No.2255 of 2021	Vinit Bansal Vs. State of Haryana and another
49.	RFA No.2256 of 2021	Bina Vs. State of Haryana and another