307 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1.**RFA-2413-2021 (O&M)**

Mahender and others

....Appellants

Versus

DRO-cum-Land Acquisition Collector, Gurugram and others

..Respondents

2.**RFA-2664-2021 (O&M)**

Gopal Agriculture Farms (P) Ltd

....Appellant

Versus

State of Haryana and others

..Respondents

Date of decision: 08.12.2022

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gaurav Aggarwal, Advocate
Mr. Sanjay Verma, Advocate
for the landowners

Mr. Shivendra Swaroop, AAG, Haryana

Mr. Pritam Singh Saini, Advocate for HSIIDC

ANIL KSHETARPAL, J (Oral)

1. By this order, two Regular First Appeals i.e RFA-2413-2021 and 2664-2021 shall stand disposed of.

2. Through these appeals filed under Section 54 of the Land Acquisition Act, 1894, (hereinafter referred to as 'the 1894 Act') the

landowners who stand deprived of their land due to the compulsory acquisition, assail the correctness of award passed by the Reference Court on 08.01.2020. The learned counsel representing the parties are ad idem that these appeals can be conveniently disposed of by a common judgment.

3. With highest regard to the direction of the Hon'ble Supreme Court to avoid reproduction and individually record the adjudication upon questions pertaining to land acquired in different villages, it is observed that in a significant number of appeals listed before this Bench, the land has been acquired through a common notification involving identical issues, which have already been sufficiently and elaborately dealt with, in the previous judgments. Hence, certain extracts from the previous judgments, have been reproduced in this judgment, for the sake of convenience, clarity and judicious use of time. In all these cases, the following issues arise for consideration:-

> *1. Whether the parties have produced comparable sale exemplars of the contemporaneous period to enable the Court to assess the market value of the acquired land as prevalent on the date of notification under Section 4 of the Land Acquisition Act, 1894?*
>
> *2. Whether the landowners of the acquired land can be deprived of just, fair and reasonable compensation, on the ground that they have failed to claim the amount as per the policy decision of the State?*

> *3. Whether the Court is required to assess the severance damages suffered by the landowners with regard to the bifurcation of their unacquired land into different parcels due to the compulsory acquisition of a narrow strip of the land for constructing an elevated express highway?*

4. The discussion on issue number 2 and 3 involves common questions which have been, comprehensively, answered in the previous judgments arising from the same notification under Section 4 of the 1894 Act.

<u>5. FACTS</u>

5.1. Some relevant facts are required to be noticed. The State of Haryana in order to use the land for developing and constructing Kundali Manesar Express Highway (hereinafter referred to as "KMP") Phase VII connecting NH-1, NH-10, NH-8 and NH-2 issued a notification under Section 4 of the 1894 Act on 11.01.2005 proposing to acquire land measuring 520 acres, 2 kanals and 13.5 marlas spread over a total of 18 villages. The declaration under Section 6 of the 1894 Act was published on 31.05.2005 whereas the award No.27 was announced on 10.05.2006 with respect the acquired land located in Village Fazalwas, Tehsil and District Gurugram. The landowners were held entitled to a uniform market value of the acquired land at the rate of ₹12,50,000/- per acre. In the first round, on 08.10.2012 the Reference Court, assessed the market value of the acquired land at the rate of ₹43,17,841/- per acre. While deciding appeals, the High Court vide a judgment dated 05.02.2016 revised the market value of the acquired land to ₹62,11,700/-

per acre. However, the Hon'ble Supreme Court vide judgment dated 25.1.2018 in **Surender Singh vs. State of Haryana and others (2018) 3 CC 278** remanded all the cases back to the Reference Court wherein the parties were permitted to lead further evidence. In the second round, the Reference Court has dismissed the various reference petitions while upholding the assessment made by the Land Acquisition Collector (hereinafter referred to as "LAC") at ₹12,50,000/- per acre.

5.2 At this stage, it would be important to note that in the village Fazalwas itself, 11 kanals and 13 marlas of land, in other words, 1.5 acres of land, approximately, has been acquired.

5.3. The reference Court, on appreciating the pleadings, framed the following issues:-

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

<u>6. Evidence produced by the respective parties:-</u>

6.1 The landowners, in order to prove their case, in oral evidence, examined Dhanna Singh, Junior Darftsman, from the office of DTP Gurugram as PW1, Banwari Lal as PW2 and Sanjay Saini, Halqa Patwari, Village Fazalwas, Tehsil Manesar, District Gurugram, as PW3.

6.2 In documentary evidence, the landowners have also produced the following documents, apart from the sale deeds, a tabulated compilation whereof is incorporated in para 7.3 of the judgment:-

Ex.PW1/A	Site Plan
Ex.PW2/B	Site plan
Ex.P8	Copy of award dated 27.2.2012 passed by the Court of Shri Vikram Aggarwal, the then learned ADJ, Gurugram, in case titled as ‘Hari Mohan vs. State of Haryana’
Ex.P9	Site Plan
Ex.P10	Site Plan

6.3 The HSIIDC, in oral evidence, has examined Sh.B.S.Rana, Senior Manager, KMP Cell, Uyog Vihar, Gurugram, as RW1.

6.4 In documentary evidence, the HSIIDC relied upon the following documents, apart from the sale deeds, a tabulated compilation whereof is incorporated in para 7.3 of the judgment:-

Ex.R1	Copy of LAC Award No.27 dated 10.05.2006 of Village Fazalwas
Ex.R2	Copy of letter sent by Deputy Commissioner to Sub Divisional Officer (Civil) Gurugram
Ex.R3	Copy of letter sent by SDO (C) Gurugram to Financial Commissioner and Principal Secretary to Government of Haryana Industries Department
Ex.R	Copy of notification of Policy for Rehabilitation and resettlement of landowners
Ex.R7	Copy of Award dated 20.09.2010 passed by the Court of Shri S.K.Kaushik, ADJ, Palwal, in case titled as ‘**Bhim Singh ors Vs. State of Haryana and ors’**
Ex.R8	Map of KMP Expressway
Ex.R12	Site plan

7. Discussion and Analysis by this Court:-

7.1 Heard learned counsel representing the parties at length and with their able assistance perused the judgment passed by the reference Court along with the record of the reference Court which was requisitioned.

Issue No.1

7.2 At this stage, it wold be appropriate to compile the details of the various sale deeds produced by both the parties in evidence in a tabulated form, which is as under:-

Sale deeds produced by the landowners

Sr. No.	Exhibits	Sale deed No.	Date	Total Area	Sale consideration Rs.	Price per acre Rs.	Village
1.	Ex-P1	951	13.04.2006	138K-6M	9,37,25,000/-	54,21,547/-	Kukrola
2.	Ex-P2	19193	10.12.2007	15K-0M	1,45,00,000/-	77,33,333/-	Fazilwas
3.	Ex-P3	5316	05.06.2006	36K-6M	3,31,23,750/-	73,00,000/-	Kukrola
4.	Ex-P4	2487	08.07.2005	41K-8M	2,66,66,000/-	51,52,850/-	Kukrola
5.	Ex.P5	18629	04.12.2006	14K-5M	1,78,12,500/-	1,00,00,000/-	Fazilwas
6.	Ex.P6	5921	15.06.2005	138K-06M	9,37,25,000/-	54,21,547/-	Kukrola
7.	Ex-P7	18897	07.12.2006	12K-17M	1,66,87,500/-	1,03,89,105/-	Fazilwas
8.	Ex.P11	22394	11.02.2005	27 Sq Yd.	50,000/-	89,62,963/-	Fazilwas
9.	Ex-P12	14956	19.10.2004	0K-3M	1,66,000/-	88,53,333/-	Fazilwas
10.	Ex-P13	3031	12.05.2004	38 Sq. Yd.	1,00,000/-	1,27,36,842/-	Kukrola
11.	Ex-P14	17008	15.11.2006	3K-17M	46,46,670/-	96,55,418/-	Fazilwas
12.	Ex-P15/ Ex-P17	28023	27.03.2006	0K-4M	7,00,000/-	2,80,00,000/-	Kukrola
13.	Ex-P16	16848	21.11.2005	45 Sq Yd	1,82,500/-	1,96,28,889/-	Fazilwas
14.	Ex-P18	16839	21.11.2005	45 Sq Yd	1,82,500/-	1,96,28,889/-	Fazilwas
15.	Ex-P19	14776	17.10.2006	1K-19M	23,23,335/-	95,31,631/-	Fazilwas
16.	Ex-P20	24280	07.03.2005	32K-1M	1,44,22,500/-	36 lakh	Fazilwas

Sale deeds produced by the HSIIDC

Sr.No	Exhibits	Sale deed	dated	Area	Sale	Price per Acre	Village

.		No.			consideration Rs.	Rs.	
1.	Ex-R5	18798	31.03.2004	14K-05M	21,37,500/-	**12,00,000/-**	Fazilwas
1.	Ex-R6	6812	28.06.2004	35K-4M	44,00,000/-	**10,00,000/-**	Fazilwas
2.	Ex-R9	7154	01.07.2004	19K-6M	24,12,500/-	**10,00,000/-**	Fazilwas
3.	Ex-R10	18797	31.03.2004	11K-19M	17,92,500/-	12,00,000/-	Fazilwas
4.	Ex-R11	2709	05.05.2005	2K-0M	2,75,000/-	11,00,000/-	Fazilwas

7.3 As the sale deeds Ex.P7, P11, P14, P16, P18, P19, P20 relate to the period post the date of notification under Section 4 of the 1894 Act whereas the sale instance Ex.P12 is with respect to a tiny size of plot measuring 3 marlas only. The RC refused to rely upon these sale instances. The RC has observed that the sale instances produced by the HSIIDC Ex.R5, R6, R9, R10, R11 prove that the market value of the comparable parcels of land during the contemporaneous period was not more than the amount awarded by the RC.

7.4 It is evident that from the perusal of the sale deeds produced by the HSIIDC that the price of the land during the contemporaneous period was not more than the amount offered by the LAC. In this case, notification under Section 4 was issued on 11.01.2005 whereas sale deed Ex.R5 and R10 indicate that the price was somewhere around Rs.12,00,000/- per acre. The RC has committed an error in excluding the aforesaid sale deeds produced by the HSIIDC on the ground that the prices reflected in the sale deeds are lower than the amount offered by the LAC. Section 25 of the 1894 Act does not debar the court from taking into account the sale deeds produced by the parties even if they reflect a price lower than the amount offered by the LAC. The bar is only upon awarding an amount which is lesser than the amount awarded by the LAC. This issue is no longer res integra in view of judgment in **Lal Chand vs. Union of India (2009) 15 SCC 769.**

Issue No.2

7.5 Learned counsel representing the landowners failed to draw the attention of the Court to any error in the aforesaid findings, however, they rely upon the various policies issued by the State of Haryana to contend that even in the absence of any definite evidence to prove the market value of the acquired land, the RC should have relied upon the policy and awarded increase as per the order in RFA-421-2021 titled as '**HSIIDC vs. Om Dutt and others**' decided on 07.10.2021.

7.6 The issue with regard to the benefit of policy has been discussed in detail in RFA-7819-2013 titled as '**Dhara Chand @ Dharambir and others vs. State of Haryana and others'** decided on 21.03.2022. Though in RFA-889-2021 titled as '**Birender and others vs. State of Haryana and others'** decided on 29.11.2021, the court had calculated the increase as per the policy upto the date of award, however, subsequently, in RFA-7819-2013, the attention of the Court was drawn to Section 23 of the 1894 Act, which mandates the court to assess the market value prevalent on the date of preliminary notification under Section 4 of the 1894 Act.

Issue No.3

7.7 The relevant discussion on issue no. (3) is in the **RFA-889-2021 titled as 'Birender and others vs. State of Haryana and others'**

decided on 29.11.2021. The relevant paragraphs are reproduced as under:-

> *"11. ISSUE NO.3*
>
> *As regards the claim of the landowners for damages on account of severance of their remaining/unacquired land into two different parcels due to compulsory acquisition of land in a narrow strip, the matter has already been discussed at length in Om Dutt's case (supra). In this case also, this Court was called upon to examine the issue of severance charges arising from the acquisition of land under the same notification issued for the same purpose. The relevant discussion is extracted as under:-*
>
> > *"8.14 The next argument of the learned counsel representing the owners is with regard to damages for severance/splitting of the unacquired land in two parcels. It may be noted here that the land owners have not produced any evidence to prove the extent of land left on one side of the road as compared to the other side of the road. The owners may have suffered a loss due to splitting of their remaining unacquired land, however, in the absence of proper evidence to prove the extent of unaquired land which stands split up on both the sides of road and to what extent they have suffered a loss, it becomes very difficult for the court to assess the damages on account of severance. Unequivocally, Section 23 of the 1894 Act recognizes and permits the court to grant damages sustained by the person interested by reason of severance of such land from his other land. In the aforesaid situation, ordinarily this Court might have remitted the matter back to the Reference Court, however, keeping in view the fact that matter has already been once remitted by the Hon'ble Supreme Court, it is considered appropriate to use thumb rule and assess the damages on account of severance of the land on the basis of precedents. Recently, while deciding appeals arising from acquisition of land for KMP Expressway from villages Daboda Khurd and others (RFA-5620-2013 titled as HSIIDC vs. Rattan Singh and others decided on 05.10.2021) this Court after noticing that the Reference Court awarded 20% of the acquired or un-acquired land, whichever is less, as damages for severance of the land, upheld the aforesaid view. In the cases arising from acquisition of land in one of*

> *the villages i.e Daboda Khurd, HSIIDC did not file any appeal.*
>
> *8.15 Keeping in view the aforesaid facts, it is declared that if on account of acquisition of a land the remaining land holding of the landowner has been split into two or more parts, then the landowners shall be entitled to 20% of the smaller parcel of unacquired land. However, the damages for severance shall be restricted only to those owners who are left with less than 5 acres land in the smaller parcel. This assumption has been made, particularly, in view of the fact that due to splitting of the land, the landowner will have to not only cultivate his land in two independent parcels but also make a provision for irrigation of the land located in each parcel of land. Even the agricultural implements have to be carried to the other side of the road by going through underpasses, which may be at a distance. If an owner is left with a very small parcel of land, he may be forced to indulge in distress sale thereof".*

8. Decision:-

8.1 Keeping in view the aforesaid facts, the landowners are not entitled to any increase even as per the policy, because the notification under Section 4 of the 1894 Act is prior to the policy dated 28.04.2005 but effective from 03.03.2020. Therefore, the appeals are dismissed.

8.2 All the pending miscellaneous applications, if any, are also disposed of.

08.12.2022 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No