

## Udho Dass vs State Of Haryana & Ors on 21 April, 2010

**Equivalent citations: AIR ONLINE 2010 SC 80, 2010 (12) SCC 51, (2010) 9 SCALE 41, (2010) 82 ALL LR 768, (2010) 94 ALL IND CAS 58 (SC)**

**Bench: Harjit Singh Bedi, J.M. Panchal**

UDHO DASS

v.

STATE OF HARYANA & ORS.

(Civil Appeal No. 3677 of 2010)

APRIL 21, 2010

[Harjit Singh Bedi and J.M. Panchal, JJ.]

2010 (8) SCR 900

The Order of the Court was delivered

### ORDER

1. Permission to file SLPs is granted.
2. Delay condoned in filing substitution applications.
3. Applications for substitution are allowed.
4. Delay condoned in filing the special leave petitions.
5. Leave granted.
6. Vide Notification dated 17th May, 1990 under Section 4 of the Land Acquisition Act, 1894, (hereinafter called 'The Act') 162.5 acres of land situated in village Patti Musalmanan was notified for setting up of a housing project in Sector 12, Sonapat. This Notification was followed by a declaration under Section 6 of the Act on 16th May 1991. The Collector rendered his Award on 12th May 1993 awarding a sum of Rs. 2,00,000/- (Rupees two lakhs) per acre as compensation for the entire land.
7. On a reference under Sec. 18 of the Act to the Additional District Judge, Sonapat, the compensation was enhanced to Rs.125/- per sq. yard for the land behind the E.C.E. factory situated away and on the left side of the Sonapat Bahalgarh road and Rs.150/- per square yard on the right side abutting the aforesaid road. In arriving at these different figures the Reference Court held that the land on the left side did not abut the road and it had therefore less potential value vis-a-vis. the land on the right side which touched the road.
8. The High Court in first appeal further enhanced the compensation from Rs.125/- to Rs.135/- for land on the left side and to Rs.160/- from Rs.150/- on the right side on the principle applied by the

Reference Court. The present set of appeals at the instance of the landowners have been filed impugning the judgments of the courts below.

9. We have gone through the record and have heard the learned counsel for the parties at length.

10. It has been submitted by Mr. A.K. Srivastava, the learned senior counsel in most of the appeals, that the appellants were entitled to take the Award for the acquisition in village Jamalpur Kalan which pertained to an acquisition of the year 1992, and which had led to a compensation of Rs.250/- per square yard, as the basis for the determination of the compensation in the present case as well as the land of Jamalpur Kalan had a common boundary with the land acquired behind the E.C.E. factory with a small deduction in the price as the present acquisition was of the year 1990. In the alternative he has submitted that the compensation ought to have been settled on the basis of the sale instances exhibits P.2 to P.14 which showed a substantial increase yearwise from Rs.300/- per sq. yd in 1984 (Ext. P.2) to Rs. 600/- in 1989 (Ext. P.14). He has also submitted that as the land had been notified for the purpose of a housing project no distinction could be made between the land abutting the main road and that which was slightly away and the belting principle applied by the District Judge as well as the High Court was not called for. For this argument the learned counsel has placed reliance on P. Rama Reddi and Others vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and others (1995) 2 SCC 305. It has also been submitted that though the potentiality of the land had admittedly been noted by the District Judge and the High Court but the full potential of land had not been appreciated or recognized and as such it was open to this Court to reappraise the evidence and to arrive at a fair assessment on this aspect, as the compensation proceedings started in the year 1990, were still continuing.

11. Mr. P.S. Patwalia, the learned senior counsel for some of the other claimants has supplemented the arguments made by Mr. Srivastava and has also placed reliance on the award in the case of village Jamalpur Kalan. Some of the other counsel have also raised certain issues but as they are substantially covered by the submissions noted above we need not refer to them.

12. Mr. Shakil Ahmed, the learned counsel appearing in SLP(C) No. 18312/2008 has further pointed out that the proper compensation for the building and trees had not been correctly awarded and the compensation under these heads needed to be substantially enhanced.

13. The arguments raised by the learned counsel for the claimants have been controverted by Mr. Govind Goel, the learned counsel appearing for the beneficiary-respondents. He has submitted that the Award in the case of Jamalpur Kalan could not be taken into account for the primary reason that it pertained to an acquisition of 1992 whereas the present one was of 1990 and the District Judge as well as the High Court had fully recognized the potential of the land and had accorded compensation on that basis. He has also submitted that the reliance by the claimants on the sale instances Ext. P.2 to P.14 was misplaced as they pertained to very small areas of one Biswa (50 sq. yd) and the other sale instances put on record by the claimants themselves (Ext.p.15 and P.16) pertaining to two sales made on 28th April, 1989 for 4400 square yards at Rs.120/- per square yard and P.16 for 1600 square yards at Rs.122/- per square yard had in fact been accepted by the Courts below with a marginal increase towards the potential of the acquired land. It has also been submitted that in the

light of the fact that these were sale instances pertaining to this very village that is Patti Musalmanan there was absolutely no justification in going to the Award pertaining to Jamalpur Kalan for determining the compensation. He has finally submitted that belting in the facts of the case was fully justified and in this connection has placed reliance on Executive Director Vs. Sarat Chandra Bisoi and Another (2000) 6 SCC 326)

14. We have heard the learned counsel for the parties and gone through the record. The location of the land in order to appreciate its potential for the purpose of compensation has first to be understood.. Admittedly, the land is situated within the municipal limits of Sonapat which is a district headquarter adjoining Delhi and within the National Capital Region. The distance between Bahalgarh, a small township on the Grand Trunk Road, National Highway No.1, built five centuries ago by Sher Shah Suri (and arguably India's most important and strategic highway and the lifeline between the rest of India and the north and northwest), and Sonapat is 7 km., as per the indication on the National Highway itself. The acquired land is situated on both sides of the road leading from Bahalgarh to Sonapat with some portions touching the road side and some portion slightly away and situated behind the ECE factory. It is, however, the admitted position and (we have seen the location on the maps that have been produced before us) that the land behind the ECE factory adjoins the area of village Jamalpur Kalan which had been acquired in the year 1992 and which the appellants claim should be made the basis for determining compensation in the present matter as well. It must also be noticed that the enormous development from the Delhi border alongside the Grand Trunk Road and well beyond the Bahalgarh - Sonapat bifurcation is now a matter for all to see and we have seen this on the maps produced in Court as well, as huge residential and commercial areas have been developed with a mind boggling increase in the price of agricultural land in the last 15 or 20 years. While dealing with the question of the potential value of the land acquired this Court in P. Rama Reddy's case (supra) observed that several matters had to keep in mind; they being (and we quote), "(i) the situation of the acquired land vis-a-vis the city or the town or village which had been growing in size because of its commercial, industrial, educational, religious or any other kind of importance or because of its explosive population;

(ii) the suitability of the acquired land for putting up the buildings, be they residential, commercial or industrial, as the case may be;

(iii) possibility of obtaining water and electric supply for occupants of buildings to be put up on that land;

(iv) absence of statutory impediments or the like for using th acquired land for building purposes;

(v) existence of highways, public roads, layouts of building plots or developed residential extensions in the vicinity or close proximity of the acquired land;

(vi) benefits or advantages or educational institutions, health care centres, or the like in the surrounding areas of the acquired land which may become available to the occupiers of buildings, if built on the acquired land;

(vii) and lands around the acquired land or the acquired land itself being in demand for building purposes, to specify a few.

15. The material to be so placed on record or made available in respect of the said matters and the like, cannot have the needed evidentiary value for concluding that the acquired land being used for building purposes in the immediate or near future unless the same is supported by reliable documentary evidence, as far as the circumstances permit. When once a conclusion is reached that there was the possibility of the acquired land being used for putting up buildings in the immediate or near future, such conclusion would be sufficient to hold that the acquired land had a building potentiality and proceed to determine its market value taking into account the increase in price attributable to such building potentiality."

16. As already indicated above, these are the broad factors that we too have kept in mind.

17. Although, in the present matter, sale instances around or near abouts the date of Notification of the present acquisition are available yet these cannot justify or explain the potential of a particular piece of land on the date of acquisition as the potential can be recognized only some time in the future and it is open to a landowner claimant to contend that the potential can be examined first at the time of the Section 18 Reference, the first Appeal in the High Court or in the Supreme Court in appeal as well. We must also highlight that Collectors, as agents of the State Government, are extraordinarily chary in awarding compensation and the land owners have to fight for decades before they are able to get their due. We take the present case as an example. The land was notified for acquisition in May 1990. The collector rendered his award in May 1993 awarding a sum of Rs.2,00,000/- per acre. The Reference Court by its award dated January 2001 increased the compensation to Rs.125 per square yard for the land of the road behind the ECE factory and Rs.150 per square yard for the land abutting the road which would come to Rs.6,05,000/- and Rs.7,26,000/- respectively for the two pieces of land. This itself is a huge increase vis-a-vis the Collector's award. The High Court in First Appeal by its judgment of 24th September 2007 enhanced the compensation for the two categories to Rs.135 and 160 respectively making it Rs.6,53,400/- and Rs.7,74,400/-. In other words, this is the compensation which ought to have been awarded by the Collector at the time of his award on 12th May 1993. This has, however, come to the land owner for the first time as a result of the judgment of the High Court which is under challenge in this appeal; in other words, a full 17 years from the date of Notification under Section 4 and 14 years from the date of the award of the Collector on which date the possession of the land must have been taken from the landowner. Concededly, the Act also provides for the payment of the solatium, interest and an additional amount but we are of the opinion, and it is common knowledge, that even these payments do not keep pace with the astronomical rise in prices in many parts of India, and most certainly in North India, in the land price and cannot fully compensate for the acquisition of the land and the payment of the compensation in dribblets. The 12% per annum increase which Courts have often found to be adequate in compensation matters hardly does justice to those land owners whose land have been acquired as judicial notice can be taken of the fact that the increase is not 10 or 12 or 15% per year but is often upto 100% a year for land which has the potential of being urbanized and commercialized such as in the present case. Be that as it may, we must assume that the landowners were entitled to the compensation fixed by the High Court on the date of the award

of the Collector and had this amount been made available to the landowners on that date, it would have been possible for them to rehabilitate their holdings in some other place. This exercise has been defeated for the simple reason that the payment of compensation has been spread over almost two decades. In this view of the matter, we are of the opinion that a landowner is entitled to say that if the compensation proceedings continued over a period of almost 20 years as in the present case, the potential of the land acquired from him must also be adjudged keeping in view the development in the area spread over the period of 20 years if the evidence so permits and cannot be limited to the near future alone. We, therefore, feel that in the circumstances, the appellants herein were fully entitled to say that the potential of the acquired land had not been fully recognized by the High Court or by the Reference Court. We must add a word of caution here and emphasize that this broad principle would be applicable where the possession of the land has been taken pursuant to proceedings under an acquiring Act and not to those cases where land is already in possession of the Government and is subsequently acquired.

18. There is another unfortunate aspect which is for all to see and to which the Courts turn a Nelson's eye and pretend as if the problem does not exist. This is a factor which creates an extremely grim situation in a case of compensation based exclusively on sale instances. This is the wide spread tendency to under value sale prices. The provision of Collector's rates has only marginally corrected the anomaly, as these rates are also abnormally low and do not reflect the true value. Where does all this leave a landowner whose land is being compulsorily acquired as he has no control over the price on which some other landowner sells his property which is often the basis for compensation?

19. We are, therefore, of the opinion that the above sale instances relied upon by the parties do not accurately reflect the potential of the acquired land and the award of the High Court in the case of Jamalpur Kalan granting a sum of Rs.250/- per square yard as compensation is the minimal proper base.

20. Mr. Goyal has, however, submitted that the belting system ordered by the reference and the High Court was the proper one in the circumstances, more particularly as it was well known that land alongside the road had more value vis.a.vis. the land away therefrom. He has, accordingly, submitted that the land behind the ECE factory which was not abutting the road needed to be given lower compensation. Mr. Goyal's reliance on Sarat Chandra's case for this argument is however to no avail. In this matter, agricultural land which had no potential for urbanization and commercialization had been acquired and it was on that basis, this Court held that the belting system was permissible. In the case before us, admittedly the land was acquired in the year 1990, had great potential value, and has been completely urbanized as huge residential complexes, industrial areas and estates and a huge education city have come up in the last ten or fifteen years. Moreover, insofar land which is to be used for residential purposes is concerned, a plot away from the main road is often of more value, as the noise and the air pollution alongside the arterial roads is almost unbearable. It is also significant that the land of Jamalpur Kalan was touching the rear side of the ECE factory and the High Court had granted compensation of Rs.250/- per square yard for the acquisition of the year 1992. We have also seen the site plan to satisfy ourselves and find that the land acquired from Jamalpur Kalan and the present land share a common boundary behind the ECE factory. The belting system in the facts of the present case would thus not be permissible.

21. We are, therefore, of the opinion as the said award pertained to the year 1992, a sum of Rs.225/- per square yard which would come Rs. 10,89000/- per acre would be the adequate compensation in the present case and for arriving at this figure not only have we computed the value of the land on the date of the Notification under Section 4 but have also recognized its potential on the basis of evidence of development in the area around the Bahalgarh-Sonepat road.

22. Mr. Shakil Ahmed, the learned counsel appearing in one of the cases has also prayed that compensation for the building and trees awarded in his case was inadequate and needed to be enhanced. We are unable to accept this submission as there is no evidence with regard to the value of these buildings and trees.

23. For the reasons mentioned above, we allow these appeals and award a sum of Rs.225/- per square yard as compensation for the entire acquired land and further direct that the appellants will have all statutory benefits that they would be entitled to as a consequences of this order. We also direct the respondent State of Haryana or the beneficiaries, as the case may be, to pay the compensation as enhanced by us by the end of this year.