
(2019) 11 P&H CK 0210

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 3625 Of 2014

M/S. Base Exports Pvt. Ltd.

APPELLANT

Vs

State Of Haryana And Another

RESPONDENT

Date of Decision : 22-11-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 51A, 54
Evidence Act, 1872 — Section 114

Citation : (2019) 11 P&H CK 0210

Hon'ble Judges : G.S.Sandhawalia, J

Bench : Single Bench

Advocate : Pawan Kumar, Surya Kumar, Anshuman Mandhar, Navneet Singh, Sandeep Sharma, Rajat Garg, Aditya Jain, Harshit Anand, Shekhar Verma

Final Decision : Disposed Of

Judgement

G.S.Sandhawalia, J

The present judgment shall dispose of 39 appeals i.e. RFA Nos. 3625 of 2014, 2522, 2538, 2757, 3134 to 3150, 3626 to 3637, 3659, 3675 of 2014, 953 of 2015 195, 705 and 706 of 2016 filed by the land owners since common questions of facts and law are involved in all the appeals.

Facts are being taken from RFA No. 3625 of 2014, M/s. Base Exports Pvt. Ltd. vs. State of Haryana and another.

The present appeal has been filed by the land owners under Section 54 of the Land Acquisition Act, 1894 (in short 'the Act') to claim higher compensation than what has been granted against the awards of the Reference Court, Gurugram dated 30.10.2013 and 14.10.2015. The notification under Section 4 of the Act was issued on 24.06.2008 whereby, land was sought to be acquired for village Ghata, Tehsil Sohna, District Gurgaon for the public purpose and utilization of Sector roads from Sectors 58 to 67. The Land Acquisition Collector, vide Award No. 36 dated 12.08.2009 for the land measuring 45.23 acres, fixed the market

value at Rs.55,00,000/- for chahi and magda lands and at Rs.60,00,000/- per acre for the land along the periphery road measuring 4 acres distance from the road. The Reference Court, while deciding the lead case i.e. L.A. No. 1148 of 2001, M/s. Base Exports Pvt. Ltd. vs. State of Haryana and another on 30.10.2013 alongwith 42 other cases has fixed the market value at Rs.6,338/- per square yard (Rs.3,06,75,920/- per acre). The basis for enhancement was a two fold formula applied wherein the average of the sale deeds of Exs. P-117 to P-124 was taken @ Rs.6,473.30/- per square yard. A 60% cut was applied to fix the market value at Rs.2,589.30/- per square yard.

Thereafter, an earlier award in L.A. Case No. 639 of 2007, Parul Garg vs. State of Haryana Ex. P-135 decided on 06.06.2012 for the notification dated 12.08.2003 for village Ghata was kept in mind wherein, Rs.5,000/- per square yard had been awarded. Keeping in view the difference of 5 years in the intervening period, a 12% increase was further granted to fix the market value at Rs.10,087/- per square yard. After taking the said amount and the average of Exs. P-117 to P-124, which was Rs.2,589.30/- per square yard, a average was arrived at and a 60% cut was applied and the market value was, thus, fixed at Rs.6,338/- per square yard, (Rs.3,06,75,920/- per acre). It is pertinent to mention that the State has not preferred any appeals against the said award and vide the subsequent award dated 14.10.2015, the earlier award was followed.

Counsel for the land owners has accordingly stressed for further increase on the ground that the averaging formula should not have been resorted to and the benefit of the highest sale deed closest to the Section 4 notification should have been taken into consideration. Since the land was being acquired for the sector roads there should be no development cut. Therefore, the market value was sought to be on the basis of Ex.P-123, which was a sale deed for 37 kanals 8 marlas executed on 15.02.2008 for Rs.16,35,00,000/-, the market value which would work out at Rs.7,225.88/- per square yard translating to Rs.3,49,73,260/- per acre.

Counsel for the State, on the other hand, has opposed the further increase by submitting that the formula which had been adopted of giving 12% increase for the land which was acquired on 12.08.2003 was not a safe method and, therefore, only the average of Exs. P-117 to P-124 should have been kept in mind which worked out at Rs.6,473.30/- Even if a cut of 20% was applied on the same on account of the fact that the sale deeds were in favour of the builders, the market value was liable to be reduced. It is further submitted that the case of Parul Garg (supra) was a case where 4 marlas of land was acquired for the master road from Sector 55 to Sector 56, Gurgaon and no cut had been applied to fix the market value in view of the small piece of land acquired and, therefore, the said award should not have been kept in mind.

The argument of the land owners is not liable to be accepted in the facts and circumstances of the present case. It is settled principle that the award as such of the same village is not liable to be taken into consideration as it is only a

relevant piece of evidence but has no binding force, as such. The law stands settled in *Manoj Kumar and others vs. State of Haryana and others*, 2018 (2) RCR (Civil) 815 and *Loveleen Kumar and others vs. State of Haryana and others*, 2018 (7) Scale 596. It has been held that blind reliance upon the awards as such is not to be resorted to and the best sale exemplars are the sale deeds. The relevant part in *Manoj Kumar's* case (*supra*) reads as under:-

"15. The awards and judgment in the cases of others not being inter parties are not binding as precedents. Recently, we have seen the trend of the courts to follow them blindly probably under the misconception of the concept of equality and fair treatment. The courts are being swayed away and this approach in the absence of and similar nature and situation of land is causing more injustice and tantamount to giving equal treatment in the case of unequal's. As per situation of a village, nature of land its value differ from the distance to distance even two to three-kilometer distance may also make the material difference in value. Land abutting Highway may fetch higher value but not land situated in interior villages.

16. The previous awards/judgments are the only piece of evidence at par with comparative sale transactions. The similarity of the land covered by previous judgment/award is required to be proved like any other comparative exemplar. In case previous award/judgment is based on exemplar, which is not similar or acceptable, previous award/judgment of court cannot be said to be binding. Such determination has to be out rightly rejected. In case some mistake has been done in awarding compensation, it cannot be followed on the ground of parity an illegality cannot be perpetuated. Such award/judgment would be wholly irrelevant.

17. There is yet another serious infirmity seen in following the judgment or award passed in acquisition made before 10 to 12 years and price is being determined on that basis by giving either flat increase or cumulative increase as per the choice of individual Judge without going into the factual scenario. The said method of determining compensation is available only when there is absence of sale transaction before issuance of notification under section 4 of the Act and for giving annual increase, evidence should reflect that price of land had appreciated regularly and did not remain static. The Recent trend for last several years indicates that price of land is more or less static if it has not gone down. At present, there is no appreciation of value. Thus, in our opinion, it is not a very safe method of determining compensation.

18. To base determination of compensation on a previous award/ judgment, the evidence considered in the previous judgment/ award and its acceptability on judicial parameters has to be necessarily gone into, otherwise, /gross injustice may be caused to any of the parties. In case some gross mistake or illegality has been committed in previous award/judgment of not making deduction etc. and/ or sufficient evidence had not been adduced and better evidence is adduced in case at hand, previous award/judgment being not inter-parties cannot be followed and if land is not similar in nature in all aspects it has to be out-rightly

rejected as done in the case of comparative exemplars. Sale deeds are at par for evidentiary value with such awards of the court as court bases its conclusions on such transaction only, to ultimately determine the value of the property."

Even otherwise, there was a difference of almost 5 years between the acquisition of 12.08.2003 which was present in Ex.P-135 and the present acquisition dated 24.06.2008. The Reference Court though has noticed the judgment of The General Manager, ONGC Ltd. vs. Rameshbhai Jivanbhai Patel, 2008 (14) SCC 745 wherein, it has been held that beyond a period of 4 to 5 years, the said principle of 12% increase is not to be applied but still fell back on the said formula. Thereafter, it failed to even taken into consideration that in Parul Garg's case (supra), the then Reference Court was dealing with only an acquisition of 4 marlas of land, which was situated in Sushant Lok, Phase-II and the land had been purchased at Rs.4.50 lacs vide sale deed dated 03.07.2000. The sale deed of the owner had been impounded by the Collector on 05.10.2000 and the market rate had been fixed at Rs.5,000/- per square yard. In such circumstances, the same amount of compensation had been granted since the total land acquired in that case was 15.96 acres. It was noticed that there were sale exemplars Exs. P-1 to P-4 which were fully developed.

The averaging, thus, which has been resorted to by taking Rs.10,087/- to be market price while granting the 12% increase for the difference of 5 years never kept in mind the cut which was required to be applied though a cut of 60% had been applied on the average of Exs. P-117 to P-124. Therefore, the market rate got unnecessarily inflated and the basis as such to arrive at the market value is not justified in the facts and circumstances. Necessarily, reliance upon award of Parul Garg (Ex.P-135) has to be discarded for arriving at the market value since the land which has been acquired in the present case is 45.23 acres and 4 marlas of land would not be a relevant piece of evidence. The sale deeds which were available were the best sale exemplars as such and as many as 127 of them were exhibited ranging from the period May 2006 till 2011, some of which were for village Ullhawas and Behrampur, the adjoining villages. The post notification sale deeds necessarily have to be discarded which has been rightly done by the Reference Court. As per settled principle, the relevant sale deed of village Ghata is to be of a reasonable chunk of land and closest to the point of time to the Section 4 notification and location wise. Therefore, the argument that Ex.P-8/ Ex.P-91 should be taken into consideration which is of 01.05.2007 is not liable to be accepted wherein, land was sold @Rs.4,64,99,939/- per acre more than a year earlier. Thus, this Court will only reproduce the relevant sale deeds from the proximity time point and the size to assess the market value. The relevant sale deeds thus of village Ghata in question are:-

Ex.No

Date

Land Area

Total Consideration

Rate per sq. yd.

Rate Per acre

Revenue Estate

P-91

01.05.2007

No. 474

66

kanals

12

marla

38,71,12,000/-

9607

4,64,99,939/-

Ghata

P-117

24.01.2008

8 kanal

10

marla

3,32,56,250/-

6466.99

3,13,00,232/-

Ghata

P-118

24.01.2008

15

kanal 14

marla

6,14,26,000/-

6466.91

3,12,99,844/-

Ghata

P-119

27.02.2008

9 kanal 19-1/2

marla

3,80,00,000/-

6296.73

3,04,76,173/-

Ghata

P-120

19.02.2008

15

kanal 13

marla

6,13,30,000/-

6477.43

3,13,50,761/-

Ghata

P-121

19.02.2008

6 kanal

13

marla

2,61,68,000/-

6466.94

3,12,99,990/-

Ghata

P-122

08.04.2008

30

kanal 2 marla

11,77,66,250/-

,

6504.19

3,14,80,280/-

Ghata

P-123

15.02.2008

37

kanal 8 marla

16,35,00,000/-

7225.88

3,49,73,259/-

Ghata

P-124

29.01.2008

45

kanal 19

marlas

14,65,00,000/-

5881.34

2,84,65,686/-

Ghata

All the said sale deeds in question are in favour of the builders with one prime builder namely 5 Rivers Buildcon Pvt. Ltd./5 Rivers Township Pvt. Ltd. being the main vendee and, therefore, the land purchased by the said builder cannot be said to be depicting the correct market price. The builder's sale deeds would not depict the correct market value as such in its entirety as the keenness of the builders as such to purchase land at all costs to increase its land bank is a phenomena which is well known for the land it is keen to purchase. This Court

has been consistently granting 50% cut as such on builder's sale deeds by holding that the sale deeds exhibited in favour of the builder are not to be totally ignored once they are pertaining to transactions to large chunk of land. The argument that there has to be no development charge as such on account of the land being utilized for the purpose of sector roads is liable to be accepted on behalf of the land owners but the fact that the sale deeds are in favour of the builders would only show the potentiality of the land. The ability of the builders to hold on to the land and also be able to suffer the cost factors for holding on it is well known.

The three-Judge Bench of the Apex Court in *Ram Kanwar and others vs. State of Haryana and another*, 2015 (1) RCR (Civil) 234 upheld the deductions which had been applied on account of the abnormal increase which was shown in the sale deeds by holding that necessary deductions had to be applied to bring it at par with the estimated fair market value of the acquired lands. The relevant portion reads thus:-

"19. In the instant case, though the sale deeds were for part of lands which were acquired by the acquiring authority under the notification, the said sale deeds indicated an abnormal increase of more than 100% in less than four months. It is not a far reaching implication of the said land being in the vicinity of area under development or already developed, which attributed additional locational advantages leading to escalation of the sale price at which a buyer would purchase the lands. Another fact noticed by the High Court is that the buyers for all these sale transactions had vested interest in the land adjoining or around the properties in such transaction.

20. In light of the aforesaid, it can be concluded that the buyers would not have hesitated in offering higher prices to purchase the lands than the market rate of such lands and, therefore, in determination of compensation payable to the land-losers, such price could not be relied upon without making necessary deductions bringing it at par with the estimated fair market value of the acquired lands. In our considered view, the High Court has correctly made appropriate deductions to the consideration offered under the sale deeds produced and marked in the evidence while assessing fair and true market value of the acquired lands on the date of issuance of Section 4 notification."

In such circumstances, this Court is of the opinion that even if a 20% cut is applied on the above sale exemplars, the amount which had been assessed by the Reference Court would be more than what has become payable to the land owners. The sale deeds which have also been exhibited through the Revenue official are liable to be ignored on the ground also that the vendor and the vendee have not been examined. The said sale deeds have been produced without examining the said persons though it may not be necessary as such in view of the provisions under Section 51-A of the Act. However, a caveat has been put by the Constitutional Bench of the

Apex Court regarding such sale deeds in *Cement Corporation of India vs. Purya and others*, 2004 (8) SCC 270. The Apex Court held that though the sale deeds may be read in evidence but the fact that the vendor and the vendee had not appeared for cross examination as to the location of the land and the peculiar circumstances for which the land may have been purchased for higher price is a factor which is to be kept in mind. The relevant part of the said judgment reads thus:-

"31. Thus, the reasoning of this Court in *Narasaiah's* case that Section 51A enables the party producing the certified copy of a sale transaction to rely on the contents of the document without having to examine the vendee or the vendor of that document is the correct position in law. This finding in *Narasaiah's* case is also supported by the decision of this Court in the case of *Mangaldas Raghavji Ruparel* (*supra*).

32. Therefore, we have no hesitation in accepting this view of the court in the *Narasaiah's* case as the correct view.

33. The submission of Mr. G. Chandrasekhar to the effect that the contents of a sale deed should be a conclusive proof as regard the transaction contained therein or the court must raise a mandatory presumption in relation thereto in terms of Section 51A of the Act cannot be accepted as the Court may or may not receive a certified copy of sale deed in evidence. It is discretionary in nature. Only because a document is admissible in evidence, as would appear from the discussions made hereinbefore, the same by itself would not mean that the contents thereof stand proved. Secondly, having regard to the other materials brought on record, the court may not accept the evidence contained in a deed of sale. When materials are brought on record by the parties to the lis, the court is entitled to appreciate the evidence brought on records for determining the issues raised before it and in the said process, may accept one piece of evidence and reject the other.

34. In *M.S. Madhusoodhanan and Anr. vs. Kerala Kaumudi (P) Ltd. and Ors.* [(2004) 9 SCC 204], it is stated :

"119.... They are rules of evidence which attempt to assist the judicial mind in the matter of weighing the probative or persuasive force of certain facts proved in relation to other facts presumed or inferred (*ibid*). Sometimes a discretion is left with the court either to raise a presumption or not as in Section 114 of the Evidence Act. On other occasions, no such discretion is given to the court so that when a certain set of facts is proved, the court is bound to raise the prescribed presumption. But that is all. The presumption may be rebutted."

35. A registered document in terms of Section 51A of the Act may carry therewith a presumption of genuineness. Such a presumption, therefore, is rebuttable. Raising a presumption, therefore, does not amount to proof; it only shifts the burden of proof against whom the presumption operates for disproving it. Only if the presumption is not rebutted by discharging the burden, the court

may act on the basis of such presumption. Even when in terms of the Evidence Act, a provision has been made that the court shall presume a fact, the same by itself would not be irrebuttable or conclusive. The genuineness of a transaction can always fall for adjudication, if any question is raised in this behalf."

The applications for additional evidence have also been filed in the present case and other connected appeals to place on record the notification dated 05.02.2007 (Annexure A-3) and master plan (Annexure A-4). However, no effort as such was made to bring the same on record during the pendency of the reference petition though there was sufficient time as such and the documents were in existence at the time the petitions were pending before the Reference Court. It is settled principle that applications for additional evidence cannot be used to fill up the lacuna in the case, as has been held by the Apex Court in *Satish Kumar Gupta and others vs. State of Haryana*, (2017) 4 SCC 760. Neither the documents are necessary as such for the Court to pronounce the judgment as there are sufficient sale deeds as such on record for the purposes of fixing the market value and, therefore, the applications are dismissed.

However, since the State has not preferred to file any appeals, the amount which had been awarded by the Reference Court is not liable to be interfered with. However, no case as such is made out for further enhancement. Accordingly, the appeals filed by the land owners are dismissed. All pending miscellaneous applications, if any, in which no separate orders have been passed, also stand disposed of accordingly.