

MAYA DEVI (D) THROUGH LRS & ORS.

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v.

STATE OF HARYANA & ANR.

(Civil Appeal Nos. 873-874 of 2018)

JANUARY 25, 2018

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[RANJAN GOGOI AND R. BANUMATHI, JJ.]

Land Acquisition Act, 1894:

ss.23(1), 4(1) – Land acquisition – Determination of compensation – Relevant date – Land acquired by notification dated 12.02.1988 – Sale deed relied upon by claimants dated 27.12.1988 – High Court did not consider the said sale deed as an exemplar on the ground that the same is post notification – Justification of – Held: In terms of s. 23(1), the compensation to be awarded shall be determined by the reference court, based upon the market value of the acquired land on the date of the publication of the notification u/s. 4(1) – Post notification instances cannot be taken into consideration for determining the compensation of the acquired land – Sale deed relied upon by the claimants dated 27.12.1988 is post notification, thus, rightly not considered by the High Court.

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Land acquisition – Determination of compensation – Deduction at the rate of 67.5% for development charges – Considering the fact that the land acquired was required for development, and that the property covered under the exemplar was for a small extent of 9 marlas of land which was sold for Rs.25,500/-, the High Court adopted the rate of escalation at 10% and calculated the value at Rs.6,64,887/-, and applied maximum deduction at 67.5% and calculated the compensation to be paid at Rs.2,19,413/- per acre – Justification of – Held: High Court applied deduction at 67.5% which is on the higher side – In the facts and circumstance of the case, considering that the exemplar dated 26.05.1983 was for a small extent of land and that the acquired land has to be developed for construction of warehouse, it is appropriate to apply one-third deduction, that is Rs.2,21,629/- from Rs.6,64,887/-, the compensation to be awarded is arrived at Rs.4,43,258/- per acre, payable with all statutory benefits.

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A *Kolkata Metropolitan Development Authority v. Gobinda Chandra Makal and Anr.* [2011] 14 SCR 373 : (2011) 9 SCC 207 – relied on.

B *Haryana State Agricultural Market Board and Anr. v. Krishan Kumar and Ors.* (2011) 15 SCC 297; *Lal Chand v. Union of India and Another* [2009] 13 SCR 622 : (2009) 15 SCC 769; *Andhra Pradesh Housing Board v. K. Manohar Reddy and Ors.* [2010] 11 SCR 1107 : (2010) 12 SCC 707; *Major General Kapil Mehra and Ors. v. Union of India and Anr.* [2014] 10 SCR 1153 : (2015) 2 SCC 262; *Subh Ram and Others v. State of Haryana and Anr.* [2009] 15 SCR 287 : (2010) 1 SCC 444 – referred to.

Case Law Reference

	[2011] 14 SCR 373	relied on	Para 6
D	(2011) 15 SCC 297	referred to	Para 8
	[2009] 13 SCR 622	referred to	Para 9
	[2010] 11 SCR 1107	referred to	Para 9
	[2014] 10 SCR 1153	referred to	Para 10
E	[2009] 15 SCR 287	referred to	Para 11

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 873-874 of 2018.

F From the Judgment and Order dated 14.05.2013 in RFA No. 1519 of 1993 (O&M) and Final Order dated 12.02.2015 in Review Application No. 13-CI of 2015 in RFA No. 1519 of 1993 of the High Court of Punjab and Haryana at Chandigarh.

Vijay Hansaria, Sr. Adv., Ajay Garg, Ms. Shilpa Sharma, Rajiv Shankar Dvivedi, Advs. for the Appellants.

G Ms. Alka Agrawal, Ms. Tusharika Sharma, Ms. Anamika Agrawal, Smar Vijay Singh, Sanjay Kumar Visen, Advs. for the Respondents.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted

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2. These appeals arise out of the judgment of the High Court of Punjab and Haryana at Chandigarh in and by which the High Court enhanced the compensation to Rs.2,19,413/- per acre and also dismissed the review holding that the subsequent evidence sought to be brought is not relevant as it is based upon post notification. A

3. Respondent No.2-Haryana State Ware Housing Corporation had acquired 40 kanal and 8 marlas land at Rania for construction of warehouse/godown *vide* Notification dated 12.02.1988 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act'); out of which 40 kanal 8 marlas land, 21 kanal 6 marlas land was of the present appellants; Notification dated 21.02.1989 was issued under Section 6 of the Act. *Vide* award No.9 dated 19.05.1990, the Land Acquisition Officer awarded compensation of Rs.75,000/- per acre. Being aggrieved by the award dated 19.05.1990, the appellants/claimants filed a reference petition under Section 18 of the Act before Additional District Judge, Sirsa for enhancement of compensation, which came to be dismissed by judgment dated 15.02.1993. Being aggrieved by the dismissal of the claim for enhancement, the appellants/claimants filed appeal before the High Court in R.F.A.No.1519 of 1993. The High Court relied upon the sale deed dated 26.05.1983 wherein small extent of land of 9 marlas was sold for Rs.25,500/- as an exemplar. The High Court gave escalation at 10% for the time gap of 56 months and calculated the value at Rs.6,64,887/- per acre and made the deduction at the rate of 67.5% for development charges and calculated the compensation to be awarded at Rs.2,19,413/- per acre. B
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4. Being aggrieved, the land owners filed Special Leave Petition(C) No.27989 of 2013 before this Court which was withdrawn by order dated 01.08.2014 with liberty to file review before the High Court. In the review petition, the appellants/claimants relied upon:- (i) sale deed dated 27.12.1988; and (ii) subsequent acquisition of nearby land *vide* notification dated 27.03.1989 in which the High Court by its judgment dated 15.09.2006 in R.F.A. No.866 of 1996 awarded compensation of Rs.7,26,000/- per acre. The High Court dismissed the review, *inter alia*, holding that the sale deed dated 27.12.1988 is a post notification sale and also the acquisition *vide* notification dated 27.03.1989 was subsequent one and the same is not relevant for determining the market value of the lands acquired *vide* notification dated 12.02.1988. Moreover, the High Court found no valid ground for review under Order XLVII C.P.C. Being aggrieved, the appellants/land owners have filed these appeals. F
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A 5. Contention of the appellants/claimants are mainly three-fold:-
(i) there was only ten months difference between the notification dated
12.02.1988 and the sale deed dated 27.12.1988 while so, the High Court
was not justified in not considering the said sale deed dated 27.12.1988
as an exemplar on the ground that the same is a post notification; (ii)
B considering that the land acquired falls within municipal limits and had
immense potential for use for commercial and residential purpose,
applying the maximum cut at the rate of 67.5% was not justified; and
(iii) for acquisition of the land of the adjoining khasra by notification
dated 27.03.1989, compensation was awarded at the rate of Rs.7,26,000/
- per acre by the High Court which is more than three times higher than
C the compensation awarded in the present case.

6. So far as the first contention is concerned, the sale deed relied
upon by the appellants/claimants dated 27.12.1988 is post notification.
Sub-section (1) of Section 23 of the Act provides that the compensation
to be awarded shall be determined by the reference court, based upon
D the market value of the acquired land *at the date of the publication of
the notification under Section 4(1)*. In ***Kolkata Metropolitan
Development Authority v. Gobinda Chandra Makal and Anr.*** (2011)
9 SCC 207, it was held that the relevant date for determining the
compensation is the date of publication of the notification under Section
4(1) of the Act in the Gazette. In para (34), it was held as under:-
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“34. One of the principles in regard to determination of the market
value under Section 23(1) is that the rise in market value after the
publication of the notification under Section 4(1) of the Act should
not be taken into account for the purpose of determination of
market value. If the deeming definition of “*publication of the
notification*” in the amended Section 4(1) is imported as the
F meaning of the said words in the first clause of Section 23(1), it
will lead to anomalous results. The owners of the lands which are
the subject-matter of the notification and neighbouring lands will
come to know about the proposed acquisition, on the date of
G publication in the Gazette or in the newspapers. If the giving of
public notice of the substance of the notification is delayed by two
or three months, there may be several sale transactions in regard
to nearby lands in that period, showing a spurt or hike in value in
view of the development contemplated on account of the
acquisition itself.”
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Applying the ratio of the above decision, we are of the view that the post notification instances cannot be taken into consideration for determining the compensation of the acquired land. A

7. So far as the contention regarding deduction at the rate of 67.5% for development charges is concerned, the exemplar relied upon by the High Court dated 26.05.1983 was for a small extent of land of 9 marlas which was sold for Rs.25,500/-. The transaction relates to the period which is about 56 months prior to the notification under Section 4 of the Act and the High Court adopted the rate of escalation at 10% and calculated the value at Rs.6,64,887/-. Considering the fact that the acquired land required for development and that the property covered under the exemplar was for a small extent of 9 marlas of land, the High Court applied maximum deduction at 67.5% and calculated the compensation to be paid at Rs.2,19,413/- per acre. B C

8. In *Haryana State Agricultural Market Board and Anr. v. Krishan Kumar and Ors.* (2011) 15 SCC 297, this Court has held 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 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.” D E

9. Observing that the development charges for development of particular plot of land could range from 20% to 75%, in *Lal Chand v. Union of India and Another* (2009) 15 SCC 769, in paras (13), (14) and (20), this Court held as under: F

“13. The percentage of ‘deduction for development’ to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the layout in which the exemplar plots are situated. G

14. The ‘deduction for development’ consists of two components.

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A The first is with reference to the area required to be utilised for developmental works and the second is the cost of the development works.

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B 20. Therefore the deduction for the ‘development factor’ to be made with reference to the price of a small plot in a developed layout, to arrive at the cost of undeveloped land, will be for more than the deduction with reference to the price of a small plot in an unauthorised private layout or an industrial layout. It is also well known that the development cost incurred by statutory agencies is much higher than the cost incurred by private developers, having regard to higher overheads and expenditure.”

C The same principle was reiterated in *Andhra Pradesh Housing Board v. K. Manohar Reddy and Ors.* (2010) 12 SCC 707.

D 10. In a catena of judgments, this Court has taken the view to apply one-third deduction towards the development charges. After referring to various case laws on the question of deduction for development, in *Major General Kapil Mehra and Ors. v. Union of India and Anr.* (2015) 2 SCC 262, this Court held as under:

E “35. Reiterating the rule of one-third deduction towards development, in *Sabha Mohammed Yusuf Abdul Hamid Mulla v. Land Acquisition Officer* (2012) 7 SCC 595, this Court in para 19 held as under: (SCC pp. 606-07)

F “19. In fixing the market value of the acquired land, which is undeveloped or underdeveloped, the courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. In *Kasturi v. State of Haryana* (2003) 1 SCC 354 the Court held: (SCC pp. 359-60, para 7)

G ‘7. ... It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of

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expenditure involved for development and the area required A
for road and other civic amenities to develop the land so as
to make the plots for residential or commercial purposes. A
land may be plain or uneven, the soil of the land may be soft
or hard bearing on the foundation for the purpose of making
construction; maybe the land is situated in the midst of a B
developed area all around but that land may have a hillock or
may be low-lying or may be having deep ditches. So the
amount of expenses that may be incurred in developing the
area also varies.....*There may be various factual
factors which may have to be taken into consideration
while applying the cut in payment of compensation C
towards developmental charges, maybe in some cases it
is more than 1/3rd and in some cases less than 1/3rd. It
must be remembered that there is difference between a
developed area and an area having potential value, which
is yet to be developed. The fact that an area is developed D
or adjacent to a developed area will not ipso facto make
every land situated in the area also developed to be
valued as a building site or plot, particularly when vast
tracts are acquired, as in this case, for development
purpose.'*

The rule of 1/3rd deduction was reiterated in *Tejumaal Bhojwani E
v. State of U.P. (2003) 10 SCC 525, V. Hanumantha Reddy v.
Land Acquisition Officer (2003) 12 SCC 642, H.P. Housing
Board v. Bharat S. Negi (2004) 2 SCC 184 and Kiran Tandon
v. Allahabad Development Authority (2004) 10 SCC F
745.*"(emphasis in original)

36. While determining the market value of the acquired land,
normally one-third deduction i.e. 33 1/3% towards development
charges is allowed. One-third deduction towards development was
allowed in *Tehsildar (LA) v. A. Mangala Gowri (1991) 4 SCC
218, Gulzara Singh v. State of Punjab (1993) 4 SCC 245, G
Santosh Kumari v. State of Haryana (1996) 10 SCC 631,
Revenue Divl. Officer and LAO v. Sk. Azam Saheb (2009) 4
SCC 395, A.P. Housing Board v. K. Manohar Reddy (2010) 12
SCC 707, Ashrafi v. State of Haryana (2013) 5 SCC 527 and
Kashmir Singh v. State of Haryana (2014) 2 SCC 165. H*

A **37.** Depending on the nature and location of the acquired land, extent of land required to be set apart and expenses involved for development, 30% to 50% deduction towards development was allowed in *Haryana State Agricultural Market Board v. Krishan Kumar* (2011) 15 SCC 297, *Director, Land Acquisition v. Malla Atchinaidu* (2006) 12 SCC 87, *Mummidi Apparao v. Nagarjuna Fertilizers & Chemicals Ltd.* (2009) 4 SCC 402 and *Lal Chand v. Union of India* (2009) 15 SCC 769.

B **38.** In few other cases, deduction of more than 50% was upheld. In the facts and circumstances of the case in *Basavva v. Land Acquisition Officer* (1996) 9 SCC 640, this Court upheld the deduction of 65%. In *Kanta Devi v. State of Haryana* (2008) 15 SCC 201, deduction of 60% towards development charges was held to be legal. This Court in *Subh Ram v. State of Haryana* (2010) 1 SCC 444, held that deduction of 67% amount was not improper. Similarly, in *Chandrashekar v. Land Acquisition Officer* (2012) 1 SCC 390, deduction of 70% was upheld.”

C 11. In *Subh Ram and Others v. State of Haryana and Anr.* (2010) 1 SCC 444, the deduction of 67% was held to be not improper. In the case in hand, the High Court applied deduction at 67.5% which in our considered view is on the higher side. In the facts and circumstances of the present case and considering that the exemplar dated 26.05.1983 was for a small extent of land and that the acquired land has to be developed for construction of warehouse, we deem it appropriate to apply one-third deduction and deducting one-third that is Rs.2,21,629/- from Rs.6,64,887/-, the compensation to be awarded is arrived at Rs.4,43,258/- per acre.

D 12. The impugned judgment is modified and the appellants/claimants are entitled to get enhanced compensation of Rs.4,43,258/- payable with all statutory benefits. The appeals are partly allowed. It is made clear that the appellants/claimants shall not be entitled to claim interest for the period of delay in preferring the appeals from the review.

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