IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No. 1525 of 1998 (O&M)
Reserved On: 13.09.2023
Pronounced On: 12.12.2023

Ramesh Chand (now deceased) through LRs
and others

...Appellants

Versus

The State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Karamveer Singh Banyana, Advocate
for appellant Nos. 1 (iii), 2 & 3.

Mr. R.S. Manhas, Advocate
Mr. Rajinder Singh Rana, Advocate and
Mr. Saruti Sandal, Advocate
for appellant Nos. 1 (i), (ii), (iv) & 4.

Mr. Abhinash Jain, Deputy Advocate General, Haryana

****

HARKESH MANUJA, J.

By way of present appeal, challenge has been laid to an Award dated 12.02.1998 passed by learned Additional District Judge, Kurukshetra **(hereinafter to be referred as "Reference Court")** seeking further enhancement of compensation on account of acquisition of land owned by the appellants.

[2] Briefly stating, 13 Kanals of land situated in the revenue estate of Village Pipli, District Kurukshetra, owned by the appellants was acquired vide Notifications dated 24.03.1992

& 23.03.1993 issued respectively under Sections 4 & 6 of Land Acquisition Act, 1894 **(hereinafter to be referred as "1894 Act")** followed by an Award dated 22.03.1995 passed by the Land Acquisition Collector **(for short "Collector")** in exercise of its power under Section 11 thereof, whereby market value of the acquired land was assessed at the rate of Rs. 4,98,000/- per acre.

[3] Aggrieved thereof, the landowners invoked Reference under Section 18 of the 1894 Act which came to be decided by the Reference Court vide judgment dated 12.02.1998, whereby the market value of acquired land was uniformally assessed @ Rs. 9,50,000/- per acre (i.e. Rs. 196.28 per square yard) besides grant of other benefits.

[4] Still aggrieved, the appellants-landowners approached this Court by way of filing present appeal and at the same time, cross appeals were also filed by respondent-State. Appeals filed by both the sides were dismissed by this Court vide judgment dated 23.12.2008, lead case of which was ***RFA No. 2515 of 1998***, titled "***State of Haryana and another Versus Badan Singh"***, whereby the award passed by the Reference Court was upheld. Aggrieved thereof, the appellants-landowners as well as respondent-State approached the Hon'ble Apex Court. Though, the appeals filed by respondent-State as well as the other landowners were dismissed, however, Civil Appeal No.

10141 of 2011 filed at the instance of present appellants-landowners was allowed vide decision dated 18.01.2022 and matter was sent back to this Court for its fresh adjudication with following observations:-

> *" Mr. Sachin Jain, learned counsel for the appellants would point out that unlike the rest of the cases there is a distinction, in this case according to him. The land in question is 13 Kanals and odd (About 1.6 Acres). The land in question according to him abutted the National highway. A change of use of the land was given by proceedings evidenced by document dated 04.05.1981 much prior to the date of the Notification under Section 4 of the Land Acquisition Act which was issued on 24.03.1992. He would further point out that this land in question required a different approach from the rest of the lands. We would think that the case of the appellants has not received the attention it deserves with reference to the difference in facts projected.*
>
> *In such circumstances, we are of the view that the matter be remanded back to the High Court so that the High Court may bestow its attention and find whether difference in facts which is pressed before us would warrant a different treatment being given.*
>
> *We make it clear that we have not pronounced on the merits of the contentions of the appellants and also the learned counsel for the respondents who opposed the claim for enhancement. The impugned judgment in the said appeal is set aside and the matter will stand remanded back to the High Court. The appeal filed by the appellants will be reconsidered. We would request the High Court to take a decision as early as possible.*

Parties will bear their respective costs.

The appeal is allowed as above.

Pending application(s), if any, stands disposed of. "

[5] While making his submissions, relying upon document Ex.P-74 (i.e. Jamabandi for the year 1992-1993), the order dated 04.05.1981 (Ex.P-57) regarding permission for Change of Land Use for the acquired land as well as order dated 08.06.1981 (Ex.P-58) i.e. approval of building plan, learned counsel for the appellants point out that their land under acquisition was purely of commercial nature and thus, the respondent-State went wrong, while assessing the market value thereof by treating it to be as agricultural land. As regards the locational / market value of the land in question, learned counsel for the appellants relies upon site plan Ex.P-13 which has been proved on record through draftsman-Surender Kamboj (PW-10) and the Patwari concerned, namely, Raghbir (PW-13) to point out that the same falls in close proximity to the GT-road being just adjoining the building of Youth Hostel and Rest House owned and run by Haryana Tourism Department.

[6] On the point of assessment of compensation, learned counsel for the appellants relies upon the Collector's rates fixed by the respondent-State as regards the commercial property situated on Karnal GT road, for the year 1992-93 to submit that the same was fixed @ Rs. 4,000/- per square yard.

He further points out *qua* Exhibits P-29 & P-30 i.e. the Collector rate pertaining to the year 1993-94 and 1994-95, to contend that the Collector rate for the commercial nature of land, situated at Karnal Road remained the same i.e. Rs. 4,000/- per square yard between 1992 to 1995. Relying upon a latest decision rendered by the Hon'ble Supreme Court in case of ***"Reddy Veerana Vs. State of U.P." 2022 AIR (SC), 2225***, learned counsel submits that the Collector rate was the minimum which should have been awarded in favour of the appellants-landowners, while considering the nature of the acquired land to be commercial. Relevant para-21 of the aforesaid judgment as relied upon by learned counsel for the appellants is reproduced hereunder:-

> *" **21**. Bare perusal of the aforesaid makes it clear that, the determination of the compensation has to be made by taking into consideration the circle rate which has been determined as per the market value. The market value of a property is the price that a willing purchaser would pay to a willing seller for it, taking into account its current condition, all existing advantages, and potential possibilities when led out in the most advantageous manner, while excluding any benefit resulting from the implementation of the scheme for which the property is compulsorily acquired. Therefore, the market value is to be determined in the light of price paid by the purchaser of similar land in the neighbourhood of the land in question and in cases, where no records for such transaction/purchase is available, the minimum statutory value in accordance with Stamp Act must be taken as market value for circle rate."*

[7] On the other hand, learned counsel for the respondent-State submits that while passing the judgment dated 23.12.2008 in ***Badan Singh's case (supra)***, this Court very well considered the location of the property in question, the same being situated on the GT road surrounded by youth hostel, public guest house as well as other commercial establishments and thus, the appellants cannot be permitted to draw any additional benefit in this regard at this stage while making assessment of compensation *qua* their land. Learned State Counsel further submits that even as per jamabandi for the year 1992-93, there was no construction existing on the land under acquisition and at best only a boundary wall existed thereupon and accordingly, the market value of the said land could not be assessed by taking it to be a commercial property, but he was not able to dispute the Collector rates (Exs. P-28 to P-30). He also submits that even as per the documentary evidence produced on record by the appellant-landowners, in the shape of sale deeds Ex. P-1 to P-12 and Ex .P-51 to P-54, the prayer made by the landowners could not be accepted for grant of market value @ Rs.4,000/- per square yard as none of the sale deeds relied upon by them depicts that value. He also points out that the appellants-landowners cannot go beyond their own evidence led before Reference Court for the purpose of making assessment of the acquired land and he also relies upon decision made by the

Hon'ble Supreme Court in case of ***"Bharat Sanchar Nigam Ltd. Vs. M/s. Nemichand Damodardas and Anr." 2022(3) RCR (Civil) 501",*** to contend that the Collector rate cannot be made basis for the purpose of making assessment of market value of the acquired land. Reliance in this regard has been placed on the judgment passed by the Hon'ble Apex Court in case of ***"Lal Chand Vs. Union of India and Anr."***, reported as ***2009 (15) SCC 769***. Learned State Counsel also submits that when the sale deeds have been produced on record, the same have to be taken into consideration for the purpose of making assessment of market value of the acquired land as compared to the Collector rate.

[8] I have heard learned counsel for the parties and gone through the paper-book as well as the records of the case and also perused the case law cited at bar.

[9] While both the sides have made relevant arguments, however, few of them do not fit well in the facts and circumstances of the present case and they are required to be examined in the context of the present case. A perusal of Jamabandi for the year 1992-1993 (Ex.-P-74), order dated 04.05.1981 granting permission for Change of Land Use for the acquired land (Ex.P-57) and the order dated 08.06.1981 i.e. approval of building plan regarding the said land (Ex.P-58) substantiates the argument raised by learned counsel for the appellants that not only the acquired land had potential for commercial use, but along with that, appellants had also taken positive steps in this direction. Requisite permissions by the Government officials were duly sought to make it usable for commercial purpose and after approval of building plan, partial construction work, required to establish a commercial unit at the site, was also undertaken. Additionally, after taking into consideration the other features of the land, e.g. it was in close proximity with the high valued premises and its major chunk was facing the national highway, it cannot be denied that this site required special consideration while assessing the market value of the land.

[10] At the same time contention by learned counsel for the appellants that acquired land was a commercial site on Karnal Road and in view of circle / collector rate as regards the commercial site, which was @ Rs. 4,000/- per square yard, assessment of compensation should have been at least at the said rate, does not hold much substance. It was held by the Hon'ble Apex Court in ***"Jawajee Nagnatham vs. Revenue Divisional Officer"***, reported as ***1994(4) SCC 595*** that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land on the date of notification under Section 4(1) and out of the possible methods of valuation, which read as under:-

> *" (1) opinion of experts;*
> *(2) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and*
> *(3) a number of years purchase of the actual or immediately prospective profits of the lands acquired."*

Generally the second method of valuation is accepted as the best. Similarly in ***"Periyar and Pareekanni Rubbers Ltd. vs. State of Kerala"***, reported as ***1991(1) RCR 427 (SC)***, it was held by Hon'ble Apex Court that conduct of a hypothetical prospective buyer and seller was extremely relevant to determine the compensation in such cases. Relevant para of this judgment is reproduced hereunder:-

> *" ....What is fair and reasonable market value is always a question of fact depending on the nature of the evidence, circumstances and probabilities in each case, The guiding star would be the conduct of a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market condition as on the date of the notification under Section 4(1) but not an anxious buyer dealing at arm's length nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value."*

[11] Therefore, there cannot be any doubt about the postulate that the exemplar sale deed, in the period immediately prevailing the time of notification under Section 4, provides the best assistance in determining the market rate. In the present case, when exemplar sale deeds are on record, they have to be given preference in comparison to the Collector rate. Even in **Reddy's case (supra),** relied upon by learned counsel for the appellants, It was observed that minimum statutory value in accordance with Stamp Act can be taken as market value for circle rate only where no records for such actual transaction/purchase was available. Further, this argument by learned counsel for the appellants is not supported by the evidence brought on record by them. It was held by Hon'ble Apex Court in ***Lal Chand's case (supra)*** that though estimation of market value by such statutorily constituted expert committees, can form the basis for determining the market value in land acquisition cases, however, it is open to either party to place evidence to dislodge the presumption that may flow from such guideline regarding market value. Accordingly, contention by learned counsel for the appellants is required to be looked into in view of the evidence brought on record by them.

[12] If circle rate for commercial property as propounded by appellants are taken into account, then it comes to be around Rs. 1,95,47,680/- per acre (Rs. 2 Crores approximately), which is contrary to the sale deeds brought on record by them, as per which maximum market rate has only been around Rs. 96 lakhs per acre (Ex-P2), that too, after a long duration from the date of notification i.e. on 20.02.1995 and in rest other cases, it has been at substantially lower side. Therefore, the argument raised by learned counsel for the appellants that compensation be calculated as per the circle rate of the commercial property is liable to be discarded, as it is not supported by their own evidence. There is one other fact which goes against the appellants, though the Change of Land use and approval for building plans for the establishment of a commercial set up was taken in as early as 1981, but a functional commercial set up was not established till the time of acquisition, which also shows that despite the site having potential commercial value, time was still not ripe for extracting the actual benefits as a commercial site and therefore, compensation for this land cannot be assessed at the circle rate for commercial property.

[13] Now, the next question is, if this case requires special consideration but the assessment cannot be made as per the Collector rate for commercial property, then what should be the appropriate market value at the time of notification under Section 4 of 1894 Act and how it shall be assessed. For this purpose, many sale deeds were brought on record as evidence by landowners-appellants to show the prevailing market rate at the time of acquisition. However, in ***Badan Singh's case (supra)***, this Court while assessing the compensation, found only four to be relevant as they belonged to the acquired area and rest sale deeds were rejected as they were far away having altogether different features and rightly so, as every locality might be at a different stage of development at a particular point of time. In my considered opinion, sale transactions in the acquired area provide the best estimates and hence, it would be relevant to discuss only these four sale deeds regarding assessment of compensation.

[14] While the Reference Court rejected these sale deeds on the ground that they pertain to very small area and cannot be applied while acquiring a large chunk of land, on the other hand, this Court rejected them after observing that there is a great variation in the value of sale deeds depending upon its size and location and these cannot be clubbed together for the purpose of taking average. However, in my considered opinion, in the specific case of appellants, like all the above referred transactions, where demised land was either on a State Highway or on a National Highway, land of appellants is also situated on National Highway while having similar features. While assessing compensation on the basis of these sale deeds, there also cannot be any hesitation on the ground that they belong to very small plots. The Hon'ble Apex Court in ***"Trishala Jain & Anr. vs. State of Uttaranchal & Anr."***, reported as ***2011 (6) SCC 47***, held that the value of sale of small pieces of land can be taken into consideration for determining the value of large tract of land but with a rider that the Court while taking such instances into consideration has to make a reasonable deduction keeping in view other attending circumstances. This proposition of law has been subsequently followed in ***"State of Madhya Pradesh & Ors. vs. Kashiram (dead) by L.Rs. & Ors."***, reported as **2010 (14) SCC 506** and ***"Prabhakar Raghunath Patil & Ors. vs. State of Maharashtra"***, reported as **2010 (13) SCC 107**. In view of above judgments, it was held in **"Haryana State Agricultural Market Board vs. Krishan Kumar"**, reported as (2011) 15 SCC 297 that value of small developed plots could be the basis after appropriate deductions. Relevant para thereof is reproduced hereunder:-

> *" 10. It is now well settled that if the value of small developed plots should be the basis, appropriate deductions will have to be made therefrom towards the area to be used for roads, drains, and common facilities like a park, open space, etc. Thereafter, further deduction will have to be made towards the cost of development, that is, the cost of leveling the land, cost of laying roads and drains, and the cost of drawing electrical, water and sewer lines."*

In this case, land of appellants was situated on Karnal - Delhi road; largely facing the Highway and thus, was primely located, as well as having easy access. In such situation, option of dividing the acquired land in multiple smaller parts and selling them as shops or for any other commercial purpose, was always available to the appellants to extract maximum price for their land in case they intended. Therefore, these sale deeds can be relied upon while assessing the compensation after applying appropriate deduction, moreso, when the land of appellants being surrounded by small area sale transactions which apparently on its own reflects its commercial nature and value, there being Change of Land Use already been granted in their favour by the Town & Country Planning Department.

[15] Now, in order to contextually examine these sale deeds, it is required to arrange them in a tabular format in ascending order of transaction date which are as under:-

Sale Deed No. / Date	**Exhibit Number**	**Area (K-M)**	**Average Price (Rs. in per acre)**
1564 / 05.07.1990	P-53	1-15	8,00,000/-
1676 / 16.07.1990	P-51	1-15	8,00,000/-
1481 / 26.06.1991	**P-12**	**0-1**	**40,00,000/-**
2448 / 04.11.1991	P-52	0-4	20,00,000/-

[16] A careful perusal of the above reveals that in July 1990, vide Ex.P-51 and Ex.P-53, plots of relatively larger size i.e. 1 kanal 15 Marla have been sold at a price of average Rs.8 lakh per acre, while vide Ex.P-52, 4 marlas of land in the end of year 1991 has been sold at a price of average Rs. 20 lakh per acre. After adjusting to some extent for size, it can be assumed that the price in this location has almost increased 1.5/2 times in a span of around 1½ years. This is required to be taken into consideration that all these sale deeds pertain to sites which are located at Kurukshetra-Pipli road, which is a State Highway, while the property of the appellants is located at a National Highway and in close proximity with some prime structures and its value should be relatively high. Only sale deed which pertains to National Highway is Ex.P-12 dated 26.06.1991 which is also in close proximity of the land of appellants and ideally, it is best suited to comparatively assess the compensation for the land of appellants as it enjoins the same potentiality. Statement of the vendee of the land (Ex.P-12), namely, Jagan Nath, in cross-examination while appearing as PW-5 that plot (Ex.P-12) was purchased for the purpose of resale on premium as the plot was meant for commercial purposes, further substantiate the cause of appellants that on account of its commercial usability, assessment for this land should have been done accordingly. In ***"Mehrawal Khewaji Trust (Registered), Faridkot and others vs. State of Punjab and others"***, reported as ***(2012) 5 SCC 432***, which was subsequently followed in ***"Himmat Singh and others vs. State of M.P. and another"***, reported as **2013(16) SCC 392** as well, it was held that highest value reflected in the sale deeds shall be taken into consideration for the purpose of determination of compensation if it is satisfied that it is a *bona fide* transaction. Relevant para of the same is reproduced hereunder:-

> *" 15. It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation."*

Therefore, this Court finds it appropriate to assess the compensation with respect to the land of appellants on the basis of sale deed Ex.P-12, but at the same time, as the same pertains to a plot size of one (01) marla only, it would definitely requires deduction on this account.

[17] In ***Lal Chand's case (supra)***, the Hon'ble Apex Court while discussing the percentage of "deduction for development" to be made to arrive at the market value of large tracts of undeveloped agricultural land, held that in case of the industrial plots, deduction would be relatively less as the industrial plots size will be large and there will be very limited civic amenities. Relevant para of the same is reproduced here under:

> *" 18. The position with reference to industrial layouts will be different. As the industrial plots will be large (say of the size of one or two acres or more as contrasted with the size of residential plots measuring 100 sq. m to 200 sq m), and as there will be very limited civic amenities and no playgrounds, the area to be set apart for development (for roads, parks, playgrounds and civic amenities) will be far less; and the cost to be incurred for development will also be marginally less, with the result the deduction to be made from the cost of an industrial plot may range only between 45% to 55% as contrasted from 65% to 75% for residential plots."*

Though, in ***Lal Chand's case (supra)***, it was observed that in case of industrial plots, deduction should be 45% to 55%, however, in case of "***Major General Kapil Mehra vs. Union of India"***, reported as ***(2015) 2 SCC 262***, after discussing catena of judgments in this regard, the Hon'ble Apex Court was of the view that while determining the market value of the acquired land, normally one-third (1/3rd) deduction i.e. 33⅓% towards development charges is allowed. On a comparative analysis, it can also be seen that there are two positives in favour of appellants' land. Firstly, the acquisition in case of appellants is almost after 9 months of the sale deed in relation to Ex. P-12 and it is a commonly known factor that rates of road side commercial properties increases very rapidly. Secondly, as discussed earlier, on account of Change of Land Use permission as well as the permission of building plan for setting up of a commercial establishment already been granted to the appellants *qua* this land coupled with the fact that most of their land is facing the National Highway, land of appellants is much ahead in development race in comparison to other nearby properties. Accordingly, deduction of 33⅓% is largely on account of the factor that the rates are being assessed on the basis of a sale deed pertaining to a small chunk of land. Therefore, after 1/3rd deduction, the compensation to be paid to the appellants in present case comes out to be Rs. 26,66,667/- per acre. [Rs. 40,00,000 – Rs. 13,33,333 (i.e. 1/3rd of Rs. 40,00,000/-) = Rs. 26,66,667.00].

[18] This rate can be roughly substantiated through an alternate way as well. Rate per acre as per Ex.P-6 dated 22.02.1991 for 2 Marla land is Rs. 24,00,000/- per acre and this land is very near to the site of the appellants, but on the opposite side of the National Highway. In comparison to the site pertaining to Ex.P-6, demised land of the appellants has one negative feature that the size is relatively very large. But as discussed earlier, with respect to land of appellants, all necessary approvals for commercial set up are already in place and this sale deed is also relatively of earlier period. Therefore, cumulatively taking all these things into consideration, the rate of land assessed @ Rs. 26,66,667/- per acre seems to be rational.

[19] At this stage, it is also required to examine the contention by the learned counsel for the appellants that at least Circle rate should be given while assessing the compensation, on account of the fact that at that time, the Deputy Commissioner concerned impounded many sale deeds i.e. Ex.P-64 to Ex.P-69 as it were less than the Circle rates for commercial property. Details of these sale deeds are collated in tabular format as below:

Sale Deed No. / Date	**Exhibit No.**	**Area (in sq. yards)**	**Total Cost (in Rs.)**	**Price per sq. yard (in Rs.)**
2720 / 26.11.1991	P-64	54	22,000	407.41/-
3607 / 15.01.1992	P-65	60	40,000	666.67/-
3140 / 07.02.1994	P-66	35	55,500	1585/-
3141 / 07.02.1994	P-67	35	55,500	1585/-
4287 / 14.02.1995	P-68	45.8	80,230	1744/-
1671 / 29.07.1994	P-69	24.4	48,000	2,000/-

While the rate as per compensation assessed above approximately comes out to be Rs. 551/- per square yard (Rs.26,66,667 / 4840 = Rs.551/- (approx.), Circle rate for commercial property at Karnal Road at that time was Rs. 4,000/-

per square yard. Figures represented by this table rather belie the claim of the appellants. Ex.P-66 to Ex.P-69 are for the years 1994 and 1995 which is after the date of notification and even in those years the circle rate assessed was ranging from Rs. 1500-2000 per square yard. Circle rate assessed in years 1991/1992 range from Rs. 400-600 per sq yard, which is comparable to the compensation assessed in case of appellants.

[20] Accordingly, in view of the discussion held above, the present appeal is **partly allowed** and appellants are held entitled to get the compensation at the rate Rs. 26,66,667/- per acre with respect to the acquired land owned by them besides, other statutory benefits / interest payable under the 1894 Act.

[21] Pending miscellaneous application(s), if any, shall also stand disposed off.

December 12, 2023 **(HARKESH MANUJA)**
'dk kamra' **JUDGE**

Whether Speaking / Reasoned :	Yes	
Whether Reportable :	Yes	