IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA-4959-2015(O&M)
Reserved on: 09.12.2021
Date of decision: 30.05.2022

HSIIDC ..Appellant

Versus

PINKY YADAV AND ORS. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANILKSHETARPAL

Present: Mr. Ashwani Kumar Chopra, Sr. Advocate
with Mr. Pritam Singh Saini, Advocate,
Ms. Vibha Nagar, Advocate and
Mr. Abhishek Goyal, Advocate
for HSIIDC.

Mr. Shailendra Jain, Sr. Advocate
with Mr. Romil Tyagi, Advocate
Mr. Deepak Balyan, Advocate and
Mr. Vishesh Dahiya, Advocate
Mr. Aditya Jain, Advocate
Ms. Balpreet K. Sidhu, Advocate
Mr. H.L. Tikku, Sr. Advocate with
Mr. Manav Bajaj, Advocate
Mr. Sudhir Aggarwal, Advocate
Mr. Ravinder K. Yadav, Advocate
Ms. Geeta Devi, Advocate
Mr. P.R. Yadav, Advocate
Mr. Sandeep Yadav, Advocate for
Mr. Sandeep Sharma, Advocate
Mr. Ashish Gupta, Advocate
Mr. Sanjay Verma, Advocate for
Mr. Vikrant Verma, Advocate

Mr. Shivendra Swaroop, AAG, Haryana and
Ms. Vibha Tewari, AAG, Haryana.

ANIL KSHETARPAL, J.

1. **BACKGROUND AND INTRODUCTION:**

1.1 Through this judgment, a batch of Regular First Appeals (details whereof are at the foot of the judgment), filed under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act'), arising from the Award passed by the Reference Court (hereinafter referred to as 'the RC') on 19.10.2013, shall stand disposed of.

1.2 The landowners as well as Haryana State Industrial and Infrastructure Development Corporation (hereinafter referred to as 'the HSIIDC') have filed the appeals. The notification under Section 4, 6 and the award passed by the Land Acquisition Collector (hereinafter referred to as 'the LAC') is common. The judgment passed by the RC is also common. The learned counsel representing the parties are *ad idem* that these appeals can be, conveniently, disposed of by a common judgment.

2. **RELEVANT PARTICULARS:**

2.1 The relevant particulars of the case are as under:-

Sr. No.	Title	Details
1.	Date of Notification under Section 4 of the 1894 Act, and, area of the land.	25.04.2008, Village Kukrola
2.	Date of declaration under Section 6 of the 1894 Act.	09.03.2009
3.	Purpose of Acquisition.	Construction of Chaudhary Devi Lal Model Township for the development as integrated complex for industrial, commercial and other public utilities.
4.	Location of the land, village, Tehsil and District.	Villages Kukrola, Fazalwas, Sehrawan, Mokalwas, Kharkhari, Baslambi and Fakharpur.
5.	Number and date of the Award of the Land Acquisition Collector.	Award No.21, dated 24.08.2009.
6.	Amount assessed by the LAC.	Rs.30,00,000/- per acre.
7.	Date of the judgment of the RC.	19.10.2013.
8.	Amount assessed by the RC.	Rs.62,14,421/-

2.2 On 19.10.2013, the RC has assessed the market value of the acquired land as on 25.04.2008, at the rate of Rs.62,14,421/- after applying 30% deduction for infrastructural development.

2.3 The landowners claimed that the market value of the acquired land is not less than Rs.5000/- per square yard as a fully developed industrial model township already exists in the area and multinational companies like Honda Scooters and Motorcycles, Mitsubishi Electricals, Motorola, Minda Industries, Lispo, Riico and Omaxe have already set up their factories in the area. It has also been stated that the office of National Security Guards is nearby.

2.4 Per contra, the HSIIDC claims that the LAC has correctly assessed the market value which is based on the assessment made by the Divisional Level Committee.

2.5 It has further been pointed out that under the Rehabilitation and Resettlement Policy for oustee, the landowners are entitled to the amount of annuity.

3. **EVIDENCE PRODUCED BY THE RESPECTIVE PARTIES:**

3.1 **ORAL EVIDENCE**

3.1.1 The landowners in order to prove their case have examined PW-1 Smt. Shobha Devi, PW-2 Sh. Hukam Chand and PW-3 Smt. Usha Devi.

3.1.2 Per contra, the State of Haryana examined DW-1 Sh. B.S. Rana.

3.2 **DOCUMENTARY EVIDENCE**

3.2.1 In order to prove their case, the landowners have produced layout plans Ex.P-5 and Ex.P-6, (apart from the sale deeds, a tabulated compilation of which is given in para 3.3).

3.2.2 The HSIIDC has produced copy of award No.21, dated 24.08.2009, as Ex.RW1/1, copy of the proceedings of Committee's meeting for fixation of market value as Ex.RW1/4, Rehabilitation and Resettlement Policy dated 07.12.2007, Ex.RW1/5 and a layout plan Ex.RW1/6 (apart from the sale deeds a tabulated compilation of which is given in para 3.3).

3.3 At this stage, it is considered appropriate to compile the tabulated information of the exemplar sale deeds produced by the respective parties:-

SALE DEEDS PRODUCED BY THE LANDOWNERS:-							
Sr. No.	Exh.	Vasika No.	Date	Land Area K-M	Total sale consideration (in Rs.)	Rate per acre (in Rs.)	Revenue estate
1.	Ex.P-1	5316	05.06.2006	36-6	3,31,23,750/-	73,00,000/-	Kukrola
2.	Ex.P-2	951	13.04.2006	17-11	2,19,37,500/-	1 Crore	Fazalwas
3.	Ex.P-3	18897	07.12.2006	12-17	1,66,87,500/-	1,03,89,105/-	Fazalwas
4.	Ex.P-4	18629	04.12.2006	14-5	1,78,12,500/-	1 Crore	Fazalwas
SALE DEEDS PRODUCED BY THE HSIIDC:-							
Sr. No.	Exh.	Vasika No.	Date	Land Area K-M	Total sale consideration (in Rs.)	Rate per acre (in Rs.)	Revenue estate
1.	Ex.RW1/2	21211	11.01.2007	1-6	3,00,000/-	18,46,153/-	Kukrola
2.	Ex.RW1/3	16465	12.11.2007	2-18	9,06,500/-	25,00,689/-	Kukrola

4. **REASONS GIVEN BY THE RC:**

4.1 The RC, after noticing that Ex.P-1, the sale deed 05.06.2006, is with respect to the parcel of land located in the same village Kukrola, considered it appropriate to rely upon the same. Further, the RC, after noticing that this sale deed is 1 year, 10 months and 20 days before the date of notification under Section 4 of the 1894 Act i.e. 25.04.2008, granted a cumulative increase at the rate of 10% per annum to arrive at a figure of

Rs.87,34,885/- and thereafter, applied 30% deduction for infrastructural development and arrived at a figure of Rs.62,14,421/-. The RC ignored the sale deeds Ex.RW1/2 and Ex.RW1/3 on the ground that the price reflected in the aforesaid sale deed is lower than the amount assessed by the LAC. The Court observed that Section 25 debars the Court from assessing market value lesser than the assessed market value by LAC.

5. **ARGUMENTS OF THE LEARNED COUNSELS:**

5.1 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.

5.2 The learned counsel representing the landowners have contended that the RC has erred in applying development cut of 30%. They further contend that the acquired land located in village Fazalwas is also abutting the area, therefore, the RC has erred in ignoring the sale instances Ex.P3, Ex.P3 and Ex.P4, which reflects that the price of the acquired land in the area was around Rupees One Crore per acre.

5.3 Per contra, the learned counsel representing the HSIIDC has submitted that the RC has erred in ignoring the sale deed produced by the HSIIDC i.e. Ex.RW1/2 and Ex.RW1/3, which are also with respect to the various parcels of land located in the same village i.e. Kukrola.

6. **DISCUSSION BY THIS COURT:**

6.1 From a bare look at the various layout plans produced by the respective parties, it is evident that the acquired land in village Kukrola is located close to four-legged intersection formed by Kundli Manesar Palwar Expressway (hereinafter referred to as 'the KMP Expressway' which by that time had been planned) and National Highway No.8 (hereinafter referred to as 'the NH-8') (Delhi-Jaipur Road). In fact, some part of the land of village Kukrola falls on the other side of the proposed KMP Expressway. The land of village Kukrola is located on both sides of NH-8. There is another road which has been carved out from near the aforesaid proposed four-legged intersection which has been named as MES-Air Force Road. Thus, it is evident that the area has great potential to be utilized for commercial and industrial purposes.

6.2 It has been noticed that Ex.P-1 is a sale instance with respect to the land measuring 36 kanals and 6 marlas, which is a little more than four and a half acres of land. The land has been purchased vide sale deed 05.06.2006, at the rate of Rs.73,00,000/- per acre. On a comparative analysis of the rectangles and khasra numbers of the acquired land as given in the Award No.21 viz-a-viz the aforesaid sale deed, it is evident that out of the land purchased vide sale deed Ex.P-1, dated 05.06.2006, 23 marlas of land out of rectangle No.36, Khasra No.11/2 and 9 has been made the subject matter of acquisition. Thus, the parcel of land Ex.P-1 abuts the acquired land. However, the sale exemplar Ex.P-1 is with respect to the parcel of land which is located on the NH-8. It has been noticed on perusal of Ex.P-6 (the layout plan), that the acquired land of village Kukrola is located upto the depth of 100 acres, approximately, from the NH-8. It is undisputed that the land abutting the NH-8 has also been acquired.

6.3 On a comparative analysis of the rectangles and khasra numbers specified in the sale deeds produced by the HSIIDC and the layout plan, it is evident that these two sale deeds are with respect to the parcels of land which are located on the other side of the NH-8 and not towards the acquired land. Hence, these sale deeds have been correctly ignored by the RC, although, for a different reason. Section 25 of the 1894 Act does not debar the RC from taking into account the aforesaid sale deeds while assessing the market value of the acquired land. It only provides that an amount lower than the amount assessed by the LAC should not be determined by RC. The 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.***

6.4 Now, the question is what should be the appropriate development cut for development infrastructure. The land has been acquired for developing an integrated complex for industrial, commercial and other public utilities. The sale instance Ex.P-1, dated 05.06.2006, is with respect to the land acquired by a developer/colonizer company. This parcel of land is located on the NH-8 upto the depth of approximately 5 acres. There is no sale instance with regard to the acquired land which is beyond the depth of 5 acres strip of land located either on the NH-8 or on the KMP Expressway. It is well known that the market value of the land located on a National Highway is higher than the land located in the interiors which is far away from the road. In view thereof, the market value of the acquired land beyond the depth of 5 acres is not expected to be same as the market value of the land located on the National Highway or within close limits.

6.5 Keeping in view the aforesaid facts, the land upto the depth of 4 acres abutting NH-8 and the KMP Expressway is assessed at the rate of Rs.87,34,885/- after granting escalation at the rate of 10% as ordered by the RC. As regards the question of development cut, this Court in ***RFA-3000-***

2016, titled as "Jai Singh Vs. State of Haryana and others", decided on 15.11.2021, after analysing the relevant case laws has opined as under:-

> *"7.14 The principle underlined by all these judgments is that while assessing the market value, the court is required to apply the wisdom of a common man and arrive at a figure which a willing seller will get from a voluntary purchaser for the property. Once the market value of the acquired agricultural land is being assessed and many sales exemplars of considerably big sized plots of the agricultural land are available, the application of cut/deduction for development, in the considered opinion of the Court, is not justified unless the court is assessing the market value of a land where the sale exemplars produced before the Court are of relatively small sized plots or are being used for residential, commercial or industrial purposes. The deduction can be applied when comparable sale exemplar is of a plot of a very small size as compared to the acquired land in order to moderate the difference between wholesale and retail prices as observed by the Supreme court in judgment passed in* ***Lal Chand (supra)****. The appropriate percentage of cut can also be applied if the sale exemplar is of a plot which was being used or was capable of being used for different purposes like residential, commercial or industrial. The development cut can also be applied when the comparable sale exemplar is of a plot which is located at a key position like near the road, market, developed residential colony or commercial establishments. There can be more than one reasons to apply the development cut. However, if the price is reduced while assessing the market value of the acquired land, without observing the aforesaid principles while making the deduction in the facts and circumstances of the individual cases, it shall be against the statutory intendment. In a case where the court is making an assessment with respect to an undeveloped acquired land as an undeveloped area and the sale exemplar produced for such determination is also of an undeveloped piece of land of reasonable size, then any deduction which is made on account of development work or development cost, in the considered opinion of this Court, shall not be considered appropriate. This can be explained by an example. Hypothetically, if a farmer purchases a sufficiently large chunk of land just before the notification under Section 4. On the acquisition of the land purchased, he is likely to produce the sale exemplar of the land purchased by him. If the court treats the sale exemplar as the base value and*

thereafter applies a cut or deduction on account of development cut or development cost per se, he shall stand deprived of the market value paid by him while purchasing the land. It would be against the spirit/intention of the Act. While assessing the market value of the undeveloped/agricultural land, the court is not required to work out the market value of the developed land or plot. In such circumstances, the application of development cut in the considered opinion of the court would not be appropriate and justified. The cut/deduction is applied by the courts in order to arrive at a correct figure representing the true market value of the acquired land on the relevant date. This method has been devised by the Courts in order to tide over the situations where exactly comparable sale exemplars of contemporaneous period are not available. The court, while making adjustments or treating the prices of the developed plots of smaller size as the base, endeavours to work out the fair market value of the acquired land.

7.15 This matter can be examined from another angle. The intention of the legislature is not to put the landowners who stand deprived of the land through double whammy. On the one hand, their immovable property is compulsorily taken away, whereas on the other hand, they are not being compensated adequately due to the deduction towards the development. This cannot be the intention of the legislature. The fundamental intention of the Legislature has always been to make the land laws fair, just and reasonable towards the sufferers of compulsory land acquisition.

7.16 Once a large chunk of agricultural land is being acquired for carving out a residential/commercial or industrial colony and the sale exemplars of plots of reasonable size of agricultural land are available, then in the considered opinion of this Court, it would not be appropriate to apply a development cut for the purpose of assessment either towards development cost or towards the area to be used for passages, roads, drains, parks etc. The landowner stands in the shoes of a loser even if some part of the acquired land is being used for providing common facilities. The landowner does not gain anything exclusively on account of reservation of land for common facilities. In fact, the landowner suffers a dual loss. On the one hand, he is deprived of the acquired land and on the other hand, he does not receive a fair and appropriate amount towards the involuntary deprivation.

7.17 There is yet another aspect of the matter. The

> *development agency/organization/colonizer or the government do not sell the developed plots on the market value assessed by the court. The plots are sold while determining price on basis of the demand and supply. Usually, the plots are sold on the basis of price determined on per sq. feet or per sq. yard. basis and not on per acre. Therefore, certain percentage of land utilized for carrying out development activities like passages, roads, drains, parks etc. is to be accounted for by the developer and not the landowner. Therefore, in the considered view of this Court, the development cost incurred or to be incurred for providing common facilities is also required to be borne by the developer.*
>
> *7.18 It is well settled that while assessing the market value, the court is required to adopt a pragmatic approach. The landowners who stand deprived of the property cannot be permitted to be denied of an adequate and just compensation as well. This is the responsibility of the courts to see that the landowners are adequately compensated. The learned counsel representing the parties have failed to draw the attention of the court to any precedent which lays down that while assessing the market value, the application of development cut or deduction on the base value is mandatory."*

6.6 In the considered view of the Court, for the reasons stated in ***Jai Singh (Supra)***, this Court does not find it appropriate to apply any deduction with respect to the acquired land located on NH-8 upto the depth of 5 acres.

6.7 The learned counsel representing the HSIIDC contends that the development cut at the rate of 1/3rd of the price reflected in the sale deed is a must. He relies upon the judgment passed by the Supreme Court in ***Kanta Devi Vs. State of Haryana, 2008(15) SCC 201***. This Court has carefully read the judgment. In the aforesaid case, in para 14, the Supreme Court observed that 1/3rd cut is normal. However, in the facts of the case, the Court can apply higher or lower development cut depending upon the facts and circumstances of the case. The Supreme Court reduced the development cut from 70% applied by the High Court to 60%. In the humble opinion of the Court, the aforesaid judgment does not lay down as a *ratio decidendi* that the development cut is mandatory. Once the Court finds that a comparable sale deed of contemporaneous period has been produced which is not only genuine but also bona fide, then, in the considered opinion of the Court, applying deduction shall not be appropriate.

6.8 On a careful perusal of the various layout plans produced by the respective parties, it is evident that the acquired land is not in a compact block. The acquired land located in villages Fazalwas and Kukrola are located alongside the existing NH-8. Whereas, the acquired land in village Baslambi, Kharkhari, Mokalwas, Fakharpur is located at a distance from NH-8. In fact, the acquired land of these villages would come on the road once the construction of KMP Expressway is completed. Hence, the market value of the acquired land cannot be assessed uniformly for all the villages particularly when there is evidence to the effect that the price of the land located alongside the NH-8 is more than the land located in the interiors (or at a distance from NH-8). Hence, it is considered appropriate to decide the cases village wise.

7. **DECISION:**

7.1 With regard to the land located in the interiors beyond the depth of 5 acres, some amount of deduction is required to be made in order to determine the true market value. Therefore, 30% deduction as ordered by the RC is maintained, though, the reasons given by RC are different. Though, this Court is not inclined to apply 30% development cut, however, keeping in view the fact that there is no evidence to prove the market value of the land located beyond the depth of 5 acres, therefore, going by the thumb rule, this Court applies 30% cut and the assessment made by the RC at the rate of

Rs.62,14,421/- is maintained.

7.2 With these observations, the award passed by the RC is modified.

7.3 The KMP Expressway is yet to be developed although the land has been acquired by issuing notification under Section 4 of the 1894 Act in January, 2005.

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

30th May, 2022 **(ANIL KSHETARPAL)**
Ay **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

Sr. No.	**Case No.**	**Party Name**
1.	RFA-4959-2015	HSIIDC V/S PINKI YADAV AND ORS.
2.	RFA-4960-2015	HSIIDC V/S SHOBHA DEVI AND ORS.
3.	RFA-4962-2015	HSIIDC V/S HUKAM CHAND AND ORS.
4.	RFA-4963-2015	HSIIDC V/S BHIM SINGH AND ORS.
5.	XOBJR-126-2019	HSIIDC V/S BHIM SINGH AND OTHERS
6.	RFA-4964-2015	HSIIDC V/S SATBIR SINGH AND ORS.
7.	RFA-4966-2015	HSIIDC V/S M/S TRINITY HOSPITALITY AND INFRASTRUCTURE AND ORS.
8.	RFA-4967-2015	HSIIDC V/S USHA DEVI AND ORS.
9.	RFA-4968-2015	HSIIDC V/S M/S REGAL HOSPITALITY AND ORS.
10.	RFA-4969-2015	HSIIDC V/S JITENDER SINGH AND ANR.
11.	RFA-4970-2015	HSIIDC V/S RANBIR AND ORS.
12.	RFA-4971-2015	HSIIDC V/S ASHARFI DEVI AND ORS.
13.	RFA-4972-2015	HSIIDC V/S RAJ PAL AND ORS.

14.	RFA-4973-2015	HSIIDC V/S BHURI AND ORS.
15.	RFA-4974-2015	HSIIDC V/S JITENDER SINGH AND ORS.
16.	RFA-4975-2015	HSIIDC V/S DHARAM SINGH AND ORS.
17.	RFA-4976-2015	HSIIDC V/S ROHTASH SINGH AND ORS.
18.	RFA-4977-2015	HSIIDC V/S BANWARI LAL AND ORS.
19.	RFA-4978-2015	HSIIDC V/S SURENDER AND ORS.
20.	RFA-1241-2014	RAJPAL & ORS V/S STATE OF HARYANA & ORS
21.	RFA-267-2016	DHARAM SINGH V/S STATE OF HARYANA AND ORS
22.	RFA-2303-2014	HUKAM CHAND AND ORS V/S STATE OF HARYANA AND ORS
23.	RFA-8159-2014	BHURI V/S STATE OF HARYANA AND OTHERS
24.	RFA-7343-2014	USHA DEVI V/S STATE OF HARYANA & ORS
25.	RFA-7202-2014	LAL CHAND AND ORS V/S STATE OF HARYANA & ANR
26.	RFA-6019-2015	SHOBHA DEVI V/S STATE OF HARYANA AND ORS
27.	RFA-4965-2015	HSIIDC V/S LAL CHAND AND ORS.
28.	RFA-698-2014	KRISHAN KUMAR V/S STATE OF HARYANA & ORS
29.	RFA-699-2014	ROHTAS SINGH & ANR V/S STATE OF HARYANA & ORS
30.	RFA-6342-2014	ASHARFI DEVI V/S STATE OF HARYANA & ORS
31.	RFA-865-2014	JITENDER SINGH V/S STATE OF HARYANA & ORS
32.	RFA-4327-2014	BANWARI LAL AND ORS V/S STATE OF HARYANA AND ORS
33.	RFA-1369-2015	RANBIR AND ANR V/S STATE OF HARYANA AND ORS
34.	RFA-4970-2014	SATBIR AND ORS V/S STATE OF HARYANA & ORS

(ANIL KSHETARPAL)
JUDGE