

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. RFA-5743-2013 (O&M)
Reserved on: 26.08.2022
Date of decision: 07.09.2022

MANTER

..Appellant

Versus

STATE OF HARYANA AND ORS.

..Respondents

2. RFA-5744-2013 (O&M)

MANTER AND ORS.

..Appellants

Versus

STATE OF HARYANA AND ORS.

..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 market value assessed by

Reference Court's award passed on 12.09.2012, the landowners have filed

RFA-5743-2013 & RFA-5744-2013. The learned counsel representing the parties are *ad idem* that the notification under Section 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as ‘the 1894 Act’) and the awards passed by the Land Acquisition Collector (hereinafter referred to as 'the LAC') as well as the Reference Court (hereinafter referred to as 'the RC'), are common, therefore both the 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.	Particulars	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.	Vide Award No.2	LAC offered to pay to the landowners Rs.8,00,000/- per acre for all kinds of land.
5.	Area	18.23 Acre
6.	Village	Village Brah Kalan
7.	District	Jind, Haryana
8.	Purpose	Jind-Gohana-Sonepat New Railway Line
9.	Date of RC's award	12.09.2012
10.	Amount awarded by the RC	Rs.10,00,000/- per acre.

1.3 The landowners claim that the acquired land is situated near the *abadi* of the village as well as on the road known as Sindhvi Khera to Pillu Khera Road and has the potential for development as a commercial market. There is a residential colony near the acquired land and on account of the acquisition, the remaining unacquired land stands divided in several parts.

1.4 On the other hand, the learned counsel representing the State of

Haryana claims that a fair and reasonable market value has been assessed by the LAC and the landowners have already been permitted to harvest their crop.

1.5 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. **Evidence produced by the respective parties:**

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

PW-1	Dharamvir Singh
PW-2	Rajesh Kumar

2.2 On the other hand, the State of Haryana examined Sh. K.S. Saini, Sub-Divisional Engineer, Provincial Sub-Division No.1 as RW-1.

2.3 The State of Haryana produced the sale deeds (Ex.RW1/B to Ex.RW1/D) in the documentary evidence.

3. **Discussion and analysis of the arguments made by the learned counsels representing the parties:**

3.1 The RC after relying upon the various policies issued by the State assessed the market value of the acquired land at the rate of Rs.10,00,000/- per acre.

3.2 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.

3.3 As already noticed, the landowners have not produced any sale instance to prove that the market value of the acquired land as on 08.10.2008, the date of notification under Section 4 of the 1894 Act, was more than the amount assessed by the LAC. On the other hand, the State of Haryana has produced three sale instances which are compiled here in a tabulated manner:-

Sr. No.	Exhibit Nos.	Sale Deed No.	Date	Total Area	Land calculated in Marlas	Price (in Rs.)	Price Per Acre	Village
1	RW1/B	3649	16.11.2017	6K-6M	126	3,94,000/-	5,00,317/-	Brah Kalan
2	RW1/C	5685	12.03.2008	1 Acre 7K-9M	309	9,66,000/-	5,00,194/-	Brah Kalan
3	RW1/D	635	19.05.2008	5K-6M	106	3,64,500/-	5,50,188/-	Brah Kalan

3.4 It is evident that the per acre rate during the contemporaneous period was around Rs.5,50,000/- per acre. All the sale instances produced by the State of Haryana are with respect to the land sold in village Brah Kalan. The sale instance Ex.RW1/D bearing No.635 is with respect to 5 kanals 6 marlas sold on 19.05.2008 at the rate of Rs.5,50,189/- per acre.

3.5 The RC had already assessed the market value of the acquired land at the rate of Rs.10,00,000/- per acre.

3.6 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, 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/- vide the policy decision dated 06.04.2007, whereas, it was

further revised to Rs.12,00,000/- vide the policy decision, dated 09.11.2010.

He submits that the landowners are entitled to the enhancement of the amount as per the view taken in *Ishwar Singh 's case (supra)*.

3.7 On the other hand, the learned counsel representing the State of Haryana and the Railways have contested the aforesaid position.

3.8 On a careful reading of the judgment passed in *Ishwar Singh 's case (supra)*, it is evident that the Court after noticing that the State Government itself has recognized the increase in the price of the land between 22.03.2007 till 07.09.2010 from Rs.8,00,000/- to Rs.12,00,000/-(the effective dates of two different policies) calculated per month increase at Rs.8,988/- per month and, thereafter, the Court held that since LAC's award in aforesaid case was decided on 31.07.2009, therefore, the landowners were held entitled to an increase for about 28 months. Thus, the amount of market value was assessed at the rate of Rs.10,52,000/- per acre.

3.9 The attention of the Bench in *Ishwar Singh's case (supra)*, however, 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 on the date of notification under Section 4 of the 1894 Act. In the present case, the date for assessment will be 08.10.2008 and not 04.06.2009, as held in the aforesaid case.

3.10 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 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.”

3.11 Once the statute itself provides that the amount is required to be determined on the date of the 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 on the date of award, it would not be appropriate for the Court to assess the amount on the date of award.

3.12 Keeping in view the aforesaid facts, the increase, if any, is to be

calculated from 22.03.2007 till 08.10.2008, which comes roughly to a period of 1 year and 6 ½ months. In *Ishwar Singh 's case (supra)*, the Court has calculated that the increased amount comes to Rs.8,988/- per month. So, if increased amount is calculated for seven months it comes to Rs.1,52,796/-. After adding Rs.8,00,000/- per acre which has already been awarded by the LAC, the amount comes to Rs.9,52,796/- per acre or in other words Rs.9,52,800/-. The RC has already awarded an amount of Rs.10,00,000/- per acre.

4. **Decision:**

4.1 With greatest respect, this Court holds that the opinion formed in *Ishwar Singh 's case (supra)* is *per incuriam* particularly when the attention of the Bench was not drawn to Section 23 of the 1894 Act.

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

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

07th September, 2022

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No