

The Deputy Registrar (Judicial), Punjab & Haryana High Court, Chandigarh.

Haryana State Industrial and Infrastructure Development Corporation Limited, Petitioner

#### **VERSUS**

Ray house and Others ..... Respondent(s)

Sir,.Will you kindly treat the accompanying petition as an urgent one in accordance with the provisions of Rule 9, Chapter 3-A, Rules and Orders of the High Court Chandigarh Volume - V.

The ground(s) of urgency are :- Stay Is Prayed For, 1.

America Ry, P-5, P6

Report 20

Yours faithfully

Parish

Dated: 31.08.2021.

(PRITAM SINGH SAINI)

(P/199/1982 Advocate. **Counsel For Petitioner** 

# IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

| In: Civil Revision No. 1871 | _ of 2021 |
|-----------------------------|-----------|
|-----------------------------|-----------|

| Haryana<br>Limited, | State | Industrial | and | Infrastructure | Development | Corporation |
|---------------------|-------|------------|-----|----------------|-------------|-------------|
| Lillilleu,          |       |            |     |                |             | Petitioner  |

Versus

Rughnath and Others

Respondents

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**Total Rs. 26-00** 

#### Note:

- 1. No notice of caveat has been received.
- 2. Any other case: CR 2159 of 2020 & 391 of 2021 fixed for 06.09.2021.

CHANDIGARH

DATED 16.08.2021

(PRITAM SINGH SAINI) P-199/1982 ADVOCATE

COUNSEL FOR THE PETITIONER





# CR /2021 HSIIDC VS RUGHNATH & ORS

**Balbir Saini** <br/>balbirsaini.gudha@gmail.com> to aghrycivilphhc

Sir

state of haryana is a performa respondent only



4:54 PM (0 mi:

# IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

|                     |       |            | ln       | : Civil Revision | No    | 1871   | of 2021     |
|---------------------|-------|------------|----------|------------------|-------|--------|-------------|
| Haryana<br>Limited, | State | Industrial | and      | Infrastructure   | Devel | opment | Corporation |
|                     |       |            |          |                  | ••••  |        | Petitioner  |
|                     |       |            |          | Versus           |       |        |             |
| Rughnath            | and C | )thers     |          |                  | ••••  | Res    | pondents    |
|                     |       |            | <u>C</u> | OURT FEE         | PS    | 26/-   |             |



CHANDIGARH

DATED 16.08.2021

(PRITAM SINGH SAINI)
ADVOCATE
COUNSEL FOR THE PETITIONER

# IN THE HON'BLE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA, AT CHANDIGARH

C.R No. [87] of 2021

#### **MEMO OF PARTIES**

|            |          |            |         | Per             | titioner/ Judgr | nent Debtor |
|------------|----------|------------|---------|-----------------|-----------------|-------------|
| Limited, S | Sector ( | 6, Panchku | ıla, th | rough its autho | rized represent | tative AGM. |
| Haryana    | State    | Industrial | and     | Infrastructure  | Development     | Corporation |

#### Versus

- 1. Rughnath Son of Shri Chhellu
- 2. Smt. Sushma

4

Smt. Krishna: Daughters of Dhan Kaur D/o Chhellu
 All residents of Village Nakhrola, Tehsil Manesar, District
 Gurugram, Biswedar of Village Nakhrola.

....... Const/ Respondents/Decree Holders

- 4. State of Haryana through Land Acquisition Collector, Gurugram.
- Asstt General Manager, Haryana State Industrial Development Corporation, IMT Manesar Gurugram.

**Proforma/Respondents/ Judgment Debtors** 

CHANDIGARH

DATED 16.08.2021

(PRITAM SINGH SAINI)
ADVOCATE
COUNSEL FOR THE PETITIONER

Civil Revision under Article 227 of the Constitution of India for quashing/setting aside the order dated 05.04.2019 (Annexure P/2), passed by the Ld. Additional District Judge, Gurugram, vide which execution petition filed by the respondents-claimants has wrongly and illegally been allowed.

#### RESPECTFULLY SHOWETH:

- 1. That the facts leading to the filing of the present petition are that vide notification dated 17.09.2004 issued under Section 4 of the Land Acquisition act land situated in village Nakhrola, Tehsil Manesar, District Gurugram was acquired for public purpose namely setting up of Chaudhary Devi Lal Industrial Model Township, Phase V, Manesar. The Land Acquisition Collector vide Award dated 09.03.2006 awarded compensation @ Rs.12.50 lacs per acre along with statutory benefits.
- 2. That the respondents did not file reference under Section 18 of the Land Acquisition Act, rather filed an execution before the Ld. Additional District Judge for the claim of enhanced compensation on the basis of the judgment dated 31.08.2013 passed in LA Case No.225 dated 23.05.2011 titled as "Ram Rikh Vs. State of Haryana & Ors". It has been alleged that the respondents were co-sharers along with Ram Rikh and others, therefore, they are also entitled to the benefit of enhanced compensation @ Rs.50,43,315/- per acre only on the ground that they are also co-sharers in the said land. Copy of the execution is attached herewith as Annexure P/1.

- 3. That reply to the execution was filed by the petitioner. It was contended that the appropriate remedy with the respondents was to file reference under Section 28-A of the Land Acquisition Act. Therefore, the respondents are not entitled to any benefit in the execution petition.
- 4. That the Ld. Additional District Judge, Gurugram vide impugned order dated 05.04.2019 allowed the execution and held that the land owners are entitled to the amount of enhancement @ Rs.48,46,000/per acre along with all statutory benefits as this Hon'ble Court vide judgment dated 25.05.2018 passed in RFA No.776 of 2014 titled as "Smt. Khajani Devi & Ors Vs. State of Haryana". It may be mentioned here that the said judgment passed by this Hon'ble Court has already been upheld by the Hon'ble Supreme Court of India vide judgment dated 08.04.2021 passed in Civil Appeal No.1158 of 2021 titled as "Ved & Anr Vs. State of Haryana & Anr". A copy of the impugned order passed by the Additional District Judge dated 05.04.2019 is attached herewith as Annexure P/2. A copy of the judgment passed by the Hon'ble Supreme Court is also attached as Annexure P/3.
- 5. That the Ld. Executing Court has allowed the execution application vide impugned order dated 05.04.2019 only on the ground that the respondents are co-sharers along with decree holders, who had earlier filed a reference petition under Section 18 of the Land Acquisition Act.
- 6. That from the perusal of the impugned order it is clear that the Ld. Executing Court has relied upon five judgments passed by this Hon'ble Court and the petitioner has been directed to make payment of

the enhanced compensation as awarded by this Hon'ble Court in the regular first appeal.

- 7. That the impugned order passed by the Ld. Additional District Judge, Gurugram allowing the execution petition filed by the private respondents is totally illegal, arbitrary, against the settled principles of law, hence liable to be set aside.
- 8. That the Ld. Executing Court has failed to take judicial notice of the fact that in the reference under Section 18 of the Land Acquisition Act filed by other co-sharers had not filed the reference petition on behalf of all the co-sharers, rather the petition under Section 18 of the Land Acquisition Act was filed qua the land owned by them. Since the co-sharers had filed reference under Section 18 of the Land Acquisition Act of their own and there were no averments of any kind with regard to claim of other co-sharers, who have now filed execution petition, therefore, the impugned order (Annexure P/2) passed by the Ld. Additional District Judge, Gurugram is totally illegal, arbitrary, contrary to the settled principles of law, hence liable to be set aside.
- 9. That the Ld. Reference Court has not taken into consideration the provisions of Section 28-A, which have been incorporated in the Land Acquisition Act 1894 by way of amendment made in the Land Acquisition Act w.e.f. 24.09.1984 by Act No.68 of 1984. Section 28A(1) of the Land Acquisition Act is reproduced as under:

"28A Re-determination of the amount of compensation on the basis of the award of the Court – (1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by

the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court.

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded".

From the perusal of Section 28-A of the Act itself it is very clear that the persons, who failed to avail remedy of Section 18 of the Act, they have remedy to approach to Land Acquisition Collector for re-determination of the compensation as awarded by the Reference Court. On this score alone, the respondents are stopped from filing the execution petition straightaway without availing the remedy of Section 28-A of the Act. The impugned order is thus not sustainable in the eyes of law, hence liable to be set aside.

10. That the petitioner has produced on record the Reference Application filed by the other co-owners under Section 18 of the Act before the Land Acquisition Collector, which was decided by the Reference Court. From the perusal of the aforesaid reference petition it is

clear that the said reference application was not filed on behalf of other co-owners, rather the said application was filed qua their share only. It is a settled principle of law that the other co-sharers cannot claim the same compensation as has been awarded to the other co-sharers unless and until the co-sharers, who had sought compensation in the petition under Section 18 of the Act qua other co-sharers if the co-sharer has restricted his claim in respect of his share alone, then the other co-sharers cannot claim the same compensation in the execution petition. This question was decided by the Hon'ble Supreme Court in the judgments reported as 1996(4) SCC 469 titled as "Ramesh Singh (dead) & Ors Vs. State of Haryana" [1997(7) SCC 88 and 1996(9) SCC 84]. Relying upon the aforesaid judgments, this Hon'ble Court has decided C.R. No.2811 of 2000 on 24.08.2010 in which identical point was raised by the State of Haryana when two revision petitions were allowed by this Hon'ble Court relying upon the aforesaid judgments, as mentioned above. observations of this Hon'ble Court are reproduced as under:

"I have heard learned counsel for the parties and find that the order passed by the learned Executing Court suffers from patent illegality or irregularity. The respondent(s) was not party in a reference before the learned District Judge under Section 18 of the Act. Since the respondent was not a party in the execution proceedings, he could not claim compensation on the basis of a compensation awarded to the other co-owners. From the averments made in the reference application, it is apparent that the other co-owners, who sought reference under Section 18 of the Act were not claiming compensation for the benefit of all the co-owners.

Their claim was personal restricted to the extent of land owned by them alone. Therefore, in the absence of the respondent being party to the reference, the Executing Court could not travel beyond the order rendered by the reference court to return a finding that the respondent is entitled to the same compensation as has been awarded to other co-owners, who were party in the reference petition.

A copy of the judgment dated 24.08.2010 passed in CR No.2811 of 2000 is attached herewith as **Annexure P/4** for the kind perusal of this Hon'ble Court.

11.. That similar view has been taken by this Hon'ble Court in another judgment reported as 2011(1) Punjab Law Reporter, page 532. Relevant findings recorded by this Hon'ble Court in the case of "Shyam Bihari & Ors Vs. State of Haryana & Anr" are reproduced hereunder for the kind perusal of this Hon'ble Court:

"Held, that i) if a reference is made by one of the coowners specifically mentioning therein that reference is being made on behalf of all, then other co-owners are also entitled for enhanced compensation.

ii) Even if reference is not made specifically on behalf of all the co-owners, however, if reference contained such material like in the case of A Viswanatha Pillai (supra) that applicant and his co-owners brothers are feeling dissatisfied from the award then Court can infer that reference was made on behalf of all the co-owners and other

co-owners shall also be entitled for the enhanced compensation.

- iii) However, if one of the co-owner has made reference on his own behalf without taking any pleading therein that he and other co-owners are feeling dissatisfied from the award and there is no material before the Court to find out that reference was made on behalf of other co-owners also then other co-owners who had not made reference are not entitled for the enhanced compensation in view of the judgment of the Apex Court in the matter of Ambey Devi (supra).
- iv) This Court is also of the view that if reference is made solely on behalf of one co-owner, other co-owners cannot seek impleadment in his reference or in an appeal arising out of the reference, in view of the judgment of the Apex Court in the matter of Ambey Devi (supra), as well as, in the matter of Ajjam Linganna (supra).
- v) However, if co-owner wants to seek enhanced compensation can take recourse of Section 28-A of the Act in accordance with law, if other ingredient of Section 28-A are available.

In view of the above, I find that judgment of this Court in the matter of Housing Board Haryana (supra) and Tejpal Singh (supra) distinguishable in view of the judgments of the Apex Court in the matter of Ambey Devi (supra), as well as, Ajjam Linganna (supra) and particularly in view of the fact in

the present case. Petitioners could not prove the reference was made on behalf of all the co-owners as other co-owners were feeling dissatisfied with the award".

From the perusal of the aforesaid decision, it is clear that the impugned order passed by the Ld. Additional District judge is patently illegal and the learned executing court has committed illegality in passing the impugned order.

- That from the perusal of the impugned order it is clear that the learned Additional District Judge has not recorded findings that the reference application under Section 18 of the Act filed by the other co-owners was also filed on behalf of other co-sharers also. Thus unless and until an application under Section 18 is found to have been filed on behalf of all other co-sharers, in that eventuality the other co-owners can be said to be entitled to the same compensation, which has been awarded to one co-sharer. Thus on this ground alone the impugned order passed by the Learned Executing Court is illegal, arbitrary and the Ld. Additional District Judge, Gurugram has committed illegality in passing the impugned order. Thus the order, being contrary to the settled principles of law mentioned above, is not sustainable in the eyes of law, hence liable to be set aside.
- That the question of law involved in the present petition has already been raised by the petitioner in number of revision petitions, which are pending decision before this Hon'ble Court for 06.09.2021. Copy of one order passed by this Hon'ble Court in CR No.391 of 2021 is attached herewith as **Annexure P/5** and order passed in CR no.594 of 2021 is also attached herewith as **Annexure P/6**.

- 14. That the impugned order in the present case was passed on 05.04.2019, yet the revision petition against the said order could not be filed within the period of limitation as the petitioner-Corporation was awaiting for the decision in the special leave petitions pending in the Supreme Court of India. The SLPs have been decided on 08.04.2021 hence after taking legal opinion from the respective sections of the Corporation, the present revision petition is being field. The undersigned has been engaged to file revision petition against the order passed by the Ld. Executing Court.
- 15. That the petitioner has not left with any other statutory remedy except to invoke extra-ordinary jurisdiction of this Hon'ble Court under Article 227 of the Constitution of India.
- 16. That the petitioner has not filed any such or similar revision petition in this Hon'ble Court or in the Hon'ble Supreme Court of India.

It is therefore, respectfully prayed that the present revision petition may kindly be allowed and the impugned order dated 05.04.2019 (Annexure P/2) passed by the Learned Additional District Judge, Gurugram may kindly be set aside in the interest of justice.

It is further prayed that any other order or direction which this Hon'ble Court may deem fit and proper in the light of the facts and circumstances of the present case, may also be passed, in the interest of justice.

It is further prayed that during the pendency of the revision petition, operation of the impugned order dated 05.04.2019 (Annexure P/2) may kindly be stayed.

It is further prayed that the filing of the certified and typed copy of Annexures may kindly be dispensed with, in the interest of justice.

**CHANDIGARH** 

DATED 16.08.2021

(PRITAM SINGH SAINI)

**ADVOCATE** 

COUNSEL FOR THE PETITIONER

#### IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

IN: CR NO. 1871 of 2021

Haryana State Industrial and Infrastructure Development Corporation Limited Petitioner Versus Rughnath & Others Respondents

> AFFIDAVIT of Smt. Sunita Badhran AGM Office of HSIIDC Sector-6, Panchkula

I, the above named deponent, do hereby solemnly affirm and state as under:

- 1. That contents of paras 01 to 16 of the accompanying civil revision petition are true and correct to my knowledge. No part of it is false and nothing material has been concealed therefrom.
- That the petitioner has not filed any such or similar petition 2. either in this Hon'ble Court or before the Hon'ble Supreme Court of India.

CHANDIGARH Dated 16.08.2021

Development Corporation Limited

<u>VERIFICATION</u>

BUS 119 Shipton

Verified that contents of paras 1 and 2 of the above affidavit are true and correct to my knowledge. No part of it is false and nothing

has been concealed therefrom.

DEPONENT (SUNITA BADHRAN)

Haryana State Inch. al & Infractructrure Development Corporation Limited

CHANDIGARH DATED 16.08.2021

#### IN THE HON'BLE COURT OF SHRI R.K. MEHTA ADJ, GURUGRAM

I, Rughnath S/o Sh. Chhellu, aged 80 years 2. Smt. Sushma 3. Smt. Krishna Ds/O Dhan Kaur D/o Chhellu, All R/o Village Nakhrola Tehsil Manesar, District GURUGRAM Biswedar of Village Nakhrol.

......Petitioners/Decree Holders,

#### Versus

- 1. State of Haryana through Land Acquisition Collector GURUGRAM.
- 2. Haryana State Industrial Development Corporation through its Managing Director at Panchkula, Haryana.
- 3. Asstt. General Manager Haryana State Industrial Development Corporation, IMT Manesar, Gurugaon.

......Respondents/Judgment Debtors

Case No. 232/2011/2013

Date of decision: 31-08-2013

Award No. 12/9-3-2006

"For setting up of Chaudhary Devi Lal Industrial Model Township Phase V, Manesar to be planned and developed as integrated complex for Industrial commercial recreational and other public utilities in village Nawada Fatehpur, Naurangpur, Manesar Lakhnoula, Naharpur Kasan and Shikohpur Distt. Gurgaon, Main case "Ram Niwas Vs. State of Haryana."

#### **EXECUTION- PETITION ON BEHALF OF CO-SHARER**

Sir,

The DHs/petitioners most respectfully submits as under:-

- 1. That the above said petitioners are co-owner/co-sharer in land bearing Khewat/Khatauni No.356/428 Rect. No. 37 Killa no.4 min (4-0), Khatta no. 429 Rect. No.33 killa no. 11 (8-0), Rect No. 34 Killa no. 14 (7-17), 15 (8-0), Rect. No. 37 Killa no.4 min (4-0), 6/2 (6-14), 7/1(1-16), Khatta no. 430 Rect. No. 36 Killa no.10/1 (2-0), 10/2/1 (0-4), 11/2(2-4), Rect. No. 37 Killa no. 5 (8-0), 26 (1-4), total fields 11 measuring 52 Kanal 15 Marla to the extent of their respective shares situated in the revenue estate of Village Nakhrola, Tehsil Manesar, Distt. GURUGRAM by virtue of Jamabandi for the year 2003-04.
- 2. That the above land was acquired by respondent no.1 through respondent no.2 for setting up Industrial Township Manesar Phase V, GURUGRAM and notification no. 32/7/2004/41-4IBI dated 27-09-2004 u/s 4 of the Land Acquisition Act, and its award No.12 dated 09-03-2006 was pronounced on 09-03-2006 by the Land Acquisition Collector/D.R.O. Gurgaon.
- 3. That the petitioners/Executants were/are aggrieved and interested persons and they have not filed any petition u/s 18 of the Land Acquisition Act due to lack of knowledge in regard of compensation and land acquisition act and the petitioners are simpleton illiterate persons and petitioner no.2 and 3 are residing in their respective matrimonial houses along with their children. The other co-sharer have already filed reference petition u/s 18 of L.A. Act, in which the land of present petitioners was also covered because the Killa number are the same and measurement/rakba of killa numbers was covered

under the petitioners filed by other co-sharers. The LAC No. was 232 of 21-2-2011/2013 titled as "Sheo Nath Etc. Vs. State" whereas another land under LAC No.225/23-5-2011/2013 was also filed by other co-sharers titled as Ram Rikh Vs. State of Haryana. The above said two petitions have already been allowed, copies of the petitioners are annexed herewith for kind perusal of this Hon'ble Court. Thus under the circumstances the whole land of the present petitioners and two already decided petitioners referred above was in common Khewats and common khasra numbers, the Land Acquisition Collector/HSIIDC have to prepare statement no.19 qua the share of the present petitioners, but they have not do so till date.

4. That the Ld. Court of Ms. Vani Gopal Sharma, ADJ Gurugaon, has already pronounced the award @ Rs. 50,43,315/- per acre on 31-08-2013.

In view of the above circumstances it is therefore most respectfully prayed that the petitioners may kindly be allowed to file the present Execution application being co-shares in the above said land and the same be got executed and JDs may kindly be directed to make the payment of the above acquired land of the applicants/DHs on the basis of above said Award judgment passed in LAC No. 232 & 225 decided on 31-08-2013 by the Court of Ms. Vani Gopal Sharma, ADJ, GURUGRAM and the same may kindly be recovered by the attachment and sale of immoveable and moveable properties of the JDs as per law and be got paid to the applicants.

Even then the JDs fails to deposit the awarded amount in that case the JDs may kindly be granted civil imprisonment on account of non-payment of awarded amount as per provisions of the C.P.C.

Any other relief which this Hon'bel Court may deem fit and proper may kindly be granted.

### Verification:

Verified that the

contents of the above

**Execution Petition** 

are true and correct

to my knowledge

and belief. No part of

it is false and nothing

material has been

concealed therein.

Verified

at

on

GURUGRAM

this 16/ day of

March, 2018

Petitioners/DHs

1. Rughnath S/o Sh. Chhellu,

2. Smt. Sushma

3. Smt. Krishna Ds/o Dhan Kaur

D/o Chhellu, All R/o Village

Nakhrola, Tehsil Manesar, Distt,

**GURUGRAM** Biswedar of Village

Nakhrola.

Through Counsel.

Sd/-

(PERVINDER YADAV)

**ADVOCATE** 

True Cuty Marrie Adv

Anner P/2

Rughnath etc.Vs. Hr.State

In the Court of R.K.Mehta, Addl. District Judge, Gurugram, (Haryana). UID No.: HR0136.

Execution No..

CIS no.

: Exe.995-2018.

CNR No. HRGR01-005592-2018

Decided on : 5.4.2019

1. Rughnath son of Chhellu 2 Smt. Sushma 3 Smt. Krishna daughters of Dhan Kaur D/o Chhellu, all residents of village Nakhrola, Tehsil Manesar Distt.Gurugram.

.....Petitioners.

#### Versus

1. State of Haryana through Land Acquisition Collector, Gurugram.

2. Haryana State Industrial Development Corporation through its Managing Director at Panchkula, Haryana.

3. Asstt. General Manager, Haryana State Industrial Development Corporation IMT Manesar, Gurugram.

....Respondents.

Execution petition. (Co-sharer)

Present:

Shri Parvinder Yadav, Advocate for petitioners.

Shri Vikarn, Govt. Pleader for respondent No.1.

Shri Rajesh Garg, Advocate for respondents No.2&3.

#### JUDGMENT:

Petitioners / co sharers have instituted their claim in the nature 1 of an execution petition to claim enhanced compensation as awarded to other co sharers of the same knewat situated within revenue estate of village Nakhrola Tehsil Manesar Distt.Gurugram, who had filed a reference u/s 18 of

Land Acquisition Act, 1894.

- Petitioners claimed that at the time of acquisition of land in question, they were well recorded as co sharers in the revenue record alongwith other co sharers Ram Rikhand others, who had filed a reference u/s 18 of the Act. Said reference was registered as L.A.case No.225 dated 23.5.2011 titled Ram Rikh Vs.State and decided by the court of Ms.Vani Gopal Sharma the then ADJ,Gurugram vide an award dated 31.8.2013 Ex.P1 passed in main case titled Ram Niwas Vs.State of Haryana & Others vide which reference court enhanced the compensation @ Rs.50,43,315/-per acre. But petitioners could not file reference u/s 18 but they being co sharers in the same khewat are also entitled for enhanced compensation.
- Notice of petition was given to the respondents, who appeared and contested the petition.
- Respondent No. 1 had not filed any formal reply, but it owned reply /objections filed by respondent No.2&3 who contended that petition in the present form was not maintainable being time barred. It was also contended that appropriate remedy for the petitioners was to file a reference u/s 28A of the Act. But petitioner did not avail said statutory remedy which also became time barred.
- 5. Following issues were settled for adjudication:
  - 1. Whether petitioners being co sharers have a right to seek enhanced compensation on the principle of parity, as their other co sharers got the enhanced compensation awarded by reference court on 31.8.2013 in petition titled as Ram Rikh & Ors Vs. State of Haryana & Ors.? OPP.
  - 2. Whether the petition is not maintainable being time barred?

**OPR** 

3.Relief.

6. Petitioner produced following evidence.

#### Oral.

PW1 Rughnath son of Chhellu resident of village Nakhrola Tehsil

Manesar Distt.Gurugram -Petitioner .

#### **Documentary:**

Ex.P1 Copy of Award dated 31.8.2013 passed by the court of Ms.Vani Gopal Sharma the then Ld. A.D.J.Gurugram in case titled Ram Rikh Vs. State .

Ex.P2 Copy of statement No.19

Ex.P3 Copy of jamabandi for the year 2003-04

7. Respondents had produced following evidence.

#### Oral

RW1 Dushyant Assistant Manager (IA) HSIIDC, IMT Manesar.

8. This court has gone through the pleadings of the parties and hearing valuable arguments of their counsels. Issuewise findings are as under:

#### Issue no.1:

9. The onus to prove of issue no.1 was on the petitioner i.e. Whether petitioners being co sharers have a right to seek enhanced compensation on the principle of parity, as their other co sharers got the enhanced compensation awarded by reference court on 31.8.2013 in petition titled as Ram Rikh & Ors Vs. State of Haryana & Ors.?

- Arguments heard.
- From a perusal of pleadings of the parties, these facts are not in dispute that Govt. of Haryana issued a notification u/s 4 of the Act on 17.9.2004 for acquisition of land of village Lakhnola for public purpose namely for setting up of Ch.Devi Lal Industrial Model Township Phase V, Manesar.
- It is also not in dispute that Land Acquisition Collector, herein for short, referred as Collector, passed an award No.12 dated 9.3.2006, thereby awarding compensation @ Rs.12.50 lacs per acre situated within revenue estate of village Lakhnola, involved in the present case.
- It is also not in dispute that petitioners were also recorded as co sharers to the extent of their share in the acquired land alongwith other co sharers Ram Rikh and others in the revenue record as evident from copy of jamabandi Ex.P3 and statement No.19. As such share of the petitioners was also acquired in the acquisition. It is also not in dispute that petitioner had received compensation as awarded by Collector.
- Further this fact is not in dispute that other co sharers Ram Rikh and others of the same Khewat filed a reference petition u/s 18 of the Act registered as LA case No.225 of 23.5.2011 titled Ram Rikh Vs.State which was decided vide an award dated 31.8.2013 by reference court in main LA case No.177 dated 3.8.2009/12.4.2013 titled Ram Niwas Vs. State of Haryana and others . It is not in dispute that by virtue of award dated 31.8.2013 the compensation was enhanced @ Rs.50,43,315/-per acre besides statutory benefits.

- It is now not in dispute that Hon'ble Pb.& Hr.High Court vide an order dated 25.5.2018 passed in RFA No.776 of 2014 titled Smt.Khajani Devi and others vs.State of Haryana and others reduced the compensation to Rs.48,46,000/- per acre with all statutory benefits in respect of land of villages Naurangpur and Lakhnola.
- In above a situation, it is pertinent to refer law laid down by Hon'ble Higher Courts in the following rulings.
- 1.A.Viswanatha Pillai and others Vs. Special Tehsildar for Land Acquisition No.IV and others AIR 1991 Supreme Court, 1966.
- 2.Surjit Singh and others Vs. State of Hr.and another Vol.CXLV, 2007 (1) PLR ,352 (P&H).
- 3.Food Corporation of India Vs. Sohan Lal, 2005 (3) RCR, Civil, 765 (P&H).
- 4. Patialia Improvement Trust thru. its Chairman Vs. S.Amar Singh and others, 2005 (2) RCR, 332 (P&H).
- 5. Housing Board Haryana Vs. Bhag Singh, Vol.CXLIX (2008-1), PLR 826.
- 17. In the rulings supra section 18 Land Acquisition Act 1894 has been interpreted regarding compensation payable to non-applicant co-sharer. This **ratio of law has been laid down that** when market price of land on the application u/s 18 of one co-sharer is determined, then State cannot take an objection that other co-sharers, who were not applicants u/s 18 will not be entitled to receive enhanced compensation because one co-sharer may act on behalf of all the co-sharers and he is deemed to be owner of every piece of co-sharership and as such non-applicant **co-sharers are equally entitled** to receive compensation pro rata as per their shares. Further they are not required to file an application u/s 28-A for getting the same rate of enhanced compensation.

- On 5.4.2019 Ld.counsel for petitioners made a statement to the effect that petitioners had not filed any reference petition u/s 18 and 28A in any competent court of law..
- 19. Hence having regard to the above referred undisputed facts that land in question in the same khewat in which petitioners were recorded as co sharers ,stood acquired and with due deference to the mandate of law, laid down in the rulings, supra of Hon'ble Higher Courts, it is held that petitioners-co-sharers have proved their case to receive pro rata compensation @ Rs.48,46,000/- per acre with statutory benefits as per order dated 25.5.2018 passed by Hon'ble Pb.& Hr.High Court in RFA No.776 of 2014 titled Smt.Khajani Devi and others vs.State of Haryana and others in respect of their share i.e. land in question also . Issue no.1 is decided in favour of petitioners accordingly.

#### Issue No.2.

- Onus to prove this issue was upon the respondents i.e. Whether the petition of the petitioner is not maintainable being time barred? OPR
- Ld.counsels for respondents argued that appropriate course for the petitioners was to file a reference u/s 18 but it was not filed, so another remedy was available by filing a reference u/s 28A before Land Acquisition Collector.
- On the other hand Ld.counsel for petitioners argued that petitioners- co sharers in the same knewat had a right to seek enhanced compensation as allowed to other co sharers in the reference u/s 18. Ld. counsel referred a ruling of Hon'ble High Court of Pb.& Hr. in case titled

Surjit Singh Vs. The State of Haryana 2007(1) P.L.R 383 in which section 23 of Land Acquisition Act 1894 was interpreted vis a vis enhancement of compensation. This ratio of law has been laid down that "Co owner is as much owner of entire property as a sole owner of the property and he would, therefore, be entitled to receive compensation prorata and even if one of the co owners made a statement in the reference court that he and other co owners are dissatisfied with the award made by the Collector, it would amount to making request on behalf of all the co owners and they would be entitled to enhanced compensation, even though it was not expressly stated by each of the co owners for enhancement. As such as per mandate of said ruling, present execution by petitioners is maintainable.

Present co-sharers filed petition in this court on 26.4.2018 seeking benefit of enhanced compensation. As per ratio of rulings supra, discussed in the findings of issue No.1, petition is not barred by limitation. However petitioners shall not be entitled for interest for the delay in filing the petition. Issue No.2 is decided against respondents.

#### (Relief):

In view of the findings on all the issues, present petition is allowed with no order as to costs. Petitioners-co-sharers are hereby held entitled to receive pro rata compensation pertaining to their share,@Rs.48,46,000/- per acre with statutory benefits as per order dated 25.5.2018 passed by Hon'ble Pb.& Hr.High Court in RFA No.776 of 2014 titled Smt.Khajani Devi and others vs.State of Haryana and others. However petitioners shall not be entitled for interest for delay in instituting present

execution. File be consigned to record room after due compliance.

Pronounced in open court: 5.4.2019

(R.K.Mehta) Addl. District Judge, Gurugram. UID No.HR-0136.

Note: All pages of this judgment have been checked and signed by me.

> (R.K.Mehta) Addl. District Judge, Gurugram.5.4.2019

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RAMESH
KUMAR
GERA

I attest to the accuracy and authenticity of this document.
Digitally signed by RAMESH KUMAR GERA Date: 2019.04.09 18:03:50 +0530

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#### REPORTA BLE

#### IN THE SUPREME COURT OF INDIA

#### CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 1158 of 2021 (@ out of Special Leave Petition (Civil) No.24520 of 2018)

VED & ANR.

...APPELLANTS

#### VERSUS

STATE OF HARYANA & ANR.

...RESPONDENTS

#### WITH

#### CIVIL APPEAL No(s). 1159 of 2021

(@ out of Special Leave Petition (Civil) No. 30239 of 2018) WITH

#### CIVIL APPEAL No(s), 1160-1197 of 2021

(@ out of Special Leave Petition (Civil) Nos. 3431-3468 of 2019) WITH

#### CIVIL APPEAL No(s). 1198-1210 of 2021

(@ out of Special Leave Petition (Civil) Nos. 31256-31268 of 2018) WITH

# CIVIL APPEAL No(s). 1211-1218 of 2021

(@ out of Special Leave Petition (Civil) Nos. 31770-31777 of 2018) WITH

### CIVIL APPEAL No(s). 1219-1227 of 2021

(@ out of Special Leave Petition (Civil) No(s). 5753-5761 of 2021) (@ Diary No.32001 of 2018)

#### WITH

#### CIVIL APPEAL No(s). 1228 of 2021

(@ out of Special Leave Petition (Civil) No(s). 30237 of 2018)

2

#### WITH

## CIVIL APPEAL No(s). 1229 of 2021

(@ out of Special Leave Petition (Civil) No.30230 of 2018)
WITH

#### CIVIL APPEAL No(s). 1230 of 2021

(@ out of Special Leave Petition (Civil) No. 30235 of 2018)

**WITH** 

#### CIVIL APPEAL No(s). 1231 of 2021

(@ out of Special Leave Petition (Civil) No. 3263 of 2019)

**WITH** 

#### CIVIL APPEAL No(s). 1232-1233 of 2021

(@ out of Special Leave Petition (Civil) Nos.3273-3274 of 2019)

WITH

#### CIVIL APPEAL No(s). 1234-1240 of 2021

(@ out of Special Leave Petition (Civil) Nos.3266-3272 of 2019) WITH

#### CIVIL APPEAL No(s). 1241-1242 of 2021

(@ out of Special Leave Petition (Civil) Nos.3247-3248 of 2019) WITH

#### CIVIL APPEAL No(s). 1243-1248 of 2021

(@ out of Special Leave Petition (Civil) Nos.3251-3256 of 2019) WITH

#### CIVIL APPEAL No(s). 1249-1250 of 2021

(@ out of Special Leave Petition (Civil) No(s). 5762-5763 of 2021) (@ Diary No.37088 of 2018)

**WITH** 

#### CIVIL APPEAL No(s). 1251 of 2021

(@ out of Special Leave Petition (Civil) No.3209 of 2019)
WITH

#### CIVIL APPEAL No(s). 1252-1253 of 2021

(@ out of Special Leave Petition (Civil) No(s). 5764-5765 of 2021) (@ Diary No.37098 of 2018)

**WITH** 

#### CIVIL APPEAL No(s). 1254 of 2021

(@ out of Special Leave Petition (Civil) No(s). 5766 of 2021) (@ Diary No.38933 of 2018)

#### WITH

#### CIVIL APPEAL No(s). 1255-1272 of 2021

(@ out of Special Leave Petition (Civil) No(s). 5767-5784 of 2021) (@ Diary No.39475 of 2018)

WITH

# CIVIL APPEAL No(s). 1273-1278 of 2021

(@ out of Special Leave Petition (Civil) Nos.3241-3246 of 2019) WITH

#### CIVIL APPEAL No(s). 1279-1280 of 2021

(@ out of Special Leave Petition (Civil) No(s). 5785-5786 of 2021) (@ Diary No.42388 of 2018)

WITH

#### CIVIL APPEAL No(s). 1281 of 2021

(@ out of Special Leave Petition (Civil) No.3469 of 2019)
WITH

#### CIVIL APPEAL No(s). 1282 of 2021

(@ out of Special Leave Petition (Civil) No.3489 of 2019)
WITH

#### CIVIL APPEAL No(s). 1283-1287 of 2021

(@ out of Special Leave Petition (Civil) Nos.3470-3474 of 2019) WITH

### CIVIL APPEAL No(s). 1288-1302 of 2021

(@ out of Special Leave Petition (Civil) No(s). 5787-5801 of 2021) (@ Diary No.44018 of 2018)

**WITH** 

#### CIVIL APPEAL No(s). 1303 of 2021

(@ out of Special Leave Petition (Civil) No(s). 5802 of 2021) (@ Diary No.47476 of 2018)

WITH

#### CIVIL APPEAL No(s). 1304 of 2021

(@ out of Special Leave Petition (Civil) No(s). 5803 of 2021) (@ Diary No.6353 of 2019)

WITH

#### CIVIL APPEAL No(s). 1305 of 2021

(@ out of Special Leave Petition (Civil) No(s). 5804 of 2021) (@ Diary No.6511 of 2019)

#### WITH

#### CIVIL APPEAL No(s). 1306 of 2021

(@ out of Special Leave Petition (Civil) No(s). 5806 of 2021) (@ Diary No.8979 of 2019)

**WITH** 

#### CIVIL APPEAL No(s). 1307 of 2021

(@ out of Special Leave Petition (Civil) No(s). 5807 of 2021)

(@ Diary No.8983 of 2019)

**WITH** 

# CIVIL APPEAL No(s). 1308 of 2021

(@ out of Special Leave Petition (Civil) No(s). 5808 of 2021)

(@ Diary No.9015 of 2019)

WITH

## CIVIL APPEAL No(s). 1309-1310 of 2021

(@ out of Special Leave Petition (Civil) No(s). 5809-5810 of 2021)

(@ Diary No.10024 of 2019)

WITH

### CIVIL APPEAL No(s). 1311 of 2021

(@ out of Special Leave Petition (Civil) No(s). 5811 of 2021)

(@ Diary No.11491 of 2019)

**WITH** 

#### CIVIL APPEAL No(s). 1312 of 2021

(@ out of Special Leave Petition (Civil) No.10789 of 2019)

WITH

## CIVIL APPEAL No(s). 1313-1316 of 2021

(@ out of Special Leave Petition (Civil) No(s). 5812-5815 of 2021)

(@ Diary No.21912 of 2019)

**WITH** 

#### CIVIL APPEAL No(s). 1317 of 2021

(@ out of Special Leave Petition (Civil) No(s). 5816 of 2021)
(@ Diary No.26646 of 2019)

#### **JUDGMENT**

#### Uday Umesh Lalit, J.

- 1. Delay condoned. Permission to file Special Leave Petitions granted. Leave to appeal granted in all matters. These appeals challenge the Judgment and Order dated 25.05.2018 passed by the High Court<sup>1</sup>; based on which the individual appeals were disposed of.
- 2. The facts leading to the instant appeals, in brief, are as under:-
- A) The proceedings for acquisition of lands were initiated *vide* Notification dated 17.09.2004 issued under Section 4 read with Section 17 (2) (c) of the Act<sup>2</sup> for the purpose of setting up Industrial Model Township, Phase-V, Manesar, Gurgaon for the development of an integrated complex for industrial, commercial, recreational and other public utilities.
- B) The aforesaid Notification was followed by Declaration dated 27.10.2004 issued under Section 6 of the Act. The land covered by the

<sup>&</sup>lt;sup>1</sup> High Court of Punjab & Haryana At Chandigarh in RFA No.3381 of 2013 (HSIDC now HSIIDC vs. Roshan Lal and Others) and other connected appeals.

<sup>&</sup>lt;sup>2</sup> The Land Acquisition Act, 1894

Declaration admeasured 956 acres 5 Kanals 18 Marlas, the details of which as tabulated by the High Court were:-

| "Sr. | Villages                      | Area  | -     |  |  |  |
|------|-------------------------------|-------|-------|--|--|--|
| No.  |                               | Kanal | Marla |  |  |  |
| 1.   | Nawada Fatehpur               | 65    | 8     |  |  |  |
| 2.   | Naurangpur                    | 68    | 15    |  |  |  |
| 3.   | Manesar                       | 114   | 14    |  |  |  |
| 4.   | Lakhnoula                     | 3515  | 01    |  |  |  |
| 5.   | Naharpur Kasan                | 3672  | 15    |  |  |  |
| 6    | Shikohpur (43B-9B-<br>0B)     | 217   | 5     |  |  |  |
|      | Total                         | 7653  | 18    |  |  |  |
|      | Or 956 Acre 5 Kanal 18 Marla" |       |       |  |  |  |

- C) By Awards dated 09.03.2006, the Land Acquisition Collector assessed the market value of the lands at the rate of Rs.12.50 lakhs per acre.
- D) While dealing with References preferred by the landholders, the Reference Court assessed the compensation at the rate of Rs.50,43,315/- per acre in respect of the villages other than village Manesar. Exhibit P-20 Sale Deed, relied upon by the landholders, was considered by the Reference Court as under:-
  - "... Sale deed Ex.P20 pertains to village Naharpur Kasan and sale deed Ex.P24 pertains to village Naurangpur. I have gone through the sale deed Ex.P20. In the considered opinion of this Court the sale deed Ex.P20 does not depict the true market value of the land. 96 kanals 13 marlas of land

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was sold for a total sale consideration of Rs.13,62,00,000/on 28.04.2004. The price per acre comes to Rs.1.07 crores. A close scrutiny of the sale deed shows that the sale deed was not only with regard to land. There is an assertion in the sale deed Ex.P20 that the first party had good and marketable title to the industrial land and industrial building which consisted of basement, ground floor, first floor and second floor and was desirous of selling its rights, title, interest and liens in the industrial land and the building, structures and machinery imbedded in the earth. Two schedules were also attached with the sale deeds. Schedule-I gives the area of the land and Schedule-II gives the constructed area, machinery etc which includes canteen, kitchen, offices, 7 air handling units, air cooling units, centrifugal chillers comprising of 400 tons each, LAN networking with extensive cabling, fire fighting structure etc. The price was, therefore, for the entire plant and not for the land alone."

- E) The Acquiring Body, namely, HSIDC<sup>3</sup> (now known as HSIIDC<sup>4</sup>) as well as some landholders, being aggrieved, filed appeals in the High Court.
- F) The High Court assessed the market value in respect of lands falling in villages Naurangpur and Lakhnoula at Rs.48,46,000/- per acre; and in respect of lands falling in villages Nawada Fatehpur, Naharpur Kasan and Shikohpur the market value was assessed at Rs.43,61,400/- per acre. It relied on Sale Deed Exhibit P-13, where the land was having frontage on the National Highway No.8 and, after granting 12% enhancement it arrived at the figure of Rs.57,01,066/-, whereafter 15% cut was applied to assess the market value at

<sup>&</sup>lt;sup>3</sup> Haryana State Industrial Development Corporation Ltd.

<sup>&</sup>lt;sup>4</sup> Haryana State Industrial and Infrastructure Development Corporation Ltd.

Rs.48,45,907 (rounded of to Rs.48,46,000/-) for the lands from villages Naurangpur and Lakhnoula falling on the Highway. Since the lands from villages Shikohpur, Nawada Fatehpur and Naharpur were away from the Highway, a further cut of 10% was adopted to arrive at the figure of Rs.43,61,400/- per acre for those three villages. The High Court relied upon the assessment made by it in *Madan Pal III vs. State of Harvana*<sup>5</sup>.

The relevant discussion was:-

**"71** The other instance which can be kept into mind is Ex.P13 dated 27.08.2003 for 8 kanals 8 marlas (slightly over one acre) which was executed in favour of M/s Reliance Industries Limited falling in the limits of Lakhnoula. The frontage was on the National Highway No.8 of southern side itself as per description of the plot and the sale deed in question is more than a year prior in point of time. Keeping in view the growth factor and the potentiality of the land in question, which has been discussed in the evidence above that the IMT Manesar was being developed since the year 1994 in the vicinity and market value had already been assessed @ Rs.20 lakhs per acre at that point of time and for the year 2002 the market value had been assessed @ '41.40 lakhs per acre for adjoining village Naharpur Kasan, the pressure of building activity was immense and pace of progress was rapid. The industries had been built up and exempted from acquisition which has been shown in blue colour in the site plans. The distance to Manesar was only 2 Km away, where the main activities were taking place. Gurgaon city was only 11 Kms situated on the other side and the overall picture that can be drawn up was that there was certainable trend of development from both sides towards the land in question. The site plan showed that the land was

<sup>&</sup>lt;sup>5</sup> (2018) SCC OnLine P&H 2871

situated in more advantageous location and the potentiality was immense.

- 72. Keeping in view these circumstances, the enhancement of 12% would be required on the sale deed Ex.P13 for which the value of land which was Rs.50,90,238/-. The 12% benefit is '6,10,828/- and per acre value works out to Rs.57,01,066/- per acre. As noticed Ex.P13 is of one acre of land and, therefore, the smallness of the plot is not applicable in the facts and circumstances, as one acre of land falling on the highway cannot be said to be a small portion of land. The description also shows that it had a 75.8 meter frontage on the highway as per the dimensions given and, accordingly, this Court is of the opinion that a 15% cut for development would be appropriate in the facts and circumstances, which is liable to be put to assess the market value, which comes to Rs.8,15,159/-. Thus, reducing it from `57,01,066/-, the market value works out to Rs.48,45,907/- per acre (rounded off to Rs.48,46,000/- ) for the land falling in village Naurangpur and village Lakhnoula, which are abutting the highway. The sale exemplar being of higher value is, thus, being preferred over Ex.P7, which is not falling on the Highway also.
- 73. In similar circumstances in 'Chakas Vs. State of Punjab and others' 2011 (10) SCR 618, when the land was being acquired for setting up of industry and infrastructure, it was held that the deduction of 50% of value towards the development charges was not justified by the Reference Court. It was noticed that the land was to be used for the industrial unit for which it was being acquired and, therefore, 10% reduction was upheld.
- 74. It is pertinent to notice here also that acquisition was for mixed purpose and the Corporation is going to recover the costs as such from the eventual allottees and, therefore, 15% reduction would be justified in the facts and circumstances.
- 75. In 'Kasturi Vs. State of Haryana' 2003 (1) SCC 354, the 20% cut was applied when 84.23 acres was acquired

for development of residential and commercial area in Bhiwani. The argument that there should be no reduction was repelled by noticing that the sale exemplar was of 3 kanals of land located on the main road itself and resultantly the 20% cut was applied by the Single Judge and which had been upheld by the Division Bench was also kept intact.

- 76. As noticed that the land which was acquired in the year 2002 is further away and closer to Manesar and away from Gurgaon, the market value of which has been assessed @ Rs.41.40 per acre for village Naharpur Kasan and other villages of the compact block in *Madan Pal (III)*<sup>5</sup> (supra) on 09.03.2018. The earlier development having taken place in and around village Manesar, it being the hub of development and the IMT Manesar coming around it on the first account way back in the year 1994, the value of land of village Manesar and its surrounding were a relevant factor, whereby the industry concerned on an earlier occasion, namely, M/s Kohli Holding Pvt. Ltd. has been given a higher rate. Therefore, though the present land might be falling closer to Gurgaon as such, but away from the hub of development which is taking place at Manesar cannot be equated with same compensation, which has been given to M/s Kohli Holdings Pvt. Ltd and the landowners of village Manesar. The acquisition is of  $2\frac{1}{2}$  years later and, therefore, keeping in view the said factors also in mind, compensation for the land falling closer to the town of Gurgaon would be liable to be granted which was granted in the earlier acquisition for the land further away and, therefore, the assessment which has been made @ '48,45,907/- per acre (rounding it off to Rs.48,46,000/- per acre) would be a much appropriate market value.
- 77. For the land of other villages i.e. Nawada Fatehpur, Naharpur Kasan, Shikohpur an other 10% is liable to be reduced on the said compensation assessed and, therefore, the market value is assessed @ Rs.43,61,317/- per acre (rounding it off to Rs.43,61,400/- per acre) for the said villages. From the evidence of witnesses discussed above, it would be clear that village Nawada Fatehpur and Shikohpur are at a distance from the highway. Nawada Fatehpur is at a distance of 4-5 Kms and Shikohpur is situated where the land

was acquired for CRPF and also situated behind Naurangpur and not abutting the National Highway.

- 78. The evidence which is on record upon which one can safely fall back, in the present set of cases is in the form of the 2 sale deeds in M/s Conway Developers Ltd. (Exts. P24 & P25) in one set of cases, which show that the market value was Rs.57,60,000/- per acre in village Naurangpur. But as noticed above, the location has not been specifically brought to the notice of this Court, though an application for additional evidence has been filed, bringing on record the site-plans. One witness PW has deposed that it is abutting the main Highway and appropriate cut has, thus, to be fixed upon the same and especially since the land was towards Gurgaon, as noticed and abutting the Highway. Thus, if a 15% cut is given on the same, on account of locational advantage, it would work out Rs.8,64,000/- and the market rate would be Rs.48,96,000/- per acre which is around the same price as is being fixed @ Rs.48,46,000/- per acre."
- G) The operative part of the directions issued by the High Court was: -
  - "79. Resultantly, the appeals of the HSIIDC are allowed, whereas the appeals of the landowners for further enhancement and cross-objections for enhancement which are filed are dismissed and the awards passed by the Reference Courts are, accordingly, modified.
    - (i) The market value of the land falling in two villages, namely, Naurangpur and Lakhnoula is assessed @ Rs.48,46,000/- per acre alongwith all statutory benefits on 17.09.2004.
    - (ii) For the land falling in villages Nawada Fatehpur, Naharpur Kasan and Shikohpur, the market value is fixed @ Rs.43,61,400/- per acre along with all statutory benefits on 17.09.2004.

- (iii) The directions of the Apex Court in the case of **Pran Sukh<sup>6</sup>** (supra) will also be adhered to while disbursing the balance amount of compensation.
- (iv) Where appeals have been filed by the land owners which were beyond period of limitation and applications have been filed for condoning the delay with a condition that the land owners will not be entitled for the interest during the said period, the Executive Court shall ensure that the amounts are calculated and disbursed, keeping in the view the said condition which have been passed in the case of each individual land owner."
- 3. Being aggrieved, these appeals have been preferred by the landholders. No appeal has been preferred by the State or the Acquiring Body and thus, the scope of instant appeals is limited to consider whether the landholders are entitled to any enhancement in compensation.
- 4. It must be stated at the outset that with regard to Phases II, III and IV of the Industrial Model Township, Manesar, Gurgaon, acquisition proceedings were initiated in respect of lands falling in villages Naharpur Kasan, Kasan, Bas Kusla, Bas Haria, Dhana and Manesar by issuing Notifications dated 06.03.2002, 07.03.2002 and 26.02.2002 under Section 4 of the Act. The High Court *vide* its decision dated 09.03.2018 in *Madan Pal III vs. State of Haryana*<sup>5</sup>, assessed the market value in respect of lands from villages Naharpur

<sup>6 (2010) 11</sup> SCC 175

Kasan, Kasan, Bas Kusla, Bas Haria, and Dhana (covered by Phases II and III) at Rs.41.40 lakhs per acre; while the value for lands from village Manesar (covered by Phase IV) was assessed at Rs.62.10 lakhs per acre. The appeals arising therefrom were decided by this Court *vide* its Judgment dated 11.01.2019<sup>7</sup> as modified by Order dated 08.02.2019<sup>8</sup> in Civil Appeal Nos.264-270 of 2019 and other connected matters (*Wazir and Another vs. State of Haryana*<sup>7</sup>) i.e., after the decision of the High Court which is presently under appeal. The relevant operative directions issued by this Court were:-

- "32. In the circumstances, we direct:
- 32.1 In respect of lands under acquisition from Villages Naharpur Kasan and Kasan the market value shall be Rs.39,54,666 per acre. Additionally, all statutory benefits would be payable.
- 32.2 In respect of lands under acquisition from Villages Bas Kusla, Bas Haria and Dhana the market value shall be Rs.29,77,333 per acre. Additionally, all statutory benefits would be payable.
- 32.3 In respect of lands from Village Manesar the market value shall be Rs.59,31,999 lakhs per acre. Additionally, all statutory benefits would be payable."

<sup>&</sup>lt;sup>7</sup> (2019) 13 SCC 101

<sup>8 (2019) 13</sup> SCC 123

- 5. In these appeals, it was submitted on behalf of the landholders that:-
- a) The lands from villages Naurangpur, Lakhnoula and Shikohpur being abutting National Highway No.8 towards Delhi and closer to Gurgaon than the lands from villages like Manesar, the lands from these villages were on a better footing.
- b) The lands had immense potentiality for residential and commercial purposes, being surrounded by many reputed Industrial Units, Resorts, Hotels and Farm houses.
- c) Certain Sale Deeds including Exhibit P.20 executed on 28.04.2004 showed value greater than what was assessed by the High Court.
- d) Even if, the valuation determined in *Wazir and Another vs. State of Haryana*<sup>7</sup> be taken as the base, after conferring cumulative increase for a period of 2 ½ years, the appropriate valuation for lands from village Naharpur Kasan would be:-

| "Notification       | dated | Yearly increment/Cumulative Interest   |           |             |  |  |
|---------------------|-------|--|-----------|-------------|--|--|
| 06.03.2002          | in    | for the period 2 years 6 months and 11 |           |             |  |  |
| Wazir's             | case  | days                                   |           |             |  |  |
| awarded to Naharpur |       | 8%                                     | 10%       | 12%         |  |  |
|                     |       |  |           |             |  |  |
| Rs.39,54,666/-      | · per | 48,08,795                              | 50,39,544 | 52,787,392" |  |  |
| acre                |       |  |           |             |  |  |

- 6. On the other hand, it was submitted by the State that the valuation arrived at and the discussion by the High Court on the point did not call for any interference.
- 7. In the instant case, the High Court considered Exhibit P13 concerning an extent of land admeasuring 8 Kanals and 8 Marlas in the limits of Village Lakhnoula and two Sale Deeds in respect of M/s Conway Developers Private Limited. (Exhibits P24 and P25). It also considered the assessment of market value made by it in respect of acquisition pertaining to Phases II, III and IV in its decision in *Madan Pal III vs. State of Haryana*<sup>5</sup> and finally arrived at the market value for the villages in question.
- 8. As a matter of fact, the assessment in *Madan Pal III vs. State of Haryana*<sup>5</sup> which was the foundation of the decision of the High Court in the present case, was scaled down by this Court in *Wazir and Another vs. State of*

Haryana<sup>7</sup>. Therefore, theoretically, the market value arrived at by the High Court would be on the higher side.

9. Even then we proceed to consider the evidence placed on record to see if the landholders are right in seeking enhancement.

Exhibit P-20 Sale Deed was rightly rejected by the Reference Court and the reasoning in that behalf, as quoted hereinabove is quite correct. The other Sale Deeds i.e. Exhibits P-13, P-24 and P-25, the extent of lands involved therein, their location and other features were considered by the High Court in right perspective and the matter calls for no interference.

That leaves us to consider whether by adopting the method of annual increase over the values determined in connection with acquisition for Phases II, III and IV any advantage can still be conferred upon the landholders.

- 10. In General Manager, Oil and Natural Gas Corporation Limited vs.

  Rameshbhai Jivanbhai Patel and Another<sup>9</sup>, this Court dealt with the issue of grant of annual increase and expressed caution in following words.:-
  - "15. Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over

<sup>&</sup>lt;sup>9</sup> (2008) 14 SCC 745

the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisitions), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on sale transactions/acquisitions precede the subject acquisition by only a few years, that is, up to four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is of only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the "rate" of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase."

11. It is true that the process of determining the value by annual increase was considered as one of the alternatives in *Wazir and Another vs. State of Haryana*<sup>7</sup>. But in that case, three methods including one relating to cumulative annual increase were considered and that method which led to the highest valuation was adopted. But the law laid down in *ONGC Ltd.*<sup>9</sup> is quite clear.

In case we go by the method of cumulative annual increase it would mean that cumulative increase over the valuation in *Wazir and Another vs.*State of Haryana<sup>7</sup> must displace the valuation based on Sale Deed, which is normally the safest method.

12. In the circumstances, the decision of the High Court which is presently under appeal calls for no interference and these appeals are dismissed without any order as to costs.

(Uday Umesh Lalit)

.....J. (Vineet Saran)

New Delhi; April 08, 2021



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# IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 24.08.2010

C.R.No.2811 of 2000

State of Haryana

...Petitioner

Versus

Jai Dev

...Respondents

Present:

Mr. Aman Chaudhary, Addl. AG, Haryana, for the petitioner.

Mr. Shailendra Jain, Advocate, for the respondent.

C.R.No.4062 of 2000

State of Haryana

...Petitioner

Versus

Shiv Kumar and others

...Respondents

Present:

Mr. Aman Chaudhary, Addl. AG, Haryana, for the petitioner.

Mr. Ashok Arora, Advocate, for the respondents.

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

#### HEMANT GUPTA, J.

This order shall dispose of C.R.No.2811 of 2000 and C.R.No.4062 of 2000 directed against the orders passed by the learned Addl. District Judge, Hisar on 29.01.2000 and 19.08.2000 respectively. Vide the aforesaid orders, the learned Addl. District Judge has allowed an application in execution petition to award the same amount of compensation to the respondents as has been awarded to the other land-owners.

C.R.No.2811 of 2000

Since the issue is identical in both the petitions, therefore, the same are taken up together. However, for facility of reference, the facts are taken from C.R.No.2811 of 2000.

22 Kanals 2 Marlas of land was intended to be acquired by the State Government vide notification dated 19.05.1992 issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act'). The Land Acquisition Collector awarded Rs.3 lac per acre as the compensation of the acquired land vide its award dated 17.05.1995. The other co-sharers namely Daulat Ram, Smt. Sarti, Jai Singh and Richhpal sought reference under Section 18 of the Act for claiming enhancement of compensation. The reference Court assessed the market value of the acquired land at the rate of Rs.235/- per square yard besides giving statutory benefits.

The respondent herein i.e. Jai Dev did not seek any reference under Section 18 of the Act, but filed an application in execution petition to claim compensation at the same rate as has been awarded to the other land-owners on the ground that he is a co-sharer to the extent of 1/24th share in the joint knewat of 22 Kanals 2 Marlas. The learned trial Court relied upon the judgments of this Court reported as *Punjab State Vs. M/s Globe Motors*Ltd. and another 1981 PLJ 73, State of Haryana Vs. Bishan Singh and others 1981 PLJ 40 and Sh. Harmant Singh and anothers Vs. Land Acquisition Collector, Gurgaon and others 1987 PLJ 22, to return a finding that as a co-sharer, the respondent is entitled to the same amount of compensation as has been awarded to his other co-sharers. It is the said order, which is challenged by the State in the present revision petition.

Learned counsel for the petitioner has vehemently argued that the other co-sharers have sought compensation in respect of their specific share. It is contended that though a co-sharer can represent the interest of the other co-sharers, but when a co-sharer has restricted his claim in respect of his share alone, the other co-sharers cannot claim the same compensation as has been awarded to the other co-sharers. It is contended that each of the co-sharer is an owner in his individual right. He is entitled to compensation in his own right and also seek reference to claim enhancement. The reliance is placed upon <u>Sant Ram Nagina Ram Vs. Daya Ram Nagina Ram, AIR</u>

1961 Punjab 528 and <u>Ram Chander Vs. Bhim Singh and others, 2008 (3)</u>

RCR (Civil) 685 (Full Bench).

Learned counsel for the petitioner has referred to para No.1 of the reference application under Section 18 of the Act and the prayer in support of his argument, which read as under:

"1. That applicant No.1 was owner in possession of land to the extent of 1/8th share while applicants No.2 to 4 were owners in equal share to the extent of 1/8th share in the land fully detailed and described in the head note of this application. The applicants being owners in possession of the land were interested persons within the meaning of Section 18 of the Land Acquisition Act to file the application for reference of the matter to the Court."

"Under the circumstances, it is prayed that the reference be made to the competent Court for adjudication and <u>for</u> determination of the exact khasra numbers of the acquired land of the applicants with its correct area and for enhancement of the compensation payable to the applicants in respect of the acquired land and buildings and other structures standing thereon, besides the compensation on account of severance of holdings. The applicants be also awarded interest on the enhanced compensation besides the additional amount of 12% per annum calculated on such market value and 30% solitium as provided under Section 23-A (1) of the Land Acquisition Act, 1894. (Emphasis supplied....)"

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Learned counsel for the petitioner also refers to the judgments of Hon'ble Supreme Court reported as Ramesh Singh (Dead) by LRs and others Vs. State of Haryana and others (1996) 4 Supreme Court Cases 469, Irshad Ali and others Vs. Hazi Abdul Sukhur Mazumdar and others (1997) 7 Supreme Court Cases 88, Smt. Ambey Devi Vs. State of Bihar and another (1996) 9 Supreme Court Cases 84 and also a Single Bench judgment of this Court reported as State of Haryana Vs. Rumal Singh 1994 (1) PLR 169. It is contended that merely because one of the co-sharer has got higher compensation, the other co-sharers do not automatically get the same compensation unless the remedies provided under the Act are availed of. It was held in Ramesh Singh's case (supra) to the following effect:

"5. .... Merely because one of the claimants had got higher compensation unless the remedies, as provided under the Act, are availed of. One of the remedies under the Act is Section 28-A; if it is available according to law. Determination of higher compensation in favour of some claimants or so-called co-owners and denial thereof to other claimants is not violative of Article 14 of the Constitution. The subject-matter having been regulated under the provisions of the Act, the right and remedy for higher compensation should be sought and had only under the Act. The principle of equality of Article 14 cannot be extended in that behalf."

In <u>Ambey Devi's case</u> (supra), it was held to the following effect:

"4. ..... It is an admitted position that the co-owner filed an application and had sought reference under Section 18 in respect of his share only. So, it is, as a fact, claims for compensation in specie and was paid towards 1/4th share to the claimant. By no stretch of imagination, the application under

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Section 18(1) by one of the co-sharers would be treated as one made on behalf of all the co-sharers. Accordingly, we hold that the appellant is not entitled to lay any higher compensation pursuant to an award made by the Reference Court under Section 26 at the instance of one of the co-owners."

In *Irshad Ali's case* (supra), a co-owner was found entitled to 1/3<sup>rd</sup> share of the acquired land. The claimant sought reference under Section 18 of the Act, but the first appeal before the High Court was preferred by another co-owner. Thereafter, the appellant sought compensation as awarded to the other co-owners by filing review petition and the same was dismissed. In Special Leave Petition, the Hon'ble Supreme Court found that since the award of the reference Court has not been challenged, the appellant is not entitled to higher compensation.

On the other hand, learned counsel for the respondent(s) relies upon <u>A. Viswanatha Pillai and others Vs. Special Tahsildar for Land Acquisition No.IV and others, AIR 1991 SC 1966</u> and <u>Jalandhar Improvement Trust Vs. State of Punjab and others (2003) 1 SCC 526</u>, to contend that a co-owner has undivided share in the entire property, therefore, amount of compensation awarded in respect of one co-owner would be the amount of compensation in respect of the other co-owners. Thus, the respondents have been rightly granted compensation on the basis of parity of compensation granted in favour of the other co-owners.

I have heard learned counsel for the parties and find that the order passed by the learned Executing Court suffers from patent illegality or irregularity. The respondent(s) was not party in a reference before the learned District Judge under Section 18 of the Act. Since the respondent was not a party in the execution proceedings, he could not claim

#### C.R.No.2811 of 2000



compensation on the basis of a compensation awarded to the other coowners. From the averments made in the reference application, it is
apparent that the other co-owners, who sought reference under Section 18 of
the Act were not claiming compensation for the benefit of all the co-owners.
Their claim was personal restricted to the extent of land owned by them
alone. Therefore, in the absence of the respondent being party to the
reference, the Executing Court could not travel beyond the order rendered
by the reference Court to return a finding that the respondent is entitled to
the same compensation as has been awarded to other co-owners, who were
party in the reference petition.

In <u>A. Viswanatha Pillai's case</u> (supra), it was found by the Hon'ble Supreme Court that the co-owner has sought reference not only in respect of his share, but in respect of other brothers as well. The paragraph extracted below will show the findings that a co-owner as entitled to compensation awarded to the other co-owners, arose from the said fact:

"2. ..... In the reference application made by Venkatachalam indisputably he mentioned that the acquired property belonged to him and his other brothers and the compensation awarded by the Land Acquisition Officer was inadequate and very low. It was also stated that they should get an enhanced amount at the figure specified in the reference application — Undoubtedly he stated therein that he is entitled to 1/4 share. What he stated thereby was that of his entitlement of 1/4 share of the total enhanced compensation and obviously, after the reference on par with his three brother, he is entitled to receive compensation at 1/4 share."

In *Jalandhar Improvement Trust's case* (supra), the reference at the instance of respondent No.4 under Section 18 of the Act was found barred by limitation. The compensation was enhanced on a reference raised



by his children under Section 18 of the Act. After the compensation was enhanced, respondent No.4 sought same compensation as has been enhanced in terms of Section 28-A of the Act. The appeal before the Hon'ble Supreme Court was against the compensation so awarded by the Land Acquisition Collector to respondent No.4. Even, the said judgment is of no help to the argument of learned counsel for the respondent. The respondent No.4 has been awarded enhanced compensation in a reference under Section 28-A of the Act. The judgments of this Court referred to by the learned Executing Court are no longer relevant in view of the judgments of the Hon'ble Supreme Court relied upon by the petitioner. The remedy of the present respondent to claim same compensation was under Section 28-A of the Act, as he has not sought reference under Section 18 of the Act, but having failed to do so, the respondent cannot claim compensation in execution proceedings in respect of decision given in the case of other coowners.

In view of the judgments referred to by the learned counsel for the petitioner and the averments made in the application under Section 18 of the Act, restricting the order passed by the learned Executing Court granting the same amount of compensation to the respondent is clearly not sustainable in law.

Consequently, the present revision petitions are allowed. The orders passed by the Executing Court are set aside.

24.08.2010 Vimal

(HEMANT GUPTA) JUDGE



122 Civil Revision No.391-2021

Annean P15

HSIIDC VS RAMNATH AND ORS

Present:

Mr. Pritam Singh Saini, Advocate,

for the petitioner.

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The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

Inter alia learned counsel for the petitioner contends that in the absence of a specific statement to the effect that a co-sharer is seeking reference under Section 18 of the Land Acquisition Act, 1894 on behalf of the other co-owners, the remaining co-owners are not entitled to file an execution application by claiming parity in the payment of market value. He relies upon a detailed judgment passed in Civil Revision No. 2811 of 2000 titled as *State of Haryana vs. Jai Dev*, decided on 24.08.2010.

He further submits that in a connected case i.e. Civil Revision No.376 of 2021, notice of motion has been issued for 06.09.2021 and further proceedings in the execution application have been stayed.

Notice of motion to the contesting respondents, for 06.09.2021.

On the request of this Court, Mr. Samarth Sagar, Addl. A.G., Haryana, accepts notice on behalf of the State.

To be heard with Civil Revision No.376 of 2021.

In the meantime, further proceedings before the Executing Court shall remain stayed.

Liberty is granted to serve the contesting respondents through their counsel in the Executing Court.

February 24, 2021 Ayub/nt

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(ANIL KSHETARPAL)
JUDGE

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CR-594-2021

Haryana State Industrial and Infrastructure Development Corporation Limited

 $V_{\mathcal{S}}$ 

Ashok Kumar @ Ashok Kumar Mittal and Others.

Present:

Mr. B.R. Mahajan, Sr. Advocate, with

Mr. Pritam Singh Saini, Advocate, for the petitioner.

(Presence marked through video conference).

Notice of motion.

Ms. Mamta Talwar, DAG, Haryana on advance service, joins the proceedings and accepts notice on behalf of the respondent No.2-State of Haryana and seeks time to get instructions.

Let other respondents be served in the meanwhile.

To be heard with CR-391-2021.

Interim order in the same terms as in CR-391-2021.

March 12, 2021

Vivek

(ARUN MONGA) JUDGE



# Haryana State Industrial & Infrastructure Dev. Corporation Ltd., Panchkula

#### Office Order

The matters pertaining to RFAs and Enhanced Compensation are being examined and finalized by Land Acquisition Cell. Earlier all the replies/affidavits were being signed by the DTPs due to calibration availability of staff in Land Acquisition Cell. Now, the hierarchy of officers at all level have been followed in this cell.

Henceforth, DGM /AGM of Land Acquisition Cell are being authorized to sign all the matters pertaining to Land Acquisition Cell which are to be filed before the Hon'ble Courts.

Place: Panchkula Dated 13th October, 2017

Dr. Raja Sekhar Vundru Managing Director

Endst. No. HSIIDC: PER: 2017 4308- 4313

A copy of the above is forwarded for information and necessary action to :-

- 1. CTP/HoD (IPD), H5IIDC, Head office ,Panchkula
- 2. HoD (Legal), HSHDC, Head office, Panchkula
- 3. Sh. Vijay Mohan Mittal, DGM (LAC), HSIICC, Head office, Panchkula.
- 4. Ms. Sunita Badhran, AGM (LAC), HSIIDC; Head office, Panchkula.
- 5. All DTPs, HSIIDC, Head office Panchkula.
- 6. PS to MD for kind information of Managing Director.

7. Concerned File (s)

for Haryana State Indi. & Infra. Dev. Corpn. Ltd.

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done for the progress

from court or parties

### VAKALATNAMA

#### IN THE HIGH COURT PUNJAB & HARYANA AT CHANDIGARH

| In                       | : CR           | 1871     | of 2021 |                            |
|--------------------------|----------------|----------|---------|----------------------------|
| Haryana State Industrial | and Infrastruc | ture Dev | elopmer | nt Corporation Limited     |
|                          | VERSUS         |          |         | Toddonor                   |
| Smt Rughnath & Ors       |                |          |         | Respondent(s)<br>Plaintiff |

KNOW ALL to whom these presents shall come that I/We the undersigned appoint

## PRITAM SINGH SAINI

ADVOCATE

Punjab & Haryana High Court, Chandigarh Mobile: 9814189891. ROOM NO.14

To be the Advocate for appellant in the above mentioned case and upon our instructions to do all the following acts, deeds all things or any of them that is to say: -

To act, appear & plead in the above mentioned case in this Court or any other Court in which the same may be tried or heard in the first instance in appeal, Letters Patent Appeal, Review, Revision, Execution or in any other stage of its progress until its final decision.

2. To present sign & verify pleadings, appeal tent Appeals, Cross-objections or petitions execution review, revision to the decrease of the de To present sign & verify pleadings, appeal petition, affidavits, other documents as shall be dee prosecution of the said case in all its stages.

To withdraw or compromise the said cas differences or dispute that shall arise touching or

To deposit, draw and receive moneys and gra 4. refund or balance of security and other miscellaned and to do all other acts and things which may be ne and in the course of the prosecution of the said case.

To employ any other Advocate authorize him to exercise the power and authorities and to confer upon such advocate, whenever he may think fit to do so.

AND I/WE hereby agree to ratify whatever the Advocate or his substitute shall do in the premises and in this connection.

AND I/WE hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequences of his absence from the Court when the said case is called up for hearing.

AND I/WE hereby agree to hold the Advocate responsible for not intimating the date of hearing of the case & for not applying any verified copy cop of the judgment decision of the case.

AND I/WE hereby agree that the Advocate will not be bound to appear for us if the case is transferred to any other Court or the Court sits at any place other than its normal place of sitting and if any application or Petition is to be filed in the case, the Advocate will be entitled to fresh fee as paid in the case.

AND I/WE hereby agree that in the event of the whole or any part of the fee agreed me/us to be paid to the Advocate remaining unpaid, he shall be entitled to withdraw from the prosecution from the said cause until the same is paid.

IN WITNESS WHERE OF I/WE hereunder set my/our hands of these presents the contents of which have been explained to and understood by me/a

DATED: 10.08.2021.

Accepted A A

(PRITAM SINGH SAINI)

Advocate # 1219 SECTOR 44-B, CHD

Enrolment No. P/199/1982

(SUNITA BADHRAN)

(Signature/Thumb Impression) of Client(s)

Haryana State Indu hill & Infrestructions Development Corporation Limited