IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA-3655-2019 (O&M)
Reserved on: 26.08.2022
Date of decision: 07.09.2022

DAYA NAND AND ANOTHER **..Appellants**

Versus

STATE OF HARYANA AND ANOTHER **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Kumar Jain, Advocate
Mr. S.K. Bhardwaj, Advocate
Mr. Ashok K. Sharma (Bhana), Advocate
Mr. V.D. Sharma, Advocate
Mr. Govind Mor, Advocate
Mr. Jasbir Mor, Advocate
Mr. Sansar Kundu, Advocate
Mr. S.K. Verma, Advocate
Mr. Manoj Kakkar, Advocate
Mr. Vineet Dhanda, Advocate
Mr. Arvind Seth, Advocate
for the landowners.

Mr. Sandeep Vermani, Advocate
for respondent-Railway.

Mr. Shivendra Swaroop, AAG, Haryana.

ANIL KSHETARPAL, J.

1. **Background and introduction:**

1.1 While praying for modification of the amount assessed, for involuntary acquisition of land, vide Reference Court's award dated 20.03.2013, the landowners have filed the various appeals. The learned counsel representing the parties are *ad idem* that as the notification under Section 4 and 6 and the awards passed by the Land Acquisition Collector (hereinafter referred to as 'the LAC') as well as the Reference Court

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(hereinafter referred to as 'the RC'), are common, therefore, these appeals can conveniently be disposed of by a common judgment.

1.2 The relevant particulars of the case, in brief are as under:-

Sr. No.	**Title**	**Details**
1.	Date of notification under Section 4	08.10.2008
2.	Declaration under Section 6	12.11.2008
3.	Date of LAC's award	04.06.2009
4.	Amount assessed by the LAC	Vide Award No.3, LAC offered to pay to the landowners Rs.8,00,000/- per acre for *Nehri and Chahi* land, whereas, Rs.12,00,000/- per acre was assessed for acquired land upto the depth of 2 acres on Jind-Gohana-Sonepat New Railway line, Rs.19,36,000/- per acre was assessed for *gair mumkin abadi deh* (Residential area). A common notification was issued under Section 4 of the 1894 Act for villages Brah Kalan, Brah Khurd, Kharak Ramji, Lalit Khera and Chabri.
5.	Area	18.23 Acre
6.	Village	Village Brah Khurd
7.	District	Jind, Haryana
8.	Purpose	Jind-Gohana-Sonepat New Railway Line
9.	Date of RC's award	20.03.2013
10.	Amount awarded by RC	The market value at the rate of Rs.10,00,000/- per acre has been assessed for *Nehri* and *Chahi* land.

1.3 Dissatisfied with the amount offered by the LAC, on the applications of the landowners, the cases were referred to the RC. They claim that the market value of the acquired land was not less than Rs.50,00,000/- per acre. They claim that the acquired land was very fertile and could sow three crops a year at the relevant time. It was also claimed

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that the remaining unacquired land has been divided in several parts and no compensation for standing crops, trees and *kotha* etc. has been given. The State took a stand that the value assessed by the LAC is fair, proper and reasonable and the market value prevailing in the area, at the relevant time, has been offered to the landowners. Further, the State claims that all benefits admissible under law have been granted.

1.4 The RC while adjudicating culled out the following issues:-

> *"(1) What was the market value of acquired land? OPP*
> *(2) Whether the petitioner is entitled to enhance amount of compensation, if so to what amount? OPP*
> *(3) Whether no statutory benefits under the Land Acquisition Act has been given to the petitioners, if so to what benefits? OPP*
> *(4) Whether no compensation for standing crops, kotha, trees, tubewell structure and bifurcation of the land etc. has been given if so to what amount? OPP*
> *(5) Whether the petitions are time barred? OPR*
> *(6) Relief."*

2. **<u>Evidence produced by the parties:</u>**

2.1 In oral evidence, the landowners examined the following witnesses:-

PW-1	*Sanjay*
PW-2	*Om Parkash*
PW-3	*Rajinder*
PW-4	*Pala Ram*
PW-5	*Ram Mehar*
PW-6	*Ram Sarup*
PW-7	*Ram Mehar*
PW-8	*Maruti Devi*
PW-9	*Mahinder Singh*
PW-10	*Ram Chander*
PW-11	*Gaminder*
PW-12	*Satpal*
PW-13	*Sukhbir*

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PW-14	*Ram Phal*
PW-15	*Birbal*
PW-16	*Satinder*
PW-17	*Balwan*
PW-18	*Lehna*
PW-19	*Virender Singh*
PW-20	*Virender Singh*
PW-21	*Dariya Singh*
PW-22	*Kapur Singh*
PW-23	*Ram Mehar*

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

Ex.P2 & P-3	*Copies of Jamabandi for the year 2007-2008*
Ex.PW13/B	*Aks-Shijra (Revenue layout plan)*
Ex.PW13/C	*Copy of Jamabandi for the year 2007-2008*
Ex.PW13/D	*Copy of Jamabandi for the year 2007-2008*
Ex.PW13/E	*Copy of Jamabandi for the year 2007-2008*
Ex.PW14/B	*Copy of Jamabandi for the year 2007-2008*

2.3 In oral evidence, the State of Haryana examined Sh. K.S. Saini, Sub-Divisional Engineer, Provincial Sub-Division No.1 as RW-1.

2.4 In documentary evidence, the State of Haryana produced sale deeds Ex.R-1 to Ex.R-3.

3. The RC, after relying upon the various policies of the State, held that the amount offered by the LAC is inadequate qua *Nehri* and *Chahi* land. Therefore, the market value of the *Nehri* and *Chahi* land was assessed at the rate of Rs.10,00,000/- per acre.

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4. **Arguments address by the respective counsels:**

4.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the record, which was requisitioned.

4.2 The learned counsel representing the landowners while relying upon the judgment passed in ***Regular First Appeal No.4918-2013, titled as "Ishwar Singh and others Vs. State of Haryana and others", decided on 20.10.2015,*** submits that the Government vide a policy decision dated 28.05.2007, has held that the minimum compensation for compulsory acquisition of the land shall be Rs.5,00,000/- per acre which was revised to Rs.8,00,000/- per acre vide policy decision dated 06.04.2007, which has been further revised to Rs.12,00,000/- per acre vide policy decision dated 09.11.2010. He submits that the landowners are entitled to enhancement of the amount as per the view taken in ***Ishwar Singh 's case (supra)***.

4.3 On the other hand, the learned counsel representing the State of Haryana and the Railway contest the aforesaid position.

5. **Discussion by this Court:**

5.1 At this stage, it will be appropriate to compile the tabulated information of the sale deeds relied upon by the respective parties:-

SALE DEED PRODUCED BY THE LANDOWNERS								
Sr. No.	**Exhibit Nos.**	**Sale Deed No.**	**Date**	**Total Area**	**Land calculated in Marlas**	**Price (in Rs.)**	**Price Per Acre**	**Village**
1	P-1	3520	27.11.2006	12 Acre 5K-4M	2024	8,47,55,000/-	67,00,000/-	Pindara
SALE DEED PRODUCED BY THE STATE								
1	R-1	806	28.05.2008	4K-16M	96	3,30,000/-	5,50,000/-	Brah Khurd
2	R-2	1214	24.06.2008	1 Acre	160	7,25,000/-	7,25,000/-	Brah Khurd
3	R-3	1360	03.07.2008	1 Acre 4K-9M	249	8,56,000/-	5,50,040/-	Brah Khurd

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5.2 Moreover, sale deed Ex.P-1 is with respect to village Pindori (Pandu-Pindara). Through the aforesaid sale deed, 101 kanals and 4 marlas of land has been purchased for Rs.8,47,55,000/-. This parcel of land is located on the State Highway No.19, Jind-Gohana Road and has been purchased by Amazon Enterprises for commercial purposes. Hence, there is no evidence to prove that the price of the aforesaid land is comparable with the price of the acquired land. Once we examine the sale deeds produced by the State, it is evident that all the three sale deeds are of the contemporaneous period, with respect to land located in village Brah Khurd itself. The acquired land is also of village Brah Khurd. From a perusal thereof, it is evident that the maximum price prevailing on 24.06.2008 i.e. 3 and a ½ month before notification under Section 4 of the 1894 Act is Rs.7,25,000/- per acre . In oral evidence, the landowners have made tall claims, however, in the absence of documentary evidence, it is not considered appropriate to rely upon the same.

5.3 On a careful reading of the judgment passed in ***Ishwar Singh 's case (supra)***, it is evident that the Court, after noticing that the Government itself has recognized increase in the price of the land between 22.03.2007 to 07.09.2010 which is from Rs.8,00,000/- to Rs.12,00,000/-, respectively, calculated the increase in the aforesaid case at the rate of Rs.8,988/- per month. Thereafter, the Court held that since the LAC's award was announced on 31.07.2009, therefore, the landowners are held entitled to increase for about 28 months. Thus, the amount of market value was assessed at the rate of Rs.10,52,000/- per acre.

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5.4 With highest respect, the attention of the Bench was not drawn to Section 23(1)(i) of the 1894 Act which requires the market value of the acquired land is to be assessed as prevalent on the date of notification under Section 4 of the 1894 Act. In the present case, the relevant date of notification is 08.10.2008 and not 04.06.2009, as held in the aforesaid case.

5.5 Section 23 of the 1894 Act is extracted as under:-

> *"23. Matters to be considered on determining compensation. - (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-*
>
> *first, the market-value of the land at the date of the publication of the [notification under section 4, sub-section (1)];*
>
> *secondly, the damage sustained by the person interested, by reason of the taking of any standing crops trees which may be on the land at the time of the Collector's taking possession thereof;*
>
> *thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of serving such land from his other land;*
>
> *fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;*
>
> *fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change, and*
>
> *sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.*
>
> *[(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per*

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> *annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.*
>
> *Explanation. - In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.]*
>
> *(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of [thirty per centum] on such market value, in consideration of the compulsory nature of the acquisition."*

5.6 Once the statute itself provides that the amount is required to be determined as prevalent on the date of notification under Section 4 of the 1894 Act and the policy issued by the Government does not specifically provide that the amount should be assessed as on the date of award, then, it would not be appropriate for the Court to assess the market value prevalent on the date of award.

5.7 Keeping in view the aforesaid facts, the increase, if any, is to be calculated from 22.03.2007 to 08.10.2008, which, roughly, covers a period of 1 year and 6 ½ months. In ***Ishwar Singh 's case (supra)***, the Court has calculated the increased amount at Rs.8,988/- per month. So, if we calculate increase for seven months, it comes to Rs.1,52,796/-. After adding Rs.8,00,000/- which has already been awarded by the LAC, the amount comes to Rs.9,52,796/- or in other words, Rs.9,52,800/-, whereas, the RC has already awarded an amount of Rs.10,00,000/-.

5.8 With greatest respect, this Court holds that the opinion formed in ***Ishwar Singh 's case (supra)*** is *per incuriam* particularly when the

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attention of the Bench was not drawn to Section 23 of the 1894 Act.

6. **Decision:**

6.1 Keeping in view the aforesaid discussion, finding no merit, the appeals filed by the landowners are dismissed.

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

7th September, 2022 **(ANIL KSHETARPAL)**
Ay **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

SR. NO.	CASE NO.	PARTY NAME
1.	RFA-3655 OF 2019	DAYA NAND AND ANR. VERSUS STATE OF HARYANA AND ANR.
2.	RFA -6149 OF 2013	SATISH AND ANR. VERSUS STATE OF HARYANA
3.	RFA -10568 OF 2014	RAM PHAL SINCE DECEASED THR. LRS. AND ANR. VERSUS STATE OF HARYANA & ANR.
4.	RFA -6150 OF 2013	RAM CHANDER VERSUS STATE OF HARYANA
5.	RFA -994 OF 2014	RAM KUMAR AND ORS. VERSUS STATE OF HARYANA & ANR.
6.	RFA -995 OF 2014	RAM MEHAR VERSUS STATE OF HARYANA & ANR.
7.	RFA -996 OF 2014	SATBIR AND ORS. VERSUS STATE OF HARYANA AND ANR.
8.	RFA -997 OF 2014	PALA AND ORS. VERSUS STATE OF HARYANA AND ANR.
9.	RFA -998 OF 2014	RAJBIR AND ORS. VERSUS STATE OF HARYANA AND ANR.
10.	RFA -999 OF 2014	MURTI DEVI VERSUS STATE OF HARYANA AND ANR.
11.	RFA -1000 OF 2014	ROSHAN LAL AND ANR. VERSUS STATE OF HARYANA AND ORS.
12.	RFA -1001 OF 2014	NAFE SINGH AND ORS. VERSUS STATE OF HARYANA AND ORS.
13.	RFA -1002 OF 2014	RAJINDER AND ORS. VERSUS STATE OF HARYANA AND ANR.
14.	RFA -1003 OF 2014	RAM MEHAR AND ANR. VERSUS STATE OF HARYANA AND ANR.
15.	RFA -1004 OF 2014	PALA AND ORS. VERSUS STATE OF HARYANA AND ANR.

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16.	RFA -1005 OF 2014	JAGBIR AND ORS. VERSUS STATE OF HARYANA AND ANR.
17.	RFA -3321 OF 2014	KRISHAN AND ORS. VERSUS STATE OF HARYANA AND ANR.
18.	RFA -3329 OF 2014	RAMPHAL AND ORS. VERSUS STATE OF HARYANA
19.	RFA -9388 OF 2014	ISHWAR SINGH AND ORS. VERSUS STATE OF HARYANA AND ANR.
20.	RFA -6586 OF 2014	LEHNA VERSUS STATE OF HARYANA AND ANR.
21.	RFA -3330 OF 2014	JAGAT SINGH AND ORS. VERSUS UNION OF INDIA AND ORS.
22.	RFA -2318 OF 2015	RAM MEHAR AND ANR. VERSUS STATE OF HARYANA AND ANR.
23.	RFA -61 OF 2015	VIJENDER SINGH AND ORS. VERSUS STATE OF HARYANA AND ANR.
24.	RFA -10567 OF 2014	RAM CHANDER VERSUS STATE OF HARYANA AND ANR.
25.	RFA -9389 OF 2014	RAM SARUP AND ORS. VERSUS STATE OF HARYANA AND ORS.
26.	RFA -2096 OF 2014	RAM KUMAR & ORS. VERSUS STATE OF HARYANA AND ANR.
27.	RFA -3465 OF 2017	SUMER SINGH & ORS. VERSUS STATE OF HARYANA
28.	RFA -1662 OF 2016	DARIYA SINGH VERSUS STATE OF HARYANA
29.	RFA -1661 OF 2016	SUMER SINGH & ORS. VERSUS STATE OF HARYANA
30.	RFA - 6457 OF 2015	RAMESHWAR AND ANR. VERSUS STATE OF HARYANA & ORS.
31.	RFA - 2373 OF 2015	RAMDIA AND ANR. VERSUS STATE OF HARYANA & ORS.
32.	RFA - 1252 OF 2014	BALWAN VERSUS STATE OF HARYANA & ANR.

(ANIL KSHETARPAL)
JUDGE

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