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

1 RFA No.1718 of 2002(O&M)
Date of decision: 07.10.2016

Darshana Devi

… Appellant

Versus

State of Haryana and another

… Respondents

2 RFA No.1717 of 2002(O&M)

M/s. Amit Steels Works, B-27, Industrial Estate, Sonepat

... Appellant

Versus

State of Haryana and another

....Respondents

3 RFA No.1719 of 2002(O&M)

M/s. Chandra Auto Spairs and Allied Industries Pvt. Limited, Sonepat

.... Appellant

Versus

State of Haryana and another

....Respondents

4 RFA No.1720 of 2002(O&M)

M/s. Taneja & Co. Tehsil and Distt. Sonepat

.... Appellant

Versus

State of Haryana and another

....Respondents

5 RFA No.1721 of 2002(O&M)

M/s. Asco Industrial Corporation, Sonepat

.... Appellant

Versus

State of Haryana and another

....Respondents

6 RFA No.2803 of 2001(O&M)

State of Haryana and another

.... Appellants

Versus

M/s Amit Steels Works

....Respondent

7 RFA No.2804 of 2001(O&M)

State of Haryana and another

.... Appellants

Versus

Smt. Lalita Hans

....Respondent

8 RFA No.2805 of 2001(O&M)

State of Haryana and another

... Appellants

Versus

Smt. Krishna Hans

....Respondent

9 RFA No.2808 of 2001(O&M)

State of Haryana and another

.... Appellants

Versus

Vinay Kumar

....Respondent

10 RFA No.2809 of 2001(O&M)

State of Haryana and others

.... Appellants

Versus

Ravinder Singh

....Respondent

11 RFA No.2810 of 2001(O&M)

State of Haryana and another

.... Appellants

Versus

Manohar Lal

....Respondent

12 RFA No.2811 of 2001(O&M)

State of Haryana and others

.... Appellants

Versus

M/s. Taneja & Company Industrial Development Colony, Sonipat

....Respondent

13 RFA No.2812 of 2001(O&M)

State of Haryana and another

.... Appellants

Versus

Smt. Darshna Devi

....Respondent

14 RFA No.2813 of 2001(O&M)

State of Haryana and others

.... Appellants

Versus

M/s. Bharat Porcelain, Old D.C. Road, Sonepat and others

....Respondents

15 RFA No.2814 of 2001(O&M)

State of Haryana and others

.... Appellants

Versus

Smt. Nirmala and another

....Respondents

16 RFA No.2815 of 2001(O&M)

State of Haryana and others

.... Appellants

Versus

Sujan Singh

....Respondent

17 RFA No.2816 of 2001(O&M)

State of Haryana and another

.... Appellants

Versus

M/s. Asco Industrial Corporation, Sonepat

....Respondent

18 RFA No.2817 of 2001(O&M)

State of Haryana and another

.... Appellants

Versus

M/s. Chandra Auto Spairs and Allied Industries Pvt. Limited, Sonepat

....Respondents

19 RFA No.2818 of 2001(O&M)

State of Haryana and another

.... Appellants

Versus

Satbir Singh and others

....Respondents

20 RFA No.2819 of 2001(O&M)

State of Haryana and others

.... Appellants

Versus

Man Mohan Lal Madhok and others

....Respondents

21 RFA No.3118 of 2002(O&M)

Satbir Singh and others

.... Appellants

Versus

State of Haryana and another

....Respondents

22 RFA No.3133 of 2001(O&M)

State of Haryana and others

.... Appellants

Versus

Surinder Nath Goyal

....Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI**

Present: Mr. Alok Jain, Advocate,
for the landowner(s)/appellant(s) in RFA Nos.1717 to 1721 of 2002; and for the respondents in RFA Nos.2803, 2811, 2816 & 2817 of 2001.

Mr. Sudeep Mahajan, Addl. AG, Haryana,
for the appellant(s) in RFA Nos.2803 to 2805, 2808 to 2819 & 3133 of 2001; and
for the respondents in RFA Nos.1717 to 1721 & 3118 of 2002.
None for appellants in RFA No.3118 of 2002.

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**ARUN PALLI J.**

For, the facts involved in these appeals, which have been preferred by the landowner-claimants as also the State, are similar, and the questions that arise for consideration being common, these are being decided vide a common judgment. However, for reference, the facts are culled out from Regular First Appeal No.1718 of 2002 – **Darshana Devi** v. **State of Haryana and another**.

Vide notification No.704, dated 08.02.1989, under Section 4 of the Land Acquisition Act, 1894, [for short, 'the Act'], published on 21.02.1989, land measuring 2.58 acres, situated within the revenue estate of village Kalu Pur, Tehsil and District Sonepat, was sought to be acquired for construction of a railway over-bridge at Sonepat-Delhi Section, Crossing No.26. The declaration under Section 6 of the Act was made vide notification dated 14.11.1989. The District Revenue Officer-cum-Land Acquisition Collector, Sonepat [for short, 'the Collector'] assessed the market value of the acquired land at ₹ 4,00,000/- per acre i.e. ₹ 82.64 per sq. yard. However, being aggrieved by the assessment and the compensation awarded by the Collector, objections, under Section 18 of the Act, were preferred by the landowners. Resultantly, Collector referred the matter to the Court for determination. The reference court, on a consideration of the matter in issue and the evidence on record, concluded; that the sale instances that were being relied upon by the landowner-claimants i.e. sale deed dated

03.06.1988 (Ex.P9), vide which an area measuring 133 sq. yards was sold @ ₹ 300/- per sq. yard, and sale deed dated 03.06.1988 (Ex.P10), whereby the site measuring 148 sq. yard was sold for the same consideration, could not be taken into consideration, being of an extremely small area. Likewise, the sale deeds, dated 10.04.1986 (Ex.R1) and 12.11.1986 (Ex.R3), relied upon by the State, vide which land measuring 200 sq. yards each was alienated @ ₹ 50/- per sq. yard, too could not be factored in. For, the sale consideration at which the said sites were sold was far less than the rate at which the compensation was assessed and awarded by the Collector himself. However, taking cognizance of the fact that the acquired land was situated within the Municipal limits of Sonepat for many years prior to the issuance of the notification under Section 4 of the Act, was surrounded by residential colonies, Industrial and commercial establishments, the reference court concluded that the acquired land, indeed, formed part of a developed area. Resultantly, the compensation awarded to the landowners was enhanced from ₹ 4,00,000/- per acre, as awarded by the Collector, to ₹ 6,00,000/- per acre i.e. ₹ 124/- per sq. yard. However, no compensation was awarded on account of severance, as no evidence was led to show that the land of any of the landowners, on account of acquisition, stood bifurcated in two parts, and lay on each side of the railway over-bridge. Likewise, claims as also the prayer for further enhancement of compensation as regard the superstructure and plantation of eucalyptus trees were also declined, for want of cogent evidence. Except, in the case of Raghbir Singh v. State of Haryana - LAC No.551 of 1996/1997 [RFA-4613-2001], in which the landowners were awarded ₹ 1,53,659/- *for superstructure* by the Collector, but the reference court enhanced the compensation by ₹ 47,000/-. Similarly, in the case of

M/s Asco Industries v. State of Haryana – LAC No.16A of 1998 [RFA-1721-2002] and M/s Chandra Auto v. State of Haryana - LAC No.16A of 1998 [RFA-1719-2002], both the companies were jointly awarded ₹ 1,00,000/- as compensation, for dismantling the machinery, removal of boundary wall, and for loss of production for a period of two months. All the statutory benefits as were admissible in law were also awarded to the landowners. That is how, both the parties, as indicated above, are before this court.

Mr. Alok Jain, learned counsel for the landowners submits that concededly the acquired land was situated within the Municipal limits of Sonepat town, and the reference court itself concluded that it was surrounded by many residential colonies, commercial and industrial establishments, therefore, it seriously erred to still discard the two sale deeds dated 03.06.1988 (Ex.P9 & Ex.P10), being of a smaller area. For, it was almost impossible to find the sale instances of a large tract of land within the Municipal area. Further, he submits that both the sale deeds (Ex.P9 & Ex.P10) were duly proved, for even the vendees to the said sale deeds i.e. Shyam Sunder Sharma (AW1) and Jag Mohan Sharma (AW2), respectively, were examined. And, the record shows that the distance between the two sites that were sold vide these sale deeds was 400-500 yards from the acquired land. Likewise, he further submits that sale deed, dated 24.01.1986 (Mark 'X'), vide which a land measuring 200 sq. yard was purchased by none other than the appellant (Darshana Devi) herself for ₹ 75,000/- i.e. ₹ 375/- per sq. yard, was the best evidence to assess the true market value of the acquired land. But as only the photocopy of the said sale deed was produced, and the document was not exhibited, resultantly, it was not taken into consideration. He submits that the veracity of the document (Mark 'X') was never questioned by the respondents, and its execution and contents were duly proved by vendee – Darshana Devi in her statement as PW6. Therefore, it could always be read in evidence. Thus, he asserts that the market price of the acquired land ought to have been assessed @ ₹ 375/- per sq. yard. In support of his submissions learned counsel has placed reliance upon the decisions of the Hon'ble Supreme Court in **Atma Singh (dead) through LRs and others v. State of Haryana and another, 2008(2) SCC 568**; **Charan Dass (dead) by LRs** v. **Himachal Pradesh Housing and Urban Development Authority and others**, **2010(13) SCC 398**; and **Bama Kathari Patil** v. **Rohidas Arjun Madhavi**, **2004(3) CCC 14**.

As opposed to this, Mr. Sudeep Mahajan, learned Additional Advocate General, Haryana, submits that the District Revenue Officer-cum-Land Acquisition Collector, Sonepat, visited the spot, examined the relevant record, and on a consideration of the location and potentiality of the acquired land, assessed the compensation @ ₹ 4,00,000/- per acre, therefore, there was hardly any occasion for the reference court to still enhance the compensation to ₹ 6,00,000/- per acre. Particularly, when the sale instances that were relied upon by both the parties were rejected. He submits that even if it is assumed that the reference court has rightly assessed the value of the acquired land, but there indeed is no scope for any further enhancement. For the sale deeds [Ex.P9 & Ex.P10] were rightly rejected by the reference court being of a smaller area measuring 130 & 148 sq. yards, respectively. And even if, the said two sale deeds are taken into consideration, a cut of 50% shall have to be imposed owing to the smallness of the sites. Further, in the event, the landowners maintain that the acquired land was fully developed, and nothing more was required to be done for its development, the onus of proof was upon them to substantiate such a plea. Accordingly, he placed reliance upon the decisions rendered by the Hon'ble Supreme Court in **Himmat Singh and others v. State of M.P. and another, 2013(6) SCC 392; Saibanna 'Dead' by LRs v. Assistant Commissioner & Land Acquisition Officer, 2009(3) SCC (Civil) 776;** and **Maj. Gen. Kapil Mehra and others** v. **Union of India and another**, **2015(2) SCC 262.**

Lastly, he submits that the reference court grossly erred to discard the sale deeds, dated 10.11.1986 (Ex.R1), and dated 12.11.1986 (Ex.R3), for the consideration at which those sites were sold was far less than the compensation awarded by the Collector himself. He submits that those sales exemplars could always be taken into account to assess the true value of the acquired land.

The argument is rebutted by the learned counsel for the landowners, for he submits that the acquired land was a part of the fully developed area, with all the amenities, and the sites that were sold vide sale deeds Ex.P9 & Ex.P10 were in the same vicinity. Thus, he submits that any deduction or cut in the price for which these sites were sold shall be unjustifiable. Reliance is placed upon the decisions of the Hon'ble Supreme Court, and this Court in **Bhagwathula Samanna and others** v. **Special Tehsildar and Land Acquisition Officer, Visakhapatnam Municipality, 1991(4) SCC 506;** and **Harbans Singh and others** v. **State of Punjab through the Land Acquisition Collector, Patiala, 2006(1) RCR (Civil) 634.**

Further, he submits, for the sale deeds Ex.R1 & Ex.R3 were apparently undervalued, and thus the same could never be relied upon.

I have heard learned counsel for the parties and perused the records.

The short but a significant question that is required to be determined is as to what indeed was the true market value of the acquired land as on 21.02.1989, the date of publication of notification under Section 4. Concededly, the acquired land was situated within the Municipal limits of Sonepat, even when the acquisition proceedings were initiated. Kishan Chand Chhabra, Naib Tehsildar (Retd.), PW7, testified in his deposition that the acquired land was situated at a distance of 750 meters from the bus stand, and 500 meters from the railway station. He proved the site plan (Ex.P5), which shows that the authorized colonies such as Sujan Singh Park, Model Town, Jiwan Nagar and Vaxon Colony were in vicinity of the acquired land. And, Atlas Cycle Factory, Milton Cycle Industries were located in close proximity. Many industrial and commercial establishments such as shops, cinema halls and factories surrounded the acquired land. The Industrial Estate Sonepat was also situated nearby. So much so, Tirath Dass Patwari (RW2), examined by the State, virtually conceded this position. The acquired land, on its northern side, was abutted by Atlas Rath Dhana Road and on the southern end by a 60 feet wide road that belonged to provincial government. Significantly, even this 60 feet wide road now forms part of the acquired land. That is how, the reference court itself recorded that **"*Another factor which the Court is to consider is that the land itself was acquired for the construction of a Railway Bridge which itself shows that it is located in a congested developed area and hence such piece of land is potential one***

***and it is valuable area.”*** In this backdrop, the conclusion arrived at by the reference court that sale deeds [Ex. P9 & Ex.P10] could never be factored in being of a smaller area, is wholly erroneous. It has not yet been laid down as absolute principle of law, that notwithstanding anything, sale instances of a smaller area can never be relied upon to assess the true value of the land under acquisition. Even otherwise, if the acquired land is situated within the Municipal limits, is surrounded by residential, commercial and industrial establishments, and is a part of the area which is thickly inhabited, it would be hard and rare to still come by the sale instances of a larger tract of land. And, this is not the case of the State either that the sale instances, which were germane to the acquired land, and of a larger tract existed, but were still not produced by the landowners. Understandably so, as the evidence led even by the State i.e. Ex.R2 & Ex.R3 were also of an area measuring 200 sq. yards only. That is how, the Hon’ble Supreme Court observed in **Atma Singh’s case** (supra) that sale exemplars of small pieces of land could not be discarded specially when sale instances of large pieces of land were not available:

> “**8. Shri Rakesh Dwivedi, learned senior counsel for the sugar mill has submitted that the exemplars filed by the appellants were of very small pieces of land and, therefore, they are not safe guide to determine the market value of the land. It may be mentioned here that while determining the market value, the potentiality of the land acquired has also to be taken into consideration. The appellants have led evidence to show that the acquired land had the potentiality to be used for commercial, industrial and residential**

**purposes. PW.1 Rakesh Kumar had prepared a site plan which showed that the acquired land was adjacent to the abadi of Shahabad and abutted the Shahabad-Ladwa Road. The site plan also shows that there existed rice shellers, cold storage, shops, godowns, a college and houses etc. on both sides of Shahabad-Ladwa Road. PW.2 Baldev Singh was Patwari of village Chhapra in the year 1983. He deposed that all the four villages viz. Kankar Shahbad, Chhapra, Jandheri and Jhambara are adjacent to each other and the acquired land abutted the Shahabad- Ladwa Road. He further deposed that the acquired land was 2 kilometer from G.T. Road and there were buildings, godowns, a cinema hall, factories on both sides of the Shahabad-Ladwa Road. Therefore, there can be no manner of doubt that the acquired land had the potentiality for being used for commercial, industrial and residential purposes and there was fair possibility of increase in its market value in the near future. Therefore, the fact that the exemplars filed by the appellants were of the small pieces of land could not be a ground to discard them specially when exemplars of large pieces of land were not available. They could, therefore, be used as a safe guide for determining the market value of the land."**

Therefore, the sale deeds dated 03.06.1988 [Ex. P9 & Ex.P10], which were executed just over six months before issuance of notification under Section 4, dated 21.02.1989, pertaining to the residential sites, situated in Sujan Singh Park, which is in the same vicinity as the acquired land, were extremely crucial to determine the true value of the acquired land. More so, for the bonafides of these sale transactions were not in question.

Another document, which has a decisive bearing on the matter, is a sale instance Mark 'X', out of the acquired land itself. No doubt, for the certified copy of the sale deed, dated 24.01.1986 (Mark 'X'), could not be produced, the document was not exhibited. But, the fact remains that appellant Darshana Devi (vendee), who appeared as PW6, proved the execution and contents thereof. She testified in her deposition, which is being extracted hitherto below, that she had purchased the site measuring 200 sq. yards for ₹ 75,000/- i.e. @ ₹ 375/- per sq. yard:

> **"I purchased the land of my house in the year 1986. The land was about 200 sq. yards and was purchased for a consideration of Rs.75000/-, vide sale-deed mark 'X'. I constructed three rooms, kitchen, latrine, bathroom, verandah and boundary wall in the year 1987. It was pucca built construction and I spent about Rs.1.75 lacs on the construction. After the acquisition, the valuer assessed the value of my house about Rs.3.50 lacs.**
>
> **xxxxxx by Sh. I.K. Kalra G.P for the respondents.**
>
> **I got the site plan prepared. However, I do not have any receipts regarding the amount spent on the construction of the house. I do not know whether completion certificate of the house was obtained from M.C.,**

**Sonepat, or not. It is incorrect to suggest that the Land Acquisition Collector had given the sufficient amount for the construction as well as the land in question. It is further wrong to suggest that I had got the value of the house assessed from the valuer wrongly just to get more compensation.”**

Ex facie, the execution as also the veracity of the said sale deed was neither questioned during her cross-examination nor before this court during the hearing of this appeal. Thus, her testimony remained unchallenged, and was rather accepted to be correct by the State. I am reminded to refer to the decision rendered by the Division Bench of the Calcutta High Court, in **A.E.G. Carapiet** v. **A.Y. Derderian, 1961 AIR (Calcutta) 359**, that if an opponent fails to put his essential and material case to a witness in cross-examination, and ask no question, to an extent it concerns that witness, it must be taken that he accepts his/her testimony**:**

**“10. The law is clear on the subject. Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to**

**give and lead evidence by producing witnesses. It has been stated on high authority of the House of Lords that this much a counsel is bound to do when cross-examining that he must put to each of his opponent's witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had any share. If he asks no question with regard to this, then he must be taken to accept the plaintiff's account in its entirety."**

Significantly, there exists nothing on record to show that either no such sale deed (Mark 'X') was executed or the transaction lacked bonafides. And, once that was/is so, I am of the considered view that the document (Mark 'X') could always be factored in, to determine the just, fair and true market value of the acquired land.

This brings me to the two sale instances that are being relied upon by the State. There cannot be any quarrel with the proposition of law that sale deeds [Ex.R1 & R3], vide which an area measuring 200 sq. yards each, situated in Sujan Singh Park, was sold @ ₹ 50/- per sq. yard, could always be factored in, even though, the sale consideration at which the said sites were sold was less than the rate at which the compensation was assessed by the Collector. For, all what Section 25 of the Act postulates is; that court shall not award compensation less than what has been awarded by the Collector. However, the provision does not prohibit the court to take cognizance of such sale instances to work out the true value of the acquired land. But, the fact remains that, still, no reliance could be placed upon these documents, for the vendee of the sale deed (Ex.R1), namely, Lalita wife of

Anand Parkash, who appeared as RW1, conceded in her cross-examination; that she was not sure about the actual price at which she had purchased the said site. Rather, on a further examination, she stated that she could not say whether it was for ₹ 300/- per sq. yard, but again said that she purchased the said plot @ ₹ 300/- per sq. yard. And, still further "… *The approximate value of the land at the time of its acquisition by the State was Rs.1000/- per yard. These plots abut the area of a regular colony known as Sujjan Singh Park.*" Even otherwise, these deeds were executed on 10.04.1986 (Ex.R1) and 12.11.1986 (Ex.R3), respectively, that is almost three years prior to the issuance of the notification under Section 4 of the Act on 21.02.1989. Ex facie, even the Collector did not choose to rely upon these transactions. That being so, the only and the inevitable conclusion one could reach is; the sale deeds [Ex.R1 & Ex.R3] were grossly undervalued, lack bonafides, and thus unsafe to be relied upon. Resultantly, these are excluded out of considerations.

Thus, the above analysis leaves the court with sale deeds dated 03.06.1988 (Ex.P9 & Ex.P10) and 24.01.1986 (Mark 'X'). As is already clarified, sale instances (Ex.P9 & Ex.P10) relate to the sites that were situated in Sujan Singh Park, which is in close proximity. And, the sale deed (Mark 'X') is an instance out the acquired land itself. That being so, it would be apposite to refer to certain decisions of the Hon'ble Supreme Court, wherein it was held that best evidence is the transaction of sale from the acquired land itself or the area which is in the close proximity to the acquired land. In **Pehlad Ram and others** v. **Haryana Urban Development Authority and others**, 2014(1) RCR (Civil) 316, while referring to its earlier decision in **The Dollar Company** v. **Collector of Madras**, AIR 1975 SC 1670, the Hon'ble court has observed:

> **"13. This Court in The Dollar Company (Supra) has categorically laid down that in case the land of the claimant has been acquired in close vicinity of the purchase, the consideration paid by such claimant to the vendor is the best evidence of the market value of the land. The court should not award more unless it is possible to reach a different conclusion. Even the appellate court should not interfere in such a fact situation unless the judgment is based on wrong application of principle or because some important point affecting valuation has been overlooked or misapplied. The consideration paid by the owner only a few months ago presents bonafide evidence of value subject to certain exceptions such as relationship of the parties, market conditions and terms of sale and the date of sale."**

Likewise, In **Bangaru Narasingha Rao Naidu** v. **Revenue Divisional Officer**, 1980(1) SCC 575, it has also been held that:

> **"2. There cannot be any doubt that the best evidence of the market value of the acquired land is afforded by transactions of sale in respect of the very acquired land, provided of course there is nothing to doubt the authenticity of the transactions."**

And, in the case of **Ram Kanwar and others** v. **State of Haryana and others**, 2015(1) RCR 234, the Hon'ble Supreme Court has held that sale transactions pertaining to the acquired land or an area which is in **close proximity thereto is the best evidence**. And, only in the absence of such evidence, the court shall rely upon the awards resulting from earlier acquisition.

For, I have held that sale deeds, dated 03.06.1988 (Ex.P9 & Ex.P10) & 24.01.1986 (Mark 'X'), are extremely crucial, the question that assume significance is; Whether any cut or deduction is required to be made in the price, for which these sites were sold, to determine the true value of the acquired land **?**

The argument advanced by the learned State counsel, that owing to the smallness of the area, that was sold vide these sale deeds [Ex.P9 & Ex.P10], a 50% cut shall have to be imposed on account of development charges, lacks conviction and cannot be countenanced. As indicated above, the acquired land was situated within the Municipal limits of Sonepat, was surrounded by residential, commercial and industrial establishments, was a part of thickly inhabited area, and had all the modern day facilities. That is how, even the reference court concluded; that the acquired land was a part of a fully developed area and was extremely valuable. This is not a case where the acquired land had the potentiality of being developed or used for residential, commercial or industrial purpose, but was indeed being used for those purposes. Concededly, most of the landowners had their residences, commercial and industrial establishments upon the acquired land. Which is why, they were awarded compensation separately for superstructure and the damage suffered on account of acquisition. Significantly, what was sought to be acquired was not a big chunk or a large tract of land. But, just an area measuring 2.58 acres, and that too was owned by eighteen individuals.

Rather the Hon'ble Supreme Court in **Bhagwathula Samanna v. Special Tehsildar and Land Acquisition Officer, 1992(1) RRR 257: 1992 L.A.C.C. 314**, had held that if the larger tract of land was capable of being used for the purpose for which the smaller plots are used, and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for the purpose of compensation was not justified:

> **"The proposition that large area of land cannot possibly fetch a price at the same rate at which shall plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account that price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted. With regard to the nature of the plots involved in these two cases, it has been satisfactorily shown on the evidence on record that the land has facilities of road and other amenities and is adjacent to a developed colony and in such circumstances it is possible to utilise the entire area in question as house sites.**

**In respect of the land AMIT KUMAR 2016.02.23 17:16 I attest to the accuracy and authenticity of this document and other connected appeals acquired for the road, the same advantages are available and it did not require any further development. We are, therefore, of the view that the High Court has erred in applying the principle of deduction and reducing the fair market value of land from Rs. 10/- per sq. yard to Rs. 6.50/- per sq. yard. In our opinion, no such deduction is justified in the facts and circumstances of these cases."**

Following the dictum of the Hon'ble Supreme Court in the case of Bhagwathula Samanna (supra), the Division Bench of this court in **Harbans Singh and others v. State of Punjab through the Land Acquisition Collector, Patiala, 2006(1) RCR (Civil) 634,** concluded:

**"14. It has been noticed by the learned Single Judge himself that all the instances relied upon pertained to the sale of land which was out of the acquired land. However, the notification under Section 4 of the Act was issued on May 3, 1980 whereas all the three sale instances relied upon by the learned Single Judge are prior in time to the said notification. Since the said sale instances pertained to sale of land in municipal area itself, therefore, it could not be accepted that there would be any sale instance with regard to bigger chunk of land. The learned Single Judge in our**

**considered view was not justified in applying any cut on the average price of the aforesaid sale instances. The proposition of law laid down by the Apex Court in Bhagwathula Samanna's case (supra) and by the Madras High Court in Abdul Reguman's case (supra) is fully attracted."**

Likewise, in a recent decision, in Civil Appeal No.7219-20 of 2016, titled **Bhikulal Kedarmal Goenka (D) by L.Rs.** v. **State of Maharashtra and Anr**, decided on 28.07.2016, the Hon'ble Supreme Court held the deduction of 1/3rd amount to be wholly unjustified, as the acquired land was located in the heart of the city:

**"...it is apparent, that while fixing the market value of the acquired land, which may be undeveloped or underdeveloped, the courts have approved deduction of 1/3rd of the market value towards development cost, "except when", no development is required to be made for implementation of the public purpose for which land is acquired. Admittedly, the public purpose in the instant case is to raise a school and to provide for play-grounds, for the students to be enrolled in the school.**

**The factual position, we are satisfied is, that the land in question is located within the heart of the city, as is the case projected at the hands of the learned counsel for the appellants. The acquired land is to be used for raising a school building, and to provide play-grounds therewith.**

> **There would hardly be any requirement for development charges, in the peculiar facts of this case. We are therefore satisfied, that the deduction of 1/3rd amount, expressed by the High Court, was wholly unjustified."**

There cannot be any illusion as regards the principle of law enunciated by the Hon'ble Supreme Court in **Himmat Singh and Maj. Gen. Kapil Mehra's** (supra), the decisions that have been relied upon by the learned State counsel. For, the issue regarding application of a reasonable cut, while considering the sale deeds pertaining to the small plots was considered at length by the Hon'ble Court. And, a 50% cut was imposed (in Himmat Singh's case) owing to the smallness of the area that was sold vide the sale deeds that were being relied upon. Likewise (in Gen. Kapil Mehra's case), 35% deduction was made for utilization of the land in the lay out for road etc. and 25% cut was imposed for expenditure for development.

Therefore, what come to fore, and is also expounded by the Hon'ble Supreme Court in **Lal Chand** v. **Union of India**, 2010(3) RCR (Civil) 172, that deduction for development consists of two components. The first is with reference to the area required to be utilized for development works, and the second is cost of development. Thus, the difference between the value of a small developed plot and the value of a large undeveloped land is the "development costs". But in the wake of the fact that the acquired land was fully developed, and indeed a part of a valuable area, imposition of cut or any deduction from the sale consideration, reflected in the sale instances Ex.P9, Ex.P10, Mark 'X', is unfathomable.

In conspectus of the position, as set out above, and to arrive at the true value of the acquired land, on the basis of the sale exemplars (Ex.P9, Ex.P10 & Mark 'X'), average of sale consideration in each of these sale deeds would be the most viable and just mode; [₹ 300/- (Ex.P9) + ₹ 300/- (Ex.P10) + ₹ 375/- (Mark 'X') ÷ 3]. Resultantly, the market value of the acquired land as on the date of notification issued under Section 4 of the Act i.e. dated 21.02.1989, works out to ₹ 325/- per sq. yard.

Having said that, still an exception shall have to be made in the case of appellant Darshana Devi, who herself purchased a site, measuring 200 sq. yards, @ ₹ 375/- per sq. yard, which concededly is a part of the acquired land. As indicated earlier, the execution and veracity of this sale transaction was never questioned by the State. No evidence was led to prove to the contrary. This was not the case of the State either, during the hearing of this appeal, that the sale consideration for which the said site was sold was either inflated or fictitious. In a similar situation, the Division Bench of this Court in **Brij Nanda** v. **State of Haryana**, AIR 1980 P&H 27, had held that the vendees-landowners shall be entitled to the actual amount paid by them to the vendors indicated in their respective sale deeds:

> **"17. Taking into consideration all the aforesaid facts and inevitably resorting to what is now judicially recognised as some rational guesswork, we are of the view that the whole of the area under acquisition (with the exception noticed below), now comprised in Sector 16 must be assessed at a uniform rate of Rs. 10 per square Yard only and it is Ordered accordingly.**

**18. An exception, however, is to be made with regard to the land comprised in Khasra Nos. 370 and 372 purchased by Chander Parkash son of Nanak Ghand and Sohan Lal son of Deva Ram vide sale deeds Exhibits PW 5/6 and PW 5/7, Tara Chand son of Kishori Lal and Deep Chand son of Tara Chand vide sale deeds Exhibits PW 5/8 and PW 5/9, Chetan Dass son of Budhu Ram and Gurdial son of Mstwala Ram vide sale deeds Exhibits PW 5/10, PW 5/12, PW 5/11 and PW 5/13. With regard to the aforesaid transfers the learned District Judge had. after exhaustive discussion, come to the following conclusion:**

**"No evidence has been led by the respondents is rebuttal to lead me to suspect or doubt the genuineness of these transactions of sale. I, therefore, in absence of. such evidence for the respondents and in view of all the facts found stated therein, hold all these sale deeds as genuine transactions evidencing payment of sale consideration in cash by the vendees to the vendors."**

**The aforesaid finding has not been remotely challenged on behalf of the State of Haryana. Even otherwise on examination of the aforesaid documentary evidence we see no reason to take a different view from the one arrived at by the learned District Judge. In this context therefore, there is no option but to uphold the same and it is accordingly, ordered that the vendees above-mentioned**

**shall be entitled to the actual amount paid by them to the vendors indicated in the respective sale-deeds and the findings of the learned District Judge with regard to the same are hereby affirmed."**

Needless to assert that purport and intent of the Act is to award just and fair compensation. But, if the compensation awarded is not even equal to the consideration for which the appellant herself had acquired the same piece of land, it indeed would be unjust and unfair.

This brings me to the last phase of the claim of the landowners: compensation on account of severance, plantation of eucalyptus trees, removal and installation of machinery, boundary walls and superstructure. Mr. Alok Jain, learned counsel for the landowners in RFA Nos.1717 to 1721 of 2002, submits that in none of these appeals any issue as regards the compensation on account of severance is involved. Further, he fairly submits that the finding recorded by the reference court, against the landowners, as regards plantation of eucalyptus trees, cannot be taken exception to. However, he asserts that the landowners, in afore-indicates appeals, ought to have been awarded or granted enhancement (as the case may be) as regards their claims for removal and installation of machinery, boundary walls and superstructure.

An analysis of the record shows that in M/s Amit Steel Works v. State – LAC No.543 of 1996/1997, out of the plot measuring 70' x 75' of the said firm, a strip of 10' x 75' was acquired. The landowner claimed to have spent ₹ 1,87,500/- for installation of machinery. And, ₹ 75,000/- were purportedly incurred for its dismantling. A loss of ₹ 4,20,330/- purport to have been suffered by the claimant, and to support its claim report i.e.

Ex.P15, was relied upon. But, as one of the partners of the firm, H.N. Bhargava (PW11), conceded in his cross-examination that he did not mention all the losses, he allegedly suffered, in his petition under Section 18 of this Act, and as even the requisite documents were never appended with the report Ex.P15 to prove its authenticity, the reference court had no option but to reject the claim of the landowners.

Likewise, in the cases of M/s Asco Industries v. State and M/s Chandra Auto v. State, the reference court, on an analysis of the material on record, recorded a categorical finding, for a land measuring 227 sq. yards, owned by both these companies, was acquired, a part of the machinery installed in the premise as also the boundary wall had to be removed. For which a sum of ₹ 1,00,000/- was awarded as compensation. Learned counsel to the appellant could not point out as to how the conclusion arrived at by the reference court, on a comprehensive analysis of the material on record, was either erroneous or suffered from any illegality.

And, in the case of Smt. Darshana Devi, the Collector had awarded ₹ 42,977/- on account of superstructure, whereas the reference court declined any further enhancement in the compensation. In her statement, the claimant purport to have spent an amount of ₹ 1,75,000/- on construction of her house, which consisted of three rooms, kitchen laboratory, bathroom, verandah and a boundary wall. She examined Prabhu, Meson (PW5) and Anil Kumar, Draftsman (PW4) in support of her claim. Albeit, no evidence was led by the State in rebuttal, but still the reference court declined to award any enhancement, for in the report (Ex.P4), Anil Kumar, Draftsman, had not mentioned the dimensions of each room separately, though total covered area i.e. 667.5 sq. feet was duly reflected.

Ordinarily, the landowners claim an exaggerated amount as regards construction that exists on the acquired land. Likewise, the assessment of compensation for superstructure by the State is generally conservative, and is not reflective of its true value or worth. For, the exact value of the structure can never be determined with mathematical precision, therefore, this court in various decisions has been awarding 25% increase on the value of the superstructure assessed by the Collector as a thumb rule. As a result, appellant Darshana Devi shall be entitled to 25% increase upon the compensation i.e. ₹ 42,977/-, awarded to her by the Collector in this regard.

As a result, the compensation awarded to the landowners is enhanced to ₹ 325/- sq. yard. However, as an exception, appellant Darshana Devi shall be entitled to compensation @ 375/- per sq. yard on account of acquisition of her land, for she had herself purchased the said site at the same rate. She would also be entitled to 25% increase upon the compensation i.e. ₹ 42,977/-, awarded by the Collector qua superstructure. Needless to assert, the landowners shall be entitled to all statutory benefits admissible in law.

For, except RFA Nos.1717 to 1721 of 2002 none has caused appearance on behalf of the landowners to represent their cause, it is deemed expedient to reiterate the directions issued by the Hon'ble Supreme Court in **Haryana State Industrial Development Corp.** v. **Pran Sukh and others**, 2010(4) SCC (Civil) 394:

> "(i) The Land Acquisition Collector shall depute officers subordinate to him not below the rank of Naib Tehsildar, who shall get in touch with all the land owners and/or

their legal representatives and inform them about their entitlement and right to receive enhanced compensation;

(ii) The concerned officers shall also instruct the land owners and/or their legal representatives to open savings bank account in case they already do not have such account;

(iii) The bank account numbers of the land owners should be given to the Land Acquisition Collector within three months; and

(iv) The Land Acquisition Collector shall deposit the cheques of compensation in the bank accounts of the land owners.

Accordingly, the appeals preferred by the landowners are disposed of in the above terms, and as a necessary consequence the State appeals are dismissed. Parties shall bear their own costs.

**( Arun Palli )**
**Judge**

October 7, 2016
Rajan

**Reportable**