IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.F.A. No. 583 of 2014 (O&M)
Date of decision: 4.9.2015

Balbir Kaur

Appellant

Versus

State of Haryana and others

Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Rajeev Godara and Mr. Kushagra Mahajan,
Advocates and Mr. Sanjiv Gupta,
Mr. P. K. Ganga, Mr. Harsh Bunger, Mr. B. S. Mittal
and Mr. Lal Singh Sandhu, Advocates for the
landowners.

Mr. Vishal Garg, Additional Advocate General, Haryana and
Mr. Shivendra Swaroop, Assistant Advocate General,
Haryana.

...

Rajesh Bindal J.

1. This order will dispose of a bunch of appeals bearing

RFA Nos. 583, 1037, 1256, 1274, 1275, 1570 to 1575, 1665 to 1754, 3017 to 3024, 3115 to 3117, 3274, 3275, 3304 to 3308, 3333, 3334, 3405, 3423, 3424, 4323, 4650, 5968, 7163 to 7172, 8447, 8449, 9116 of 2014 and

RFA Nos. 261 to 263 of 2015,

as the same arise out of common acquisition.

2. In the appeals filed by the landowners, they are seeking further enhancement of compensation for the acquired land, whereas in the appeals filed by the State, the prayer is for reduction thereof.

3. Briefly, the facts of the case are that vide notification dated 15.1.2008, issued under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act'), State of Haryana sought to acquire 337.47 acres of land, situated in villages Khairpur, Vaidwala, Nejadela, Tehsil and District Sirsa for development of residential and commercial Sectors 21 and 22-P, Sirsa. The same was followed by notification dated 14.1.2009, issued under Section 6 of the Act. Ultimately, the land measuring 305.516 acres was acquired. The Land Acquisition Collector (for short, 'the Collector'), vide award dated 12.1.2011, assessed the compensation @ ₹ 50,00,000/- per acre. Aggrieved against the award of the Collector, the land owners filed objections which were referred to the learned court below, who keeping in view the material placed on record by the parties, determined the fair value of the acquired land @ ₹ 83,18,000/- per acre.

4. It is the aforesaid award, which has been challenged in the present set of appeals by the landowners as well as the State.

Arguments of landowners

5. Learned counsel for the landowners, while referring to site plans (Ex. PW11/B and Ex. PW11/C), submitted that sale deeds (Ex. P1 and Ex. P3 to Ex. P5), which are pertaining to the same revenue estate, the land of which was acquired, have not been considered. The entire land was located within the municipal limits of Sirsa. The area around that was already developed. In fact, even the area between the land pertaining to the sale deeds and the acquired land had been acquired earlier and developed as Sectors 19 and 20-Part. He further submitted that the learned court below had assessed the compensation while averaging different sale deeds registered in the same revenue estate in the previous year and granted the compensation, whereas in terms of settled position of law, the sale transaction showing maximum value should have been relied upon. In support of the submissions, reliance was placed upon a judgment of this Court in RFA No.2075 of 2012—Sohan Lal and another v. State of Haryana and others, decided on 3.9.2014. He further submitted that the information, as supplied by the Sub Registrar, in response to an enquiry under the Right to Information Act, details of sale deeds in the same revenue estate were

furnished, which have been produced on record as Ex. P6 and Ex. P7. However, he did not dispute the fact that location of the land pertaining to any of the sale-deed, as mentioned in the aforesaid charts, has not been shown on any site plan except four sale deeds, otherwise also independently produced on record. As to whether the charts produced by the landowners containing details of different sale deeds registered in the area can be treated as a piece of evidence for the purpose of assessment of compensation for the acquired land, the submission of learned counsel for the landowners was that at least this shows the trend of prices in the area. He further referred to circulars (Ex. P11 to Ex. P13) showing minimum Collector's rates fixed for the purpose of registration of sale deeds in the area. Reference was sought to be made to different areas, which may be adjoining to or otherwise close to the acquired land, but specific area pertaining to the acquired land could not be pointed out in the aforesaid circulars. The submission is that the most relevant evidence pertaining to sale deeds (Ex.P1 and Ex. P3 to Ex. P5) be considered and value of the land assessed accordingly. Further reliance was placed upon letter of allotment (Ex. P76), vide which a booth measuring 22 square meters in Sector 20 Part-II was sold in auction at an average price of ₹ 35,000/- per square meter. The date of allotment letter is 22.12.2005. Reference was also made to allotment letter (Ex. P.77) dated 24.9.2008, vide which a plot measuring 450 square meters in Sector 19 Part was allotted @ ₹ 6,655/- per square meter. The submission is that the aforesaid was the trend of prices of the land adjoining to the acquired land, which had been developed by HUDA after acquisition. He further submitted that some part of the land was either initially not acquired or was released after issuance of notification under Section 4 of the Act as licence(s) had been granted to the builder(s).

Arguments of State

6. Learned counsel for the State submitted that there is nothing on record to suggest that information as contained in charts (Ex. P6 and Ex. P7) containing details of different sale deeds registered in the area, as produced by the landowners, had been sought in an enquiry under the Right to Information Act. These are simpliciter charts containing the details.

Location of land pertaining to the sale deeds had not been pointed out on any site plan to enable this court to compare the same with the acquired land. He further submitted that small plots of land always fetch more price than big chunk. The acquired land in the case in hand is 305.516 acres. In fact, barring few sale deeds, rest all are pertaining to small plots purchased for residential purpose, the location of which is not even evident, hence, the same could not be considered by the learned Reference Court for the purpose of assessment of compensation.

7. He further submitted that even the sale transactions (Ex. P1 and Ex. P3 to Ex. P5), as are sought to be relied upon by the landowners, are also not comparable considering the fact that vide aforesaid sale-deeds, the land was purchased by a builder for commercial purpose, which is located on NH-10, hence, cannot be compared in location with the acquired land. As against the evidence produced by the landowners, learned counsel for the State submitted that the State had produced two sale deeds (Ex. R8 and Ex. R12). The land dealt with therein was part of the acquired land. Vide aforesaid sale deeds, 422.76 square yards and 13 marlas-3 sarsai of land was sold for ₹ 63,500/- and ₹ 60,000/-, respectively. The same were registered just prior to the issuance of notification under Section 4 of the Act. Even vide sale deed (Ex. R7), land measuring 11 kanals and 14 marlas was sold at an average price of ₹ 8,00,000/- per acre. The aforesaid land adjoins the boundary of the acquired land and was registered on 23.5.2008 after the issuance of notification under Section 4 of the Act, hence, this indicates the prices of the land in the area at the time of acquisition. The award of the Collector was already much more as the same was ₹ 50,00,000/- per acre. He could not apprise the court as to whether in any other case, the State had awarded compensation for the acquired land more than the rates fixed in different policies circulated by the State, as in terms of the policy applicable at that time, the value of the land in the area would be ₹ 8,00,000/- per acre. He further submitted that there had been acquisition of land in the area in the year 2002-03. If increase is awarded for the time gap, the award of the Collector was much more.

8. Heard learned counsel for the parties and perused the paper book.

Principles for determination of compensation

9. The principles of law laid down for assessment of compensation for acquisition of land are well-settled and have been reiterated by Hon'ble the Supreme Court in Union of India v. Raj Kumar Baghal Singh (Dead) (2014) 10 SCC 422. Relevant paragraph thereof is extracted below:

> "10. It is well settled in determining compensation for the acquired land, price paid in a bona fide transaction of sale by a willing seller to a willing buyer is adopted subject to such transaction being for land adjacent to acquired land, proximate to the date of acquisition and possessing similar advantages. Of course, there are other well-known methods of valuation like opinion of experts and yield method. In absence of any evidence of a similar transaction, it is permissible to take into account transaction of nearest land around the date of notification under Section 4 of the Act by making a suitable allowance. There can be no fixed criteria as to what would be the suitable addition or substraction from the value of the relied upon transaction. In ***Chimanlal Hargovinddas*** vs. ***Land Acquisition Officer, (1988) 3 SCC 751***, this Court summed up the principle as follows:-
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> > "4. The following factors must be etched on the mental screen:
> > (1) -(4)
> >
> > (5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of notifications under Sections 6 and 9 are irrelevant).
> >
> > (6) The determination has to be made standing on the date line of valuation (date of publication of notification under

Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

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

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of acquisition of land.)

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

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

(i) proximity from time angle,

(ii) proximity from situation angle.

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

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

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

thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

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

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard-and-fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds. cannot be compared with a large tract or block of land of say 10,000 sq. yds. or more. Firstly while a smaller plot is within the

reach of many, a large block of land will have to be developed by preparing a layout, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approximately between 20 per cent to 50 per cent to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

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

(17) These are general guidelines to be applied with understanding informed with common sense."

Again in **Viluben Jhalejar Contractor** vs. **State of Gujarat, (2005) 4 SCC 789,** it was observed:-

"**24.** The purpose for which acquisition is made is also a relevant factor for determining the market value. In Basavva v. Land Acquisition Officer, (1996) 9 SCC 640, deduction to the extent of 65% was made towards development charges.

25. In Bhagwathula Samanna v. Tahsildar & Land Acquisition Officer, (1991) 4 SCC 506, it has been held: (SCC pp. 510-11, para 11)

"11. The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land. In applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition which is the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications, etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified."

26. In Land Acquisition Officer v. L. Kamalamma, (1998) 2 SCC 385, this Court held: (SCC p. 387, para 6)

"6......Ext. B-30 is a sale deed dated 9-8-1976, the transaction having taken place prior to eight months from the issue of the preliminary notification for acquisition of land in the present case. Having found that the piece of land referred in Ext. B-30 is situated very close to the lands that are acquired under the notification in question the Reference Court and the High Court relied upon the said document and, in our view, rightly. Further when no sales of comparable land were available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a layout, lump sum payment as also the waiting period required for selling the sites that would be formed."

27. In Administrator General of W.B. v. Collector, (1988) 2 SCC 150, deduction to the extent of 53% was allowed.

28. In K.S. Shivadevamma v. Commr. and Land Acquisition Officer, (1996) 2 SCC 62, it was held: (SCC p. 65, para 10)

"10. It is then contended that 53% is not automatic but depends upon the nature of the development and the stage of development. We are inclined to agree with the learned counsel that the extent of deduction depends upon development need in each case. Under the Building Rules 53% of land is required to be left out. This Court has laid as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted. Where the development has already taken place, appropriate deduction needs to be made. In this case, we do not find any development had taken place as on that date. When we are determining compensation under Section 23(1), as on the date of notification under Section 4(1), we have to consider the situation of the land development, if already made, and other relevant facts as on that date. No doubt, the land possessed potential value, but no development had taken place as on the date. In view of the obligation on the part of the owner to hand over the land to the City Improvement Trust for roads and for other amenities and his requirement to expend money for laying the roads, water supply mains, electricity etc., the deduction of 53% and further deduction towards development charges @ 33-1/3%, as ordered by the High Court, was not illegal."

29. In Hasanali Khanbhai & Sons v. State of Gujarat (1995) 5 SCC 422 and Land Acquisition Officer v. Nookala Rajamallu, (2003) 12 SCC 334, it has been noticed that where lands are acquired for specific purposes deduction by way of development charges is permissible.

30. We are not, however, oblivious of the fact that normally one-third deduction of further amount of compensation has been directed in some cases. (See Kasturi v. State of Haryana, (2003) 1 SCC 354, Tejumal Bhojwani v. State of U.P., (2003) 10 SCC 525, V. Hanumantha Reddy v. Land Acquisition Officer, (2003) 12 SCC 642, H.P. Housing Board v. Bharat S. Negi, (2004) 2 SCC 184 and Kiran Tandon v. Allahabad Development Authority, (2004) 10 SCC 745.)

31. In University of Agricultural Sciences v. Balanagouda, Civil Appeals Nos. 62-65, decided on 10.12.2003 (SC) whereupon Mr Ranjit Kumar placed strong reliance, the Court noticed that if the acquisition is made for agricultural purpose, question of development thereof would not arise; but if the sale instance was in respect of a small piece of land whereas the acquisition is for a large piece of land, although development cost may not be deducted, there has to be deduction for largeness of the land and also for the fact that these are agricultural lands. In that view of the matter, deduction at the rate of 33% made by the High Court was upheld. It may not, therefore, be correct to contend, as has been submitted by Mr. Ranjit Kumar, that there cannot be different deductions, one for the largeness of the land and another for development costs."

10. The principles regarding determination of market value of the acquired land were gone into by Hon'ble the Supreme Court earlier in Himmat Singh and others v. State of Madhya Pradesh and another, (2013) 16 SCC 392. Relevant paras thereof are extracted below:

"21. Before considering the respective arguments, we may notice the principles laid down by this Court for determination of market value of the acquired land. In Shaji Kuriakose v. Indian Oil Corpn. Ltd. (2001) 7 SCC 650, this Court held:

"It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land."

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23. In Atma Singh v. State of Haryana (2008) 2 SCC 568, the Court held:

"4. In order to determine the compensation which the tenure-holders are entitled to get for their land which has been acquired, the main question to be considered is what is the market value of the land. Section 23(1) of the Act lays down what the court has to take into consideration while Section 24 lays down what the court shall not take into consideration and have to be neglected. The main object of the enquiry before the court is to determine the market value of the land acquired. The expression 'market value' has been the subject-matter of consideration by this Court in several cases. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm's length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz. A price outcome of hypothetical sale expressed in terms of probabilities. See Kamta Prasad Singh v. State of Bihar (1976) 3 SCC 772, Prithvi Raj Taneja v. State of M.P. (1977) 1 SCC 684, Administrator General of W.B. v.

Collector (1988) 2 SCC 150 and Periyar Pareekanni Rubbers Ltd. v. State of Kerala (1991) 4 SCC 195.

5. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about a town is developing or has prospect of development have to be taken into consideration. See Collector v. Dr. Harisingh Thakur (1979) 1 SCC 236, Raghubans Narain Singh v. U.P. Govt. AIR 1967 SC 465 and Administrator General of W.B. v. Collector (1988) 2 SCC 150. It has been held in Kausalya Devi Bogra v. Land Acquisition Officer (1984) 2 SCC 324 and Suresh Kumar v. Town Improvement Trust (1989) 2 SCC 329 that failing to consider potential value of the acquired land is an error of principle."

11. The issue regarding application of reasonable cut while considering the sale deeds pertaining to small plots was considered by Hon'ble the Supreme Court in Major General Kapil Mehra and others v. Union of India and another, (2015) 2 SCC 262. The application of cut falls in two categories, namely, the area required to be utilised for development works and infrastructural facilities and the second is regarding cost of

development. The principles for the purpose as laid down in Lal Chand v. Union of India, (2009) 15 SCC 769 were reiterated by Hon'ble the Supreme Court in Major General Kapil Mehra's case (supra). Para 40 thereof is extracted below:

> "40. Rule of one third deduction towards development appears to be the general rule. But so far as Delhi Development Authority is concerned, or similar statutory authorities, where well planned layouts are put in place, larger land area may be utilized for forming layout, roads, parks and other common amenities. Percentage of deduction for development of land to be made in DDA or similar statutory authorities with reference to various types of layout was succinctly considered by this Court in Lal Chand's case (supra) and observing that the deduction towards the development range from 20% to 75% of the price of the plots, in paras 13 to 22, this Court held as under:
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>> "13. The percentage of "deduction for development" to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the layout in which the exemplar plots are situated.
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>> 14. The "deduction for development" consists of two components. The first is with reference to the area required to be utilized for developmental works and the second is the cost of the development works. For example, if a residential layout is formed by DDA or similar statutory authority, it may utilize around 40% of the land area in the layout, for roads, drains, parks, playgrounds and civic amenities (community facilities), etc.

15. The development authority will also incur considerable expenditure for development of undeveloped land into a developed layout, which includes the cost of levelling the land, cost of providing roads, underground drainage and sewage facilities, laying water lines, electricity lines and developing parks and civic amenities, which would be about 35% of the value of the developed plot. The two factors taken together would be the "deduction for development" and can account for as much as 75% of the cost of the developed plot.

16. On the other hand, if the residential plot is in an unauthorized private residential layout, the percentage of "deduction for development" may be far less. This is because in an unauthorized layout, usually no land will be set apart for parks, playgrounds and community facilities. Even is any land is set apart, it is likely to be minimal. The roads and drains will also be narrower, just adequate for movement of vehicles. The amount spent on development work would also be comparatively less and minimal. Thus the deduction on account of the two factors in respect of plots in unauthorized layouts, would be only about 20% plus 20% in all 40% as against 75% in regard to DDA plots.

17. The "deduction for development" with reference to prices of plots in authorized private residential layouts may range between 50% to 65% depending upon the standards and quality of the layout.

18. The position with reference to industrial layouts will be different. As the industrial plots will be large (say of the size of one or two acres or more as contrasted with the size of residential plots measuring 100 sq. m to 200 sq. m), and as there will be very limited civic amenities

and no playgrounds, the area to be set apart for development (for roads, parks, playgrounds and civic amenities) will be far less; and the cost to be incurred for development will also be marginally less, with the result the deduction to be made from the cost of an industrial plot may range only between 45% to 55% as contrasted from 65% to 75% for residential plots.

19. If the acquired land is in a semi-developed urban area, and not an undeveloped rural area, then the deduction for development may be as much less, that is, as little as 25% to 40%, as some basic infrastructure will already be available. (Note: The percentages mentioned above are tentative standards and subject to proof to the contrary).

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

21. Even among the layouts formed by DDA, the percentage of land utilized for roads, civic amenities, parks and playgrounds may vary with reference to the nature of layout-whether it is residential, residential-cum- commercial or industrial; and even among residential layouts, the percentage will differ having regard to the size of the plots, width of the roads, extent of community facilities, parks and playgrounds provided.

22. Some of the layouts formed by the statutory

development authorities may have large areas earmarked for water/sewage treatment plants, water tanks, electrical substations, etc. in addition to the usual areas earmarked for roads, drains, parks, playgrounds and community/civic amenities. The purpose of the aforesaid examples is only to show that the "deduction for development" factor is a variable percentage and the range of percentage itself being very wide from 20% to 75%, Lal Chand's case deals with acquisition of lands by DDA under the Rohini Residential Housing Scheme where 40% deduction was made towards the land area to be utilized for laying down of roads, drains etc. Further deduction of 35% of the value of the developed plot towards cost of levelling the land, cost of providing roads, underground drainage, laying down water lines, electricity lines was made."

Location of land

12. Site plan (Ex. PW11/B) produced on record by the landowners shows the boundaries of the acquired land. A perusal of the aforesaid site plan shows that the land adjoining to the acquired land towards the side of NH-10 and where old abadi already existed, had been acquired by the State for development as Sectors 19 and 20-Part. The other establishments, which are residential and commercial, are also shown in the vicinity. It was not disputed even by learned counsel for the State that the acquired land falls within the municipal limits of Sirsa, hence, it could be used for urbanisation.

Basis of assessment of compensation by the Reference Court

13. A perusal of the impugned award of the Reference Court shows that assessment had been made while placing reliance upon Ex. P7, which is claimed to be a list of various sale deeds registered in the revenue estate of village Khairpur from 16.1.2007 to 15.1.2008. First, it has no where been pointed out as to what is the source of the list. No sale deed had been produced on record showing the area, sale consideration and buyers and

sellers for various alleged sale deeds mentioned in the list. Most of the sale deeds, as contained in the list, pertain to small plots starting from 1.66 square yards onwards. Even if the aforesaid list contained details of various sale deeds registered in the area of village Khairpur, there is no site plan produced on record showing the location thereof. It was not disputed that part of revenue estate of village Khairpur was already urbanised, where houses were existing. For the purpose of assessment of compensation by the court, factors like sale transactions pertaining to the land which is comparable, smallness and largeness of area, proximity to a road, nearness to developed area etc. are to be taken into consideration. The aforesaid factors can be compared only if location of the land pertaining to the sale deeds relied upon by the landowners or the State vis-a-vis the acquired land is pointed out on a site plan produced in court. In the absence thereof, mere list of sale deeds, even if that is correct as per record, cannot be said to be a piece of evidence which could be relied upon for the purpose of assessment of compensation. Even learned counsel for the landowners also submitted that the list merely shows the trend of prices. Mere trend of prices will not be a piece of evidence for assessment of compensation, hence, it can safely be opined that assessment of compensation by the Reference Court relying upon the alleged list of various sale deeds registered from 16.1.2007 to 15.1.2008 was totally erroneous.

14. If the assessment of compensation by the court below merely relying upon the list (Ex. P7) is considered in the light of settled position of law, as referred to above, the inescapable conclusion is that the same cannot stand in judicial scrutiny and, therefore, deserves to be set aside.

Arguments regarding Collector's rates

15. If the aforesaid evidence is discarded being not worth reliance for the purpose of assessment of compensation for the acquired land, the next reliance of learned counsel for the landowners was on minimum rates fixed by the Collector in the area for registration of the sale deeds. For the purpose, reference was made to circulars (Ex. P11, Ex. P12 and Ex. P13) fixing the minimum rates for the years 2009-10, 2010-11 and 2011-12. Firstly, none of them would be relevant for the reason that notification

under Section 4 of the Act in the present case was issued on 15.1.2008 which is the cut off date for determination of compensation in land acquisition cases. (Reference can be made to the judgment of this Court in State of Haryana and another v. Pala Ram and others, 2013(4) RCR (Civil) 165). The aforesaid minimum rates were fixed for the period subsequent thereto. Secondly, a perusal of the circulars fixing minimum rates shows that the area mentioned while prescribing the minimum rates for registration of the sale deed was quite specific as it contained specific khasra numbers of particular area while fixing the rates. However, learned counsel for the landowners at the time of hearing had not been able to refer to the area specific to the acquired land. He had tried to refer to the areas, which may be near to the acquired land. In the absence of that, the same cannot be said to be a piece of evidence worth reliance. `

16. Even otherwise, the issue regarding evidentiary value of the minimum Collector's rates fixed for registration of the sale deeds came up for consideration before Hon'ble the Supreme Court with reference to assessment of compensation for the acquired land in the area and it was opined that both operate in different fields. Minimum Collector's rates could not be made the basis for assessment of compensation, as the object thereof is only for collection of stamp duty. Reference can be made to Krishi Utpadan Mandi Samiti Sahaswan District Badaun through its Secretary v. Bipin Kumar and another, (2004) 1 RCR (Civil) 720. In the aforesaid case, while relying upon its earlier judgment in Jawajee Nagatham v. Revenue Divisional Officer, Adilabad A. P. and others, (1994) 4 SCC 595, Hon'ble the Supreme Court opined that reliance by the Reference Court on the value fixed by the District Magistrate for payment of stamp duty for registration of sale-deed is clearly erroneous. The relevant part is extracted below:

> "7. It has been held by this court in the case of Jawajee Nagatham v. Revenue Divisional Officer, Adilabad, A.P. and others (supra) that market value under Section 23 of the Land Acquisition Act, 1894 cannot be fixed on the basis of a basic valuation register maintained by the registering authority for collection of stamp duty. Therefore, the reliance by the

> Reference Court on the value of land fixed by the District Magistrate for stamp duty purposes is clearly erroneous. For the purpose of Land Acquisition Act the market value must be determined on the basis of sale deeds of comparable lands.......”

17. The issue was later considered by Hon'ble the Supreme Court in Lal Chand v. Union of India and another, (2009) 15 SCC 769, wherein it was opined that in case the parties are able to place before the court the material showing that Collector's rates were fixed in the area after taking into consideration various sale deeds registered immediately preceding the period by a specially constituted Committee of experts from different departments and the rates so determined are published for inviting objections/suggestions from the public and if final rates so determined are published in the Gazette, which are revised periodically, this can be a piece of evidence for determination of compensation, but still even the presumption therein is rebutable. Relevant paras thereof are extracted below:

> “16. It should however be noted that as contrasted from the assessment of market value contained in non-statutory Basic Value Registers, the position may be different, where the guideline market values are determined by Expert Committees constituted under the State Stamp Law, by following the detailed procedure laid down under the relevant rules, and are published in the State Gazette. Such stamp stamp Acts and the Rules thereunder, provide for scientific and methodical assessment of market value in different areas by Expert Committees. These statutes provide that such committees will be constituted with officers from the Department of Revenue, Public Works, Survey & Settlement, Local Authority and an expert in the field of valuation of properties, with the sub-registrar of the sub-registration district as the member secretary. They also provide for different methods of valuation for lands, plots, houses and other buildings. They require determination

of the market value of agricultural lands by classifying them with reference to soil, rate of revenue assessment, value of lands in the vicinity and locality, nature of crop yield for specified number of years, and situation (with reference to roads, markets etc.). The rates assessed by the committee are required to be published inviting objections/suggestions from the members of public. After considering such objections/ suggestions, the final rates are published in the Gazette. Such published rates, are revised and updated periodically. When the guideline market values, that is, minimum rates for registration of properties, are so evaluated and determined by expert committees as per statutory procedure, there is no reason why such rates should not be a relevant piece of evidence for determination of market value. One of the recognised methods for determination of market value is with reference to opinion of experts. The estimation of market value by such statutorily constituted expert committees, as expert evidence can therefore form the basis for determining the market value in land acquisition cases, as a relevant piece of evidence. It will be however open to either party to place evidence to dislodge the presumption that may flow from such guideline market value. We however hasten to add that the guideline market value can be a relevant piece of evidence only if they are assessed by statutorily appointed Expert Committees, in accordance with the prescribed assessment procedure (either street-wise, or road-wise, or area-wise, or village-wise) and finalised after inviting objections and published in the Gazette. Be that as it may. We have referred to this aspect only to show that there are different categories of Basic Valuation Registers in different states and what is stated with reference to the stamp law in Andhra Pradesh or Uttar Pradesh, may not apply with reference to other states where state stamp laws have prescribed the procedure for determination of market value, referred to above.

17. In this case, there is nothing to show the circle rates have been determined by any statutorily appointed committee by adopting scientific basis. Hence, the principle in Jawajee Naganatham will apply and they will not be of any assistance for determining the market value. Further, they do not purport to be the market value for lands in rural areas on the outskirts of Delhi, nor the market values relating to Rithala village. The circle rates relate to urban/city areas in Delhi and are wholly irrelevant."

18. In the case in hand, except producing copy of table of the rates specified for different areas excluding the acquired land, nothing has been produced on record as to the manner applied for determination of the rates as mentioned in the table and as to whether the process adopted for determination of those rates was in terms of any statutory provision and the procedure as envisaged in the aforesaid judgment was followed, hence, the same cannot be considered to be the basis for determination of compensation for the acquired land.

Rates fixed for acquisition of land vide different policies issued by the State

19. With a view to avoid litigation pertaining to valuation of the acquired land, the State Government issued policy on 28.4.2005 prescribing minimum rates of compensation to be awarded for the acquired land in the State in different areas. The State was divided into three zones. As the aforesaid policy was not specific as to what would be the cut-off date, it was clarified vide memo dated 25.5.2005 to mean that the rates will be applicable for all the acquisitions where awards are announced by the Collector on or after 5.3.2005. What was the wisdom behind taking the award of the Collector as the crucial date for assessment of compensation cannot be explained, as in terms of the provisions of the Act, the relevant date is the date on which notification under Section 4 of the Act is issued and not the date of award by the Collector, as held in Pala Ram's case (supra). Still the policy issued by the State in its wisdom is binding on it. The rates prescribed in the aforesaid policy for different zones are as under:

"Policy dated 28.4.2005

Subject:- Fixation of floor rates for acquisition of land for public purpose in the State of Haryana.

Sir,

I am directed to refer to the subject cited and to state that the State Government has been acquiring land for public purposes for various departments as well as other State Agencies. Under the present system compensation is paid to the land owners based on the rate fixed by the Committee constituted under the Chairmanship of Divisional Commissioner vide this department letter No. 3670-R-5-95/8943, dated 20.6.1995. This Committee had been recommending rates based on the quality, category and location of the land under acquisition.

2. It has been the general experience that the rates of compensation fixed for acquisition are quite low as compared to the market rates prevalent in that area. Consequently, the land owners have to approach the Courts for enhancing the compensation paid to them and this process of litigation takes a substantial time. Agricultural land all over the State has become very valuable and more so in the region surrounding Delhi. The farmer who is deprived of his only livelihood is entitled to a fair compensation based on the market rates prevalent in the area.

3. The question of bringing about an improvement in the system by fixing a minimum floor rate and thereby ensure payment of fair compensation to the farmers based on the market rates, has been under the active consideration of the State Government. The system of acquisition followed by the Delhi Administration as well as by the NOIDA operating in the NCR has also been studied.

4. It has now been decided by the Government that the State be divided into following Zones for the purpose of fixing floor

rates of land acquisition:-

i) The urbanisable area as shown in the Gurgaon Development Plan.

ii) Rest of the NCR sub-region of Haryana including Panchkula and periphery of Chandigarh forming part of Haryana State.

iii) Rest of the State outside Haryana sub-region of NCR.

5. After due consideration, it has further been decided to fix the following floor rates for the above three Zones for acquisition of land for public purpose:

i) The urbanisable area of Gurgaon will have a minimum floor rates of Rs. 15.00 lacs per acre.

ii) Rest of the Haryana sub-region of NCR including Panchkula and area of Chandigarh periphery in the Haryana State will have a minimum floor rate of Rs. 12.50 lacs per acre.

iii) For the rest of the State minimum floor rate will be Rs. 5.00 lacs per acre.

iv) These rates do not include the solatium and interest payable under the provisions of the Land Acquisition Act.

6. The Committee headed by the Divisional Commissioner will continue to perform its duties while fixing the rate of compensation for various categories of land under acquisition based on these floor rates. It will continue to take into account all these parameters for working out the land acquisition rate being followed at present while communicating the rate to the Acquiring Departments/ Agencies in the State."

Clarification dated 25.5.2005

"After a careful and detailed consideration, it has been decided that no award for acquisition of land to be announced on/ after 5th March 2005 shall be on rates lower than the floor rates, communicated to you vide this department letter dated 28-4-2005. The other provisions of the communication dated 28-4-05 will remained unchanged."

20. The aforesaid policy was revised memo dated 6.4.2007 providing for the following rates:

Policy dated 6.4.2007

"Sub: Fixation of floor rates for the acquisition of land for public purpose in the State of Haryana.

Ref: This Department Memo No. 2025-R-5-2005/4299, dated 28.4.2005.

Vide this Department Memo. under reference, minimum floor rates for acquiring land for public purposes for various Departments as well as other State Agencies were fixed by the Haryana Government as follows:

i) Minimum floor rate for urbanisable area of Gurgaon.	Rs. 15.00 lacs per acre
ii) Minimum floor rate for rest of the Haryana Sub-Region of NCR inlcuding Panchkula and area of Chandigarh periphery in the Haryana State.	Rs. 12.50 lacs per acre
iii) Minimum floor rate for the rest of the Haryana State.	Rs. 05.00 lacs per acre

(These floor rates did not include the solatium and interest payable under the provisions of the Land Acquisition Act, 1894).

2. Now it has been observed that with the passage of time market rates of the land have increased substantially. Therefore, Haryana Government has re-considered this matter and has decided to re-fix these floor rates as follows:

i) Minimum floor rate for urbanisable area of Gurgaon.	Rs. 20.00 lacs per acre
ii) Minimum floor rate for rest of the Haryana Sub-Region of NCR inlcuding Panchkula and area of Chandigarh	Rs. 16.00 lacs per acre

periphery in the Haryana State.

iii) Minimum floor rate for the rest of the Haryana State.	Rs. 08.00 lacs per acre

3. These floor rates do not include the solatium and interest payable under the provisions of the Land Acquisition Act, 1894.

4. These revised rates will be applicable on all those acquisitions where awards have been announced on or after 22.3.2007 irrespective of the date of notification under Section 4 of the Land Acquisition Act, 1894."

21. A perusal of the policy, as issued vide memo dated 28.4.2005 and clarified vide memo dated 25.5.2005, shows that assessment of minimum rates of compensation to be paid to the landowners for the land situated in three different zones in the State of Haryana were to be paid where the award by the Collector was announced on or after 5.3.2005. The revised policy circulated vide memo dated 6.4.2007 prescribed for revised minimum rates. The object of issuing the policies was not achieved, as litigation has not been reduced.

22. The acquired land falls in zone three and the minimum rate of compensation in the area would be ₹ 8,00,000/- per acre. In various cases coming before the court, it was seen that compensation was being assessed by the Collector taking the policy into consideration, however, in the case in hand, it was deviated and the compensation was assessed @ ₹ 50,00,000/- per acre. There may be good reason for that as value of the land in the area may be to that extent but still why the policy was deviated in this case is not borne out from the record.

Sale deeds produced on record

23. As far as other evidence, relied upon by learned counsel for the landowners is concerned, reference was made to following sale deeds:

Ex.	Date	Area sold	Consideration paid in ₹	Rate per acre in ₹
P1	18.4.2007	11 kanals 2 marlas	5,13,37,500/-	3,70,00,000/-

P3	18.4.2007	8 kanals 5 marlas	3,81,56,250/-	3,70,00,000/-
P4	18.4.2007	15 kanals 15 marlas	7,28,43,750/-	3,70,00,000/
P5	18.4.2007	11 kanals 2 marlas	5,13,37,500/-	3,70,00,000/-

24. Location of the aforesaid land has been shown abutting NH-10 in site plan (Ex. PW11/B). The land was purchased by a colonizer. The aforesaid sale transaction cannot be solely relied upon keeping in view the fact that both are not comparable in location. No sale deed pertaining to the acquired land was produced by the landowners, though it was claimed that part therein was either initially not acquired or released after issuance of notification under Section 4 of the Act, as licences had been granted to the colonizers. They also must have purchased the land. There may be other sale transactions in the area. Learned counsel for the State had referred to three sale transactions (Ex. R7, Ex. R8 and Ex. R12), two of which pertain to the acquired land, whereas one is adjoining thereto. Variance in the consideration paid in two allotment letters (Ex. P76 and Ex. P77) placed on record by learned counsel for the landowners on record also establishes that even those transactions also do not depict fair value of the acquired land. First was by way auction of booth measuring 22 square meters in Sector 20 Part-II at an average price of ₹ 35,000/- per square meter on 22.12.2005. The second is a sale transaction pertaining to residential plot (allotment letter Ex. P.77 dated 24.9.2008), where average sale price even after nine months of issuance of notification under Section 4 of the Act and about three years after the earlier sale transaction, was ₹ 6,655/- per square meter. The location of the land pertaining to these allotment letters was also not shown on any site plan produce on record. These pertain to Sectors 19-Part and 20-Part, the land for which was earlier acquired.

25. The aforesaid evidence is not worth reliance for independently assessment of compensation for the acquired land.

26. In view of my aforesaid discussions and considering the fact that the land is bread and butter of the farmers, it would be appropriate to set aside the impugned award and remit the cases back to the Reference

Court for re-determination of the value of the acquired land. The Reference Court shall give further opportunity to the landowners as well as State to lead evidence in support of their claims.

27. The parties through their counsels are directed to appear before the learned District Judge, Sirsa on 8.10.2015. The learned District Judge may either keep the references with himself or may entrust the same to any other Additional District Judge for fresh consideration.

The appeals filed by the landowners as well as State are disposed of, in the manner indicated above.

(Rajesh Bindal)
Judge

4.9.2015
mk

(Refer to Reporter)