In the High Court of Punjab and Haryana, at Chandigarh

Regular First Appeal No. 4521 of 2017 (O&M)
And Other Connected Cases

Reserved On: 21.12.2022
Date of Decision: 12.01.2023

State of Haryana and Others
... Appellant(s)

Versus

Raj Singh and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Shivendra Swaroop, Assistant Advocate General, Haryana.

Mr. Chanderhas Yadav and Mr. Jai Prakash Jangu, Advocates for the landowners.

Anil Kshetarpal, J.

1. While praying for the modification of the market value of the acquired land assessed by the Reference Court (hereinafter referred to as "the RC"), the landowners as well as the State of Haryana have come up in the appeal. The notifications under Section 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the 1894 Act"), the awards passed by the Land Acquisition Collector (hereinafter referred to as "the LAC") as well as the RC are common. The learned counsel representing the parties are also *ad idem* that this batch of appeals can conveniently be decided by a common judgment. In fact, all the reference petitions filed by the landowners were consolidated and the evidence was led in the LAC Case No. 44 of 2015.

1.2 The relevant particulars, in brief, for the purpose of decision of the present case, are as under:-

S.NO.	TITLE	DETAILS
1.	Date of Notification under Section 4 of the 1894 Act.	25.01.2013
2.	Date of Notification under Section 6 of the 1894 Act.	25.06.2013
3.	Purpose of Acquisition.	For the construction of a Barkhtabad Bypass Road.
4.	Location, area and nature of the acquired land	The acquired land is located in village Barkhtabad, Tehsil Bahadurgarh, District Jhajjar.
5.	Number and Date of the Award of the Land Acquisition Collector.	Vide Award No. 39-J dated 25.09.2013 the LAC acquired land measuring 76 acres and 5 marlas, located in village Barkhtabad, Tehsil Bahadurgarh, District Jhajjar.
6.	Amount assessed by the Land Acquisition Collector.	The LAC has offered to pay the market value of the acquired land located in village Barkhtabad, Tehsil Bahadurgarh, District Jhajjar, @ ₹52,00,000/- per acre along with all the statutory benefits.
7.	Date of the judgment of the Reference Court.	16.05.2017
8.	Amount determined by the Reference Court.	The RC has assessed the market value of the acquired land @ ₹83,15,400/- per acre.

2. **Facts**

2.1 It would be appropriate to notice the relevant facts in brief. Not satisfied with the amount offered by the LAC for the involuntary acquisition of their land, on the applications of the landowners, 12 cases were referred to the RC for re-determination. The landowners claimed that the LAC has failed to assess the market value of the acquired land as many relevant facts, namely the sale deeds, location, situation and the other development activities surrounding the acquired land, have not been taken into consideration. Terming the award passed by the LAC as unjust, unfair, unreasonable and inadequate, the landowners claimed that the market value of the acquired land is more than ₹5,00,00,000/- per acre. It was also claimed that towards the Eastern side, the acquired land abuts the Bahadurgarh Bye-pass, whereas, it abuts Sector 37 in the Western side. Hence, the acquired land could be utilized for the commercial, residential and industrial purposes.

2.2 On the other hand, the State of Haryana, while contesting the cases, claimed that the LAC has assessed the just, fair and reasonable amount of the market value for the acquired land.

2.3 On the appreciation of the pleadings, the following issues were culled out by the RC for adjudication:-

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

3. <u>Evidence Produced by the Respective Parties</u>

3.1 In the oral evidence, the landowners have examined the following witnesses:-

Sr. No.	Name of the Witness	Particulars of the Witness
1.	PW.1 Ramesh	Petitioner
2.	PW.2 Jai Singh	Petitioner
3.	PW.3 Jai Bhagwan	Registration Clerk, Sub Registrar Office, Bahadurgarh.
4.	PW.4 Om Parkash	Record Keeper, Office of Sub Registrar Office, Bahadurgarh.

3.2 In the documentary evidence, the landowners have produced the following documents, apart from the sale deeds, a tabulated compilation whereof is incorporated in para 5.4 of the judgment:-

Sr. No.	Exhibit Number	Description of the document
1.	Ex.P4	Mutation No. 2541
2.	Ex.P5	Mutation No. 2414
3.	Ex.PW.1/4	Affidavit of Ramesh
4.	Ex.PW.2/A	Affidavit of Jai Singh
5.	Ex.PW.4/A	Affidavit of Om Parkash

3.3 On the other hand, in the oral evidence, the State has examined RW.1 Sh.Joginder Singh, Junior Engineer, HSRDC, Jhajjar.

3.4 In the documentary evidence, the HSIIDC has produced the following documents:-

Sr. No.	Exhibit Number	Description of the document
1.	Ex.RW.1/A	Affidavit of Joginder Singh
2.	Mark-A & Mark-B	Notification
3.	Mark-C	Award No. 39 dated 25.09.2013
4.	Mark-D	Statement of the Collector
5.	Mark-E	Circumstances of the case
6.	Mark-F	Award No. 39-J District Jhajjar for the Year 2013

4 <u>Analysis of the reasons recorded by the RC</u>

4.1 On the careful perusal of the judgment passed by the RC, it is evident that after noticing that the sale deeds bearing No. 9579 (Ex.PW.3/A), 9450 (Ex.PW.3/B) and 4456 (Ex.PW.3/C) are post 25.01.2013, i.e. the date of notification under Section 4 of the 1894 Act still proceeded to calculate the mean price of the sale deeds (Ex.PW.3/A, Ex.PW.3/B, Ex.PW.3/C and Ex.PW.4/A). Thereafter, the RC has deducted 1/3rd towards the development, de-escalation and the waiting period to assess the market value of the acquired land to ₹83,15,400/- per acre.

5. <u>Discussion and Analysis of the arguments of the learned counsel representing the parties.</u>

5.1 Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book as well as the record of the Reference Court, which was requisitioned.

5.2 On the one hand, the learned counsel representing the State of Haryana contends that the landowners failed to prove that the amount assessed by the LAC was inadequate. He submits that the RC has committed an error in calculating the average of four sale deeds (Ex.PW.3/A, Ex.PW.3/B, Ex.PW.3/C and Ex.PW.4/A). He submits that the sale deeds (Ex.PW.3/A, Ex.PW.3/B, Ex.PW.3/C) are not only post the date of notification under Section 4 of the 1894 Act but also with respect to the smaller parcels of plots. He further submits that the sale deed bearing No. 4526 (Ex.PW.4/A) is with respect to a tiny sized plot measuring 6 marlas in a residential area. Hence, the RC has erred in assessing the market value of the acquired land @ ₹83,15,400/- per acre.

5.3 On the other hand, the learned counsels representing the landowners contend that the deduction of 1/3rd applied by the RC is not appropriate. They submit that at the most 10% deduction could be ordered from the average price of the aforementioned sale deeds.

5.4 This Court has analyzed the arguments of the learned counsel representing the parties and has carefully perused the impugned judgment along with the requisitioned record.

5.5 At this stage, it will be appropriate to compile a tabulated information of the various sale deeds produced by the landowners, which is as under:-

Sr. No.	***Exhibit No.***	***Sale Deed No.***	***Dated***	***Area***	***Amount (In ₹)***	***Name of Village***	***Rate Per acre (In ₹)***
1.	*Ex.PW.3/A*	*9579*	*05.02.2013*	*1K-2M*	*16,62,500*	*Bir Barktabad*	*1,20,90,909*
2.	*Ex.PW.3/B*	*9450*	*30.01.2013*	*1K-0M*	*15,25,000*	*-do-*	*1,22,00,000*
3.	*Ex.PW.3/C*	*4456*	*29.08.2013*	*0K-7M*	*10,50,000*	*-do-*	*2,40,00,000*
4.	*Ex.PW.4/A*	*4526*	*27.08.2012*	*0K-6M*	*5,10,500*	*-do-*	*1,36,13,333*
5.	*Ex.PW.4/1*	*3997*	*08.09.2015*	*9K-10M*	*3,02,81,250*	*-do-*	*2,55,00,000*
6.	*Ex.PW.4/3*	*3983*	*08.09.2015*	*16K-0M*	*5,10,00,000*	*-do-*	*2,55,00,000*

5.6 On the careful perusal of the sale deeds, it is evident that the sale deeds (Ex.PW.3/A, Ex.PW.3/B, Ex.PW.3/C, Ex.PW.4/1 and Ex.PW.4/3) are post the date of preliminary notification under Section 4 of the 1894 Act i.e. 25.01.2013. The sale deeds (Ex.PW.3/A, Ex.PW.3/B and Ex.PW.3/C) are not expected to be with respect to the agricultural land. The sale deed (Ex.PW.3/A) is with respect to a plot measuring 1 kanal and 2 marla (approximately 666 square yards). The sale deed (Ex.PW.3/B) is with respect to a plot measuring 610 square yards. Similarly, the sale deed (Ex.PW.3/C) is only with respect to the plot measuring 210 square yards. Hence, it was not appropriate for the RC to take into account the aforesaid three sale deeds while assessing the market value of the acquired land, particularly when they were also the post the date of notification under Section 4 of the 1894 Act. The sale deeds bearing No. 3997 (Ex.PW.4/1) and 3983 (Ex.PW.4/3) are approximately more than two years and eight months post the date of notification under Section 4 of the 1894 Act, hence, correctly ignored by the RC. Moreover, on the careful perusal of the aforesaid sale deeds, it is evident that the Delhi Catholic Archdiocese (Regd.) through its school, namely Sahoday Senior Secondary School has purchased the property vide both the sale deeds. Obviously, the land has not been purchased for the agricultural purpose. Now, the Court is left with the sale instance (Ex.PW.4/A:Ex.P.3). On the careful perusal of the said sale deed, it is evident that the residential plot measuring 6 marlas in the residential area has been sold on 27.08.2012 for ₹5,10,500/-. This sale deed is not only with respect to a tiny sized plot but no effort has been made by the learned counsel to prove its comparable location. As already noticed, the total acquired land is 76 kanals and 5 marlas. In the terms of the units of the agricultural land, ordinarily an acre of land is comprised of 4840 square yards. An acre of land is further sub-divided into 8 kanals. Thus, ordinarily, each kanal of land has 605 square yards approximately. Thereafter, each kanal is sub-divided into 20 marlas. Thus, each marla consists of 30.25 square yards of land. The sale deed (Ex.PW.4/A) is only with respect to 180 square yards which is hardly 3.71% of an acre. Moreover, the total acquired land is approximately 18543 square yards. The area of sale deed (Ex.PW.4/A) is less than 1% of the total acquired land. Hence, the reliance placed by the RC on the sale deeds (Ex.PW.3/A, Ex.PW.3/B, Ex.PW.3/C and Ex.PW.4/A) was not appropriate.

5.7 Once the landowners claim modification of the market value of the acquired land assessed by the LAC, they are required to prove the comparable sale instances of the contemporaneous period in order to prove that the market value assessed by the LAC is not appropriate. No doubt, the Courts have held that the sale deeds pertaining to a smaller area, in the absence of any other evidence, can be relied upon, however, it all depends upon the facts and circumstances of each case. While assessing the market value of the acquired land, the Court is required to identify a comparable sale instance of contemporaneous period. Undoubtedly, the Court can rely upon the sale instance of a smaller plot after applying the appropriate deduction, however, this rule does not have a universal application. In para 4 of the judgment rendered by the Supreme Court in ***Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and Another (1988) 3 SCC 753***, the general principles of the assessment of the market value were culled out which are extracted as under:-

> *"4. The following factors must be etched on the mental screen:*
>
> *(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition officer in his Award unless the same material is produced and proved before the Court.*
>
> *(2) So also the Award of the Land Acquisition officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition officer, as if it were an appellate*

court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under sec. 4 of the Land Acquisition Act (dates of Notifications under secs. 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under sec. 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market

value.

(8) only genuine instances have to be taken into account. (Some times instances are rigged up in anticipation of Acquisition of land).

(9) Even post notification instances can be taken into account (1) if they are very proximate,(2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(l0) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has

there after to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors (14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

Plus factors	*Minus factors*
1. smallness of size	*1. largeness of area.*
2. proximity to a road.	*2. situation in the interior at a distances from the Road.*
3. frontage on a road.	*3. narrow strip of land with very small frontage compared to death.*
4. nearness to developed area.	*4. lower level requiring the depressed portion to be filled up.*
5. regular shape.	*5. remoteness from developed locality.*
6. level vis-a-vis land under acquistion.	*6. some special disadvantageous factor which would deter a purchaser.*
7. special value for an owner of an adjoining property to whom it may have some very special advantage.	

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding

the size. A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say l000 sq. yds or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be looked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own facts pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense. The problem which has surfaced in the present appeals needs

to be recapitulated. The question is whether in scaling down the total compensation payable to the appellant from Rs.1,14,517 to Rs.63,846, the High Court has violated any principle of valuation or adopted any faulty methodology."

5.8 In the present case, the land has been acquired for the construction of a by-pass road, away from the residential area of the village. The sale deed (Ex.PW.4/A) is a tiny sized plot in the residential area of the village. There is no evidence that the acquired land also forms the part of the residential area or is located near the residential area.

6. Decision

6.1 Keeping in view the aforesaid discussion, this Court is left with no choice but to accept the appeals filed by the State of Haryana, whereas, to dismiss the appeals filed by the landowners. The award passed by the LAC requires no modification with regard to the assessment of the market value of the acquired land.

6.2 The miscellaneous application(s) pending, if any, in all the appeals, shall stand disposed of.

(Anil Kshetarpal)
Judge

January 12, 2023
"DK"

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No

Sr. No.	Case No.	Party's Name
1.	RFA-4444-2017	STATE OF HARYANA AND OTHERS V/S RAJ SINGH AND OTHERS
2.	RFA-4448-2017	STATE OF HARYANA AND OTHERS V/S KHAZAN SINGH
3.	RFA-4522-2017	STATE OF HARYANA AND OTHERS V/S SAMAY SINGH AND OTHERS

Sr. No.	Case No.	Party's Name
4.	RFA-688-2018	OM PARKASH AND ORS V/S STATE OF HARYANA AND ORS
5.	RFA-691-2018	JAI PARKASH AND ANR V/S STATE OF HARYANA AND ORS
6.	RFA-692-2018	NIRMLA AND ORS V/S STATE OF HARYANA AND ORS
7.	RFA-693-2018	RAJ SINGH AND ORS V/S STATE OF HARYANA AND ORS
8.	RFA-4449-2017	STATE OF HARYANA AND OTHERS V/S OM PARKASH AND OTHERS
9.	RFA-695-2018	JAI SINGH AND ANR V/S STATE OF HARYANA AND ORS
10.	RFA-696-2018	KHAZAN SINGH V/S STATE OF HARYANA AND ORS
11.	RFA-2796-2018	RAJINDER SINGH AND ANR V/S STATE OF HARYANA AND ORS
12.	RFA-4520-2017	STATE OF HARYANA AND OTHERS V/S RAJINDER SINGH AND ANOTHER
13.	RFA-4443-2017	STATE OF HARYANA AND OTHERS V/S JAI PARKASH AND ANOTHER
14.	RFA-4447-2017	STATE OF HARYANA AND OTHERS V/S SMT. NIRMALA AND OTHERS
15.	RFA-4442-2017	STATE OF HARYANA AND OTHERS V/S SMT. BHARPAI AND OTHERS
16.	RFA-687-2018	SAMAY SINGH AND ORS V/S STATE OF HARYANA AND ORS
17.	RFA-690-2018	SAKUNTALA DECEASED THROUGH HER LRSAND ORS V/S STATE OF HARYANA AND ORS
18.	RFA-694-2018	BHARPAI AND ORS V/S STATE OF HARYANA AND ORS
19.	RFA-4446-2017	STATE OF HARYANA AND OTHERS V/S JAI SINGH AND ANOTHER
20.	RFA-4450-2017	STATE OF HARYANA AND OTHERS V/S PARMILA DEVI
21.	RFA-2744-2018	PARMILA DEVI V/S STATE OF HARYANA AND ORS
22.	RFA-689-2018	RAJ SINGH AND ORS V/S STATE OF HARYANA AND ORS
23.	RFA-4445-2017	STATE OF HARYANA AND OTHERS V/S SMT. SAKUNTALA DECEASED THROUGH HER LRS AND OTHERS

(Anil Kshetarpal)
Judge

January 12, 2023
"DK"