IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA-2937-2018(O&M)
Reserved on: 19.04.2022
Date of decision: 11.07.2022

BALWAN SINGH AND ORS. **..Appellants**

Versus

STATE OF HARYANA AND ANR. **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANILKSHETARPAL

Present: Mr. Gopal Sharma, Advocate
Mr. C.B. Goel, Advocate
for the landowners.

Ms. Vibha Tewari, AAG, Haryana.

ANIL KSHETARPAL, J.

1. **INTRODUCTION AND BACKGROUND**

1.1 While praying for modification of the award passed by the Reference Court (hereinafter referred to as 'the RC') on 17.08.2017, the State of Haryana as well as the landowners have filed this batch of appeals, details whereof are at the foot of the judgment. The notification under Section 4, 6 and the awards passed by the Land Acquisition Collector (hereinafter referred to as 'the LAC') as well as by the RC, are common. The learned counsel representing the parties are *ad idem* that this batch of appeals (details whereof are on the foot of the judgment) can conveniently be disposed of by a common judgment.

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

Date of notification under Section 4	09.04.2007 Area: 19.46 Acre
Date of notification under Section 6	10.04.2007
Area	19.46 Acre
Village	Village Kherka Musalman, Tehsil

	Bahadurgarh, District Jhajjar, Haryana
District	Jhajjar, Haryana
Public Purpose	For the construction of master sewerage treatment plant and sector dividing road.
LAC Award	Award No.15 dated 18.12.2007
Amount awarded by LAC	Rs. 16 lac per acre
Reference Court Award	LA case No.31 of 2015 titled as "Balwan Singh Vs. State of Haryana etc." Date of decision 17.08.2017
Amount awarded vide above awards	Rs.42,98,500/- per acre.

1.3 For the purpose of location, potential and the market value, the pleadings of the landowners as well as the State are identical with the case of village Kassar and the same are extracted as under:-

> *"The State of Haryana in order to construct master sewerage treatment plant and sector dividing roads, issued a consolidated notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act') seeking to acquire land in three different villages namely Kassar, Sarai Aurangabad and Kherka Musalman. The land located in village Kherka Musalman has been utilized partially for construction of master sewerage treatment plant and remaining for construction of the sector dividing roads, whereas, the land in villages Kassar and Sarai Aurangabad, has been acquired for constructing sector dividing roads.*
>
> *Per contra, the State of Haryana has filed reply claiming that the market value offered by the LAC is correct.*
>
> *The landowners being dissatisfied with the amount offered, applied to the LAC for referring the matter to the Court. It was asserted that the acquired land is not only located in the national capital region but is located near to Tehsil Bahadurgarh, District Jhajjar. It is claimed that industrial units of international level like M/s Somini Ltd., Schablona Pvt. Ltd., M/s Parle Biscuits, M/s Arti Udyog, PDM School and Engineering College are located in and around the area. It has also been asserted that many real estate companies like OMAXE, KLG Heights, Karni Group, Time Square and New Era have purchased land near the acquired land at the rate*

not less than Rs.1.5 Crore per acre. The acquired land is located near to Sector 6 and 2 of the Bahadurgarh and the value of the land in the residential sector is not less than Rs.20,000/- per square yard."

1.4 On the request of the landowners, the matter was referred to the RC. The Court culled out the following issues:-

"1. What was the market value of the acquired land at the time of notification under Section 4 of the Land Acquisition Act, 1894? OPP
2. Whether the petitioners are entitled for any enhanced compensation, if yes, how much? OPP
3. Relief."

2. EVIDENCE PRODUCED BY THE PARTIES

2.1 In order to prove their case, the landowners examined PW-1 Jai Bhagwan, Registry Clerk, Office of the Sub-Registrar, Bahadurgarh, PW-2 Karan Singh and PW-3 Baljit, while tendering the following documents:-

Ex.P1	*Sale deed No.5122 dated 30.11.2006*
Ex.P2	*Sale deed No.5051 dated 13.09.2007*
Ex.P3	*Sale deed No.5049 dated 13.09.2007*
Ex.P4	*Sale deed No.748 dated 12.05.2006*

2.2 On the other hand, the State of Haryana examined RW-1 Ashok Kumar, Patwari and tendered the following documents:-

Ex.RW1/A	*Affidavit of Ashok Kumar*
Ex.RW1/A	*Authority letter*
Ex.R1	*Sale deed No.322 dated 24.04.2006*
Ex.R2	*Sale deed No.6483 dated 30.12.2005*
Ex.R3	*Sale deed No.3727 dated 16.10.2006*
Ex.R4	*Sale deed No.2951 dated 29.06.2007*
Ex.R5	*Sale deed No.2952 dated 29.06.2007*
Ex.R6	*Sale deed No.2953 dated 29.06.2007*
Ex.R7	*Sale deed No.2920 dated 29.06.2007*
Ex.R8	*Policy dated 07.12.2007*
Ex.R9	*Shijra plan*
Ex.R10	*List of sale deeds*

3. At this stage, it would be appropriate to compile the information with regard to the exemplar sale deeds produced by the respective parties in a tabulated form which is as under:-

Sr. No.	Exhibit Nos.	Sale Deed No.	Date	Total Area	Land Calculated in Marlas	Price	Price Per Acre	Village
1	R-1	3392	16.07.2007	10K-13M	213	460000	345539	Kherka Musalman
2	P-1	5122	30.11.2006	16K	320	7000000	3500000	Kherka Musalman
3	P-2	5051	13.09.2007	20K-2M	402	20160786	8024193	Kherka Musalman
4	P-3	5049	13.09.2007	7K	140	7021169	8024193	Kherka Musalman
5	P-4	748	12.05.2006	20K-2M	402	15685000	6242786	Kherka Musalman
6	R-1	322	24.04.2006	16K-2M	322	3018750	1500000	Kherka Musalman
7	R-2	6483	30.12.2005	18K-8M	368	1610000	700000	Kherka Musalman
8	R-3	3727	16.10.2006	17K-16M	356	3337500	1500000	Kherka Musalman
9	R-4	2951	29.06.2007	5K-3M	103	250000	388349	Kherka Musalman
10	R-5	2952	29.06.2007	2K-11M	51	125000	392156	Kherka Musalman
11	R-6	2953	29.06.2007	10K-6M	206	500000	388349	Kherka Musalman
12	R-7	2950	29.06.2007	3K-18M	78	190000	389743	Kherka Musalman

4. The RC ignored the sale deeds produced by State of Haryana on the ground that these sale deeds reflect a price which is less than the amount offered by the LAC in view of Section 25 of the 1894 Act. The RC, thereafter, calculated average of the sale consideration of all the four sale deeds produced by the landowners and applied 1/3rd deduction on account of development, de-escalation and waiting period to arrive at a figure of Rs.42,98,500/- per acre. The RC ordered that the aforesaid amount shall be payable to the landowners along with all statutory benefits.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

6. The first reason assigned by the RC is the result of incorrect interpretation of Section 25 of the 1894 Act. There is no prohibition in taking into account the sale exemplar produced by the parties reflecting a price lower than the amount offered by the LAC which only debars the Court from assessing the market value lower than the amount offered by the LAC. There is no prohibition in taking into account the sale deeds reflecting a price lower than the amount offered by the LAC. This 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***.

7. The RC has also erred in taking average of all the sale deeds produced by the landowners. It may be noted here that sale deed Ex.P-2 and Ex.P-3, are both post the date of notification under Section 4 of the 1894 Act. Hence, it is not appropriate for the Court to rely upon the same, particular when, other sale deeds produced form a part of the record. Now, the Court is left with two sale deeds produced by the landowners i.e. Ex.P-1 and Ex.P-4.

8. Ex.P-1 is a sale instance of 2 acres of land sold by the landowners in favour of Prabhu Shanti Real Estate at the rate of Rs.35,00,000/- per acre. This parcel of land is out of rectangle No.15 and 16, whereas, the sale exemplar Ex.P-4 is a sale deed executed by the landowners in favour of M/s Sperry Plast Ltd. This is with respect to the land measuring 20 kanals and 2 marlas which is nearly 2 and ½ acres of land out of land comprised in rectangle No.6. From a careful perusal of the layout plan Ex.HC1, which has been taken on record with the consent of the learned counsel representing the parties, it is evident that the parcel of land

represented by Ex.P-1 is nearly 5 acres away from the acquired land, whereas, parcel of land represented by Ex.P-4 is around 6 acres away from the acquired land. The major part of the land acquired in village Kherka Musalman by the present acquisition is for construction of a master sewerage treatment plant, whereas, the remaining land is for sector dividing road. It is also evident that the land acquired is near to Bahadurgarh road.

9. Now, this Bench proceeds to examine the sale deeds produced by the State. From a bare look at the plan, it is evident that the sale instances Ex.R-4, Ex.R-5, Ex.R-6 and Ex.R-7, are post the date of notification under Section 4 of the 1894 Act. The adjoining land has been notified for construction of master sewerage treatment plant 2 and a ½ months back, therefore, the sale deeds Ex.R-4, Ex.R-5, Ex.R-6 and Ex.R-7 cannot be relied upon because the market value of the land located near the Master Sewerage Treatment Plant is likely to fetch a lesser price as compared to the land located nearby. The sale deed Ex.R-1 is one year prior to the notification under Section 4 of the 1894 Act. The aforesaid parcel of land is located near the parcel of land sold through Ex.P-4. Similarly, the parcels of land sold through Ex.R-2 and Ex.R-3 are also not far away from the acquired land. However, Ex.R-3 is a sale instance of village Lowa Khurd, which is a different village.

10. The landowners are entitled to the highest price as laid down by the Supreme Court in ***Mehrawal Khewaji Trust Vs. State of Punjab (2012) 5 SCC 432***.

11. Keeping in view the aforesaid facts, the sale deed Ex.P-4 is considered more reliable for assessing the market value of the acquired land.

This sale deed is approximately 11 months prior to the notification under Section 4 of the 1894 Act. On perusal of Ex.P-2 and Ex.P-3, it is evident that the prices of the land were increasing rapidly. Hence, some escalation is required to be given for the period of 11 months between the date of sale instance and the date of assessment. Thus, the amount is increased by 9%. Consequently, the amount comes to Rs.68,04,647.64/- which is rounded to Rs.68,04,650/- per acre.

12. The reasons assigned by the RC to apply deduction of 1/3rd towards development, de-escalation and waiting period are erroneous. Reliance in this regard can be relied upon ***Regular First Appeal No.3000 of 2016, titled as "Jai Singh Vs. State of Haryana and others", decided on 15.11.2021***.

13. In the present case, the acquisition is for development of master sewerage treatment plant and sector dividing road. Hence, the development of the land is not the liability or responsibility of the landowners. Similarly, there is no evidence that there was any de-escalation or the prices were falling. Similarly, there is no waiting period in the present case because the land is not to be carved out into plots before selling. The acquisition is for public purpose i.e. for construction of master sewerage treatment plant and sector dividing road. Hence, there is no reason to apply development cut particularly when 2 and a ½ acres of land has been sold through Ex.P-4, which is of a significantly large area, particularly when the total acquisition with respect to land measuring 19.46 acres only. This parcel of land has been purchased at the rate of Rs.62,42,786/- per acre of the land.

14. Consequently, the appeals filed by the landowners shall stand

allowed, whereas, that of the State of Haryana shall stand dismissed.

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

11th July, 2022 **(ANIL KSHETARPAL)**
Ay **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

Sr. No.	Case No.	Appellants	Respondents
1.	RFA No. 2937 of 2017	Balwan Singh and others	State of Haryana and another
2.	RFA No. 2936 of 2018	Radhey Shyam and another	State of Haryana and another
3.	RFA No. 2935 of 2018	Karan Singh	State of Haryana and another

(ANIL KSHETARPAL)
JUDGE