

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RFA No.1956 of 2010 & connected matters

Date of decision:8.4.2016

State of Haryana through Land Acquisition Collector, Urban Estate,
Panchkula and another

...Appellant(s)

Versus

Hans Raj and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr. Shailendra Jain, Sr. Advocate,
With Mr. Sanjeev Gupta, Advocate
for the appellant(s) in RFA No. 2477 of 2001 and
for cross-objector/respondent(s) in RFA No.3920 of 2001.

Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Amit Kohar, Advocate,
for the appellant(s) in RFA Nos. 1997, 2108 & 3324 of 2010,
3485 & 6936 of 2011, 4456 of 2013.

Mr. Akshay Bhan, Sr. Advocate with
Mr. Alok Mittal, & Ms.Pallavi Singh Advocate and
Mr.H.N.Mehtani, Advocate and Mr.Arvind Kashyap, Advocate
for the appellant(s) in RFA Nos. 680 and 681 of 2011.

Mr. Jaivir S. Chandail, Advocate
for the appellant(s) in RFA Nos. 1094 and 1095 of 2012, 2293
of 2010.

Mr. Sushil Sharma, Advocate for
Mr. M.L.Sharma, Advocate.

Mr. R.C.Gupta, Advocate
for the appellant(s) in RFA No. 4034 to 4044 of 2011.

Mr. G.S.Rawat, Advocate
for the appellant(s) in RFA Nos. 1997 of 2010, 3324 of 2010,
3485 of 2011, 6936 of 2011, 4040 of 2011, 4456 of 2013, 397
of 2010.

Ms. Kamalpreet, Advocate,
for the appellant(s) in 2010 of 2010.

Mr. M.K.Chauhan, Advocate
with Sh. Shoaib Khan, Advocate.

Mr.Randhir Singh, Addl.A.G., Haryana and
Mr.Abhinash Jain, AAG, Haryana for the State of Haryana.

Mr. Arun Walia, Sr. Advocate
With Mr. Rohit Mittal, Advocate
for respondent-HUDA.

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This batch of 490 appeals, out of which appeals bearing RFA Nos. 3683, 3920 of 2001, 674 of 2002, 1230 to 1233 of 2010, 1240 to 1269 of 2010, 1956 to 1962, 2661 to 2671 of 2010, 3192 to 3206 and 3209, 3210 of 2010, 4408 to 4417 of 2010, 734 to 837 of 2011, 7159 to 7161 of 2011, 7380 to 7397 of 2011, 1422 to 1426, 1434 and 1625 to 1629 of 2012, 1632 to 1634 of 2012, 1650 to 1670, 1715 of 2012 filed by the State of Haryana and appeals bearing RFA Nos.1283 of 1999, 2294 to 2298 of 2000, 2477 of 2001, 4771 of 2001, 2367 of 2002, 3819 of 2006, 5841 to 5844 of 2009, 186 to 215 of 2010, 318 to 328 of 2010, 331, 379 to 399 of 2010, 407 to 426 of 2010, 436 to 446 of 2010, 455 to 458 of 2010, 1524, 1525 of 2010, 1969 to 1974 of 2010 and 1997 of 2010, 2010 to 2012 of 2010, 2108 of 2010, 2272, 2273, 2293 of 2010, 2330 to 2348 of 2010, 2388, 2695, 2751, 2948 to 2951 of 2010, 3017 to 3038 of 2010, 3231 to 3233 of 2010, 3310, 3324, 4656, 4668, 4669, 4901 and 4902, 4950, 4972, 5213 to 5217 of 2010, 5308 to 5310 of 2010, 5426 to 5428 of 2010, 680, 681, 1225 to 1227, 1707, 1708, 1761 to 1768, 2883, 3485, 3700, 3701, 3710, 3712 of 2011, 4034 to 4044, 4351, 4499, 4500, 4501, 4836 to 4838,

4843, 4846, 6904, 6936 of 2011, 500, 518, 1094, 1095 of 2012 and 4456 of 2013 filed by the land owners, is being decided together vide this common order, as all these appeals, arise out of the same acquisition and raise identical questions of law and facts. However, with the consent of learned counsel for the parties and for the facility of reference, facts are being culled out from RFA No.1956 of 2010 (State of Haryana vs. Hans Raj).

Briefly put, facts necessary for disposal of present set of appeals are that the State of Haryana sought to acquire the land out of as many as four revenue estates of villages Ramgarh, Bana Madanpur, Jhuriwala and Nangal Moginand, Tehsil and District Panchkula, at public expenses for public purpose; namely for development and utilization of the land as residential, commercial and institutional area, Panchkula by Haryana Urban Development Authority ('HUDA' for short) under the Haryana Urban Development Authority Act, 1977, for Sectors 24 to 28 in Urban Estate Panchkula. Accordingly, notification dated 26.6.1989 came to be issued under Section 4 of the Land Acquisition Act, 1894 ('the Act' for short) which was followed by notification dated 25.6.1990 under Section 6 of the Act.

Land acquisition collector, vide his Award Nos. 5 to 8 of even date, i.e. 17.6.1998 announced the awards for all the above-said four villages.

Land acquisition collector assessed the market value of the acquired land as under:-

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|----|--------------|-------------------------|
| 1. | Chahi, Abi | Rs.1,10,000/- per acre. |
| 2. | Barani | Rs.90,000/- per acre |
| 3. | Banjar kadim | Rs.70,000/- per acre |

4. Gair Mumkin Rs.50,000/- per acre.

Dissatisfied with the above-said awards passed by land acquisition collector, land owners filed their objections under Section 18 of the Act and as a consequence thereof, land references were forwarded to the learned reference court. Vide its award dated 12.12.1998 and other identical awards, the learned reference court assessed the market value at the uniform rate of Rs.3,50,000/- per acre. Very many regular first appeals came to be filed before this Court including RFA No.1281 of 1999 (Gurdev Singh and others Vs. State of Haryana), which were decided and the matter was remanded back vide order dated 27.10.2006, directing the learned reference court to decide the cases afresh on merits, after reconsidering all the relevant evidence available on record.

Following the law laid down by the Hon'ble Supreme Court in **P.Ram Reddy etc. V. Land Acquisition Officer, Hyderabad etc. 1995 LACC 184**, this Court remanded the matter vide above-said order dated 27.10.2006 and the relevant observations made therein, which deserve to be noticed here, read as under:-

“The learned counsel for the claimants have relied upon the following observations made by the Apex Court in P.Ram Reddy's case(supra):

If evidence to be adduced in the said regard is of public authorities or local boards or private developers who will have formed such layouts of building plots in the lands in the neighbourhood of the acquired land and sold them, it could be of great value. No difficulty arises when all the materials needed to determine the market value of the acquired land with building potentiality on the basis of a hypothetical layout of building plots to be formed in respect of it is made available to the Court, so

as to enable it to find out the possible market value of the acquired land with reference to the price to be fetched by sale of building plots to be made in such land. But, owners of the acquired land with building potentiality, rarely produce all the material or evidence needed for the Court to determine the market value of the acquired land with building potentiality on the basis of a hypothetical layout of building plots to be thought of by the Court in respect of such land, although they rely on the price fetched by sale of plots in a developed layout or an undeveloped layout for determining the market value of their lands with building potentiality in the vicinity of such layout. It is where, the Court may have to inevitably fix the market value of the acquired land with building potentiality on the basis of the prices got in the sale transactions relating to the building plots in a developed or an undeveloped layout, relied upon by the owners of the land, if such transactions are found to be genuine. A simple method, therefore, is evolved by courts in determining the market value of the acquired land with building potentiality with reference to the retail price to be fetched by sale of plots in a fully developed layout as on the date of publication of Notification under Section 4 (1) of the Act. In Bombay Improvement Trust v. Marwanji Manekji Mistry, reported in AIR 1926 Bombay 420, the said method is referred to by Macleod, C. J. as that where the wholesale price of the acquired land with building potentiality could be fixed at one-third to one-half of the retail price fetched by sale of building plots in a developed layout of building plots, depending upon the nature of development taken place in such layout.

I have duly considered the aforesaid contentions raised on behalf of the claimants. In P.Ram Reddy's case (supra), it was held by the Hon'ble Supreme Court of India that an acquired land could be regarded as that which has a building

potentiality, if such land, although was used on the relevant date envisaged under section 4(1) of the Act for agricultural or horticulture or other like purpose or was on that date even bearer or waste, had the potentiality of being used immediately or in the near future as land for putting up residential, commercial, industrial or other buildings. However, in the present case neither any finding has been recorded by the reference court nor any material has been brought to my notice by the claimants that the land in question could be used for building purpose either immediately or in near future without any further development. In any case since no such findings have been returned by the reference court, therefore, in abstract, the observations made by the Apex Court in the aforesaid case cannot be made applicable to the facts and circumstances of the case and the rates at which the plots were offered by HUDA, reflected by the evidence led by the claimants, per se, cannot be used for assessment. If the claimants wanted to take advantage of the aforesaid rates, then they were required to prove that the acquired land had a building potentiality as noticed in the said judgment in P. Ram Reddy's case.

A further perusal of the award of the reference court shows that although it has taken note of the various earlier judicial pronouncements such as Ex.P73 and Ex.P76, pertaining to the assessment of the acquired land in village Judian but no reasons have been spelt out to rule out the said evidence out of consideration. Similarly no reasons whatsoever have been given with regard to the earlier pronouncements Ex.P49, Ex.P50, Ex.P51, Ex.52, Ex.P53 and Ex.P54. As notice above, the site plans and lay out plans of the area do not show that the lands of the aforesaid villages, in which the aforementioned assessments had been made, were at such a distance, which rendered the aforesaid pronouncements as irrelevant. In any case no such findings have been returned by the reference court.

Although a great deal of arguments have been addressed on behalf of the claimants as well as learned Advocate General for persuading this court to assess the market value of the acquired land at its own level, but I find that in the absence of certain basic findings which were required to be given by the reference court with regard to the location, similarity and potentiality of the acquired land vis-a-vis the evidence available on the record, it may not be possible for this court to make an independent assessment at this stage. In these circumstances, I feel that because of the fact that the reference court has chosen not to deal with the entire evidence available on the record and has not even adverted to a substantial piece thereof, it would be appropriate if the matter is remanded back to the reference Court for fresh decision.

Before parting with this order, it may be also relevant to notice, as noticed earlier also, that in RFA No.3176 of 1999 and other connected matters, arising out of the award dated January 11,1999, the reference court had chosen to assess the market value at the rate of Rs.250/- per square yard with regard to some land in village Bana Mandapur. On the very same day, in some other reference proceedings, the reference court had chosen to adopt the assessment in Gurdev Singh's case (supra) and has assessed the market value at the rate of Rs.3,50,000/- per acre. The Land Acquisition Collector himself had chosen to assess the market value of the acquired land in all the four villages at uniform rates. Neither any reasons have been given by the reference court to distinguish the said assessment proceedings nor there is any warrant to distinguish that case from the other cases. In my considered view, the entire acquired land of all the four villages is required to be assessed at a uniform rate.

“For the foregoing reasons all the appeals filed by the claimant-landowners, as well as by the State of Haryana, are allowed. Various awards, under challenge, rendered by the reference court are set aside. The matter is remanded back to

the reference court for fresh decision of the reference petitions in accordance with law and in accordance with the observations made by this Court above.”

Both the parties produced voluminous evidence in support of their respective contentions raised before the learned reference court. At internal page 8 of the above-said order dated 27.10.2006 passed by this Court in **Gurdev Singh’s** case supra, it was also specifically held that there are documentary as well as oral evidence in the form of statement of PW4 Devi Dutt, Office Kanungo, Panchkula. It was clear that the land of village Ramgarh adjoins to that of village Bana Madanpur and Bana Madanpur adjoins villages Nadda, Devi Nagar and Maheshpur. Further revenue estate of village Maheshpur adjoins villages Fatehpur, Haripur and Fatehpur adjoins villages Kundi. The revenue estate of village Rally also adjoins that of village Maheshpur. It is on the basis of above-said location of the acquired land and proximity of the various villages to each other that the claimants-land owners have maintained that the sale instances and the earlier judicial pronouncements of assessment of the market value, pertaining to the aforesaid villages, were also required to be taken into consideration for the purpose of assessment of market value of the present acquired land. After making these observations and following the law laid down by the Hon’ble Supreme Court in the case of **P.Ram Reddy** (supra) as well as in the case of **Thakarsibhai Devjibhai and others v. Executive Engineer and another, AIR 2001 SC 2424**, the appeals were remanded to the learned reference court for fresh decision.

In compliance of the above-said remand order dated 27.10.2006 passed by this Court, the learned reference court decided the land references afresh vide its different but identical awards, including the one dated

21.8.2009, assessing the market value of the acquired land at the uniform rate of Rs.250/- per square yard.

It is pertinent to note here that the six appeals bearing RFA Nos. 2294 of 2000 titled as Hari Chand Vs. State of Haryana, 2297 of 2000 (Babu Ram Vs. State of Haryana), 2298 of 2000 (Sarla Sachdeva and another Vs. State of Haryana), 4771 of 2001 (Aruna Kumari Vs. State of Haryana), 2367 of 2002 (Amar Singh Vs. State of Haryana) and 674 of 2002 (State of Haryana Vs. Sant Ram) remained pending before this Court and were not remanded back by the abovesaid order dated 27.10.2006. However, in all these cases, fresh RFAs have been filed by the landowners as well as by the State, bearing RFA Nos. 3196, 5427 of 2010, 1763, 1765, 4843 of 2011 and 518 of 2012. In this view of the matter, above-said earlier RFA Nos. 2294, 2297, 2298 of 2000, 4771 of 2001, 674 and 2367 of 2002 have been rendered infructuous and same are disposed of, accordingly.

Both the parties felt aggrieved against the above-said different but identical impugned awards passed by the learned reference court and they have approached this Court by way of instant set of appeals. State of Haryana is seeking reduction in the amount of compensation awarded by the learned reference court, whereas the land owners are seeking further enhancement of compensation for their acquired land. That is how, all these appeals are being decided together.

Learned counsel for the State, while referring to order dated 27.5.2015 passed by this Court in **RFA No.2477 of 2001 (Kanti Parkash Bhalla v. State of Haryana)**, vehemently contended that numerous important documents were placed before this Court on behalf of the State and the same were taken on record as Mark `A' to `F. All these documents were either relevant site plans or judicial precedents which were coming

from proper custody, hence deserve to be taken into consideration. Mark 'A' and Mark 'B' are the copies of Google maps, showing the acquired land as well as adjoining areas. Mark 'C' is the copy of development plan bearing drawing No.599/2000 dated 11.8.2000 prepared by Executive Engineer, HUDA Division No.3 showing all the sectors from 23 to 28 and also other sectors across Ghaggar river. This is Panchkula Extension Development Plan.

Mark 'D' is the copy of order dated 20.7.2005 passed by the LPA Bench of this Court in LPA No.830 of 1994 (Union of India v. O.P.Makhija etc.). Mark 'E' is the copy of order dated 24.1.2007 passed by this Court in RFA No.3674 of 1992 (Prem Wati and others v. State of Haryana and others), wherein the above-said order passed in O.P.Makhija's case (supra) was followed. Order dated 24.1.2007 passed by this Court in Prem Wati's case (supra) was also upheld by the Hon'ble Supreme Court vide its order dated 28.3.2008 passed in Special Leave Appeal (C) No.4323-4324/2008 (Union of India v. Premwati (D) by LRS and others. Mark 'F' is copy of order dated 7.2.2011 passed by this Court in RFA No.1050 of 2006 (Harkirat Singh and others v. State of Haryana and another). In addition to the above-said documents already on record in the form of Mark 'A' to Mark 'F', learned counsel for the State also placed reliance on an order dated 8.10.2003 passed by this Court in **RFA No.585 of 1988 (Narota and another v. State of Haryana.**

Learned counsel for the State, while placing heavy reliance on the above-said site plans and orders passed by this Court, strenuously argued that since out of the above-said orders passed by this Court, the orders in the cases of **O.P.Makhija's** (supra) and **Narota's** (supra) were

pertaining to these very villages; namely Bana Madanpur and Ramgarh, out of whose revenue estates maximum area has been acquired in the instant acquisition, there could not be any better piece of evidence to assess the market value of the acquired land than the orders passed in **Narota's** case (supra) and **O.P.Makhija's** case (supra). He submits that since in **Narota's** case (supra), the land was acquired vide notification dated 15.1.1985 and market value was assessed at Rs.1,50,000 per acre, let a reasonable annual increase be granted to the land owners in the present set of appeals, for this time gap of about 4 ½ years and the land owners would not be entitled for any higher compensation, as illegally granted by the learned reference court.

Learned counsel for the State would next contend that Ex.P9 and Ex.P74 were relevant sale instances, relied upon by the land owners themselves and they could not have been granted any higher compensation than the market value disclosed in these sale-deeds. He submits that since the learned reference court has proceeded on an illegal and misconceived approach, ignoring all this evidence, while passing the impugned award, the same is not sustainable in law and the market value illegally assessed at the rate of Rs.250/- per square yard is liable to be reduced. In support of his arguments, learned counsel for the State also places reliance on the judgments of the Hon'ble Supreme Court in **Lal Chand v. Union of India and another, 2009 (15) SCC 769** and **Ram Kanwar v. State of Haryana, 2015 (1) RCR (Civil) 234**. Learned counsel for the State also submitted that since the acquired land was having no potentiality at the time of its acquisition, State authorities had to spend huge amount of more than Rs.28 crores in making the land fit for residential and commercial use, for which it was acquired. There was no scope of comparing the acquired land with the

land of adjoining revenue estates, which was situated across Ghaggar River. The learned reference court has illegally assessed the market value at the exorbitant rates, going beyond the evidence available on record. He prays for setting aside the impugned award passed by the learned reference court, suitably reducing the amount of compensation, by allowing the appeals filed by the State.

Learned counsel for the applicants in CM No.16299-CII of 2015 in RFA No.1956 of 2010 submits that the applicants are intending to be impleaded as co-appellants No. 3 and 4 with State of Haryana, they being “persons interested”, hence necessary party. Notice of this application was issued to the Advocate General, Haryana and learned counsel for the non-applicants-respondents. Vide order dated 23.12.2015 and pursuant thereto reply dated 25.1.2016 has been filed on behalf of respondents-land owners.

Learned counsel for the applicants contended that the applicants, being the representatives of allottees of HUDA, have every right to seek reduction in the amount of compensation granted by the learned reference court and opposing any further enhancement in compensation. He submits that as per the terms and conditions of allotment, HUDA will issue recovery notices to its allottees, soon after the enhancement of compensation in favour of the land owners, at the hands of this Court. Since the State and HUDA authorities hardly take required amount of interest in pursuing the litigation against the land owners and allottees of HUDA are the ultimate sufferers, they have every right to be heard so as to enable them to avoid their unwarranted financial liability, which is likely to be imposed on them for none of their fault. He placed reliance on Order 1 Rule 8A, Order 22 Rule 10 and Order 1 Rule 10(2) of the Code of Civil

Procedure as well as Preamble of the Constitution of India.

In support of his contentions, learned counsel for the applicants also placed reliance on the following judgments:-

1. RFA No.2373 of 2010 (Madan Pal v. State of Haryana and another) decided on 6.10.2015;
2. Order dated 15.7.2004 passed by the Hon'ble Supreme Court in CA Nos.6960-6961/2003 (Mulakh Raj Sapra Vs. State of Haryana and another);
3. Karam Devi and others v. State of Haryana and another, 2015 (3) PLJ 205 (P&H);
4. Delhi Development Authority v. Bhola Nath Sharma (D) by L.Rs. And others, 2011 (2) SCC 54;
5. M/s.Neyvely Lignite Corpn, Ltd. v. Special Tahsildar (Land Acquisition) Neyvely, 1995(1) SCC 221;
6. Draupadi Devi Dharmada Trust v. Daya Shankar, 2010 (15) SCC 799;
7. Lal Chand v. Union of India and another, 2009 (15) SCC 769.

Finally, he prays for allowing the instant application.

Per contra, all the three learned senior Advocates appearing on behalf of the land owners submit that the arguments raised on behalf of the State were wholly misplaced and contrary to the record, because of which the same are liable to be rejected. They further submit that it is a matter of record that right from year 1971 very many acquisition proceedings were initiated which were allowed to lapse, with a view to peg down the prices of the acquired land. Notification dated 14.9.1971 was issued for acquisition

of the land of village Bana Madanpur vide Ex.P81 at page 83 of the Lower Court Record ('LCR' for short). Vide notification dated 25.9.1972 Ex.P82 at page 87 of LCR, land of village Kharak Mangoli was sought to be acquired. Similarly, vide notification dated 30.1.1973 Ex.P83 at page 89 of LCR, land of more than one villages including Maheshpur and Devi Nagar was sought to be acquired. Again, vide notification dated 13.12.1982 Ex.P87 at page 115 of LCR, land measuring 517 acres of village Bana Madanpur was sought to be acquired.

However, all the above-said acquisitions were allowed to lapse either in full or in part. In such a situation, no genuine buyer would take the risk of purchasing the land, contended learned senior counsel for the land owners. The fact regarding issuance of above-said repeated notifications for acquiring the land which were allowed to be lapsed, was categorically admitted by RW3-Dhoop Singh Naib Tehsildar, at page 1121-1125 of LCR and rightly so, it being a matter of record. Learned senior counsel for the land owners submit that **O.P.Mukhija's** case (supra) was not at all relevant. Similarly, other cases, relied upon by the learned counsel for the State including that of **Prem Wati** (supra), **Harkirat Singh** (supra) and **Narota** (supra) are not relevant in the present case, being clearly distinguishable on facts.

Learned senior counsel for the land owners would further contend that since the sale-deeds Ex.P9 and Ex.P74 were the result of distress sales, the same are liable to be ignored. The most relevant pieces of evidence for assessing the market value of the acquired land, argued senior counsel for the appellants, are the judgments of the Hon'ble Supreme Court in **Ashok Kumar and others v. State of Haryana and others, 2015 (3)**

Scale 242, pertaining to adjoining villages Fatehpur, Maheshpur, Kundi and Rally, as well as the judgment of this Court dated 14.3.2013 passed in **RFA No.2358 of 2002 (Santokh Singh (deceased, through LRs) v. State of Haryana and another**. The order dated 14.3.2013 passed by this Court in **Santokh Singh's** case (supra) has also attained finality between the parties, in view of the order dated 1.7.2015 passed by the Hon'ble Supreme Court in **Special Leave to Appeal (C) Nos.31279-31280/2013 (State of Haryana and another v. Santokh Singh (D) through LRs and others**.

They also placed heavy reliance on the judgment dated 18.2.2016 passed by the Hon'ble Supreme Court in **Civil Appeal No.2714-2721 of 2012 (Ashok Kumar and another etc. v. State of Haryana)**, hereinafter referred as Ashok Kumar-II, to contend that the land owners can be granted higher compensation than even what they have claimed. Learned senior counsel would next submit that if the land owners in **O.P.Mukhija's** case (supra), **Prem Wati's** case (supra), **Harkirat Singh's** case (supra) and **Narota's** case (supra) were not vigilant litigants to take the benefit of the judicial precedents contained in **Santokh Singh's** case (supra) and **Ashok Kumar's** case (supra) or these judicial precedents were not available to them, the land owners of instant acquisition cannot be held disentitled for the benefit of these judicial pronouncements for claiming the due compensation for their acquired land, for none of their fault. They submit that because judgments in the cases of **Santokh Singh** (supra) and **Ashok Kumar** (supra) were pertaining to adjoining revenue estates, there is no reason to deny the benefit thereof to the land owners in the present set of appeals. Learned senior counsel also contended that the land owners would be entitled for the benefit of 12% annual increase, for the time gap of 14

months between the date of acquisition in **Santokh Singh's** case (supra) and the present acquisition.

In support of their contentions, learned senior counsel for the land owners, in addition to the above-said judgments in **Santokh Singh's** case (supra), **Ashok Kumar's** case (supra) and **Ashok Kumar-II's** case (supra), also placed reliance on the following judgments:-

1. Haryana State Industrial Development Corp. v. Pran Sukh and others, 2010 (11) SCC 175;
2. Prem Chand v. State of Haryana, 2005(1) RCR (Civil) P&H 499;
3. Amritsar Pharmaceutical Laboratories v. Avtar Singh and others, 2006(3) RCR (Civil) 788 (P&H);
4. Peerappa Hanmantha Harijan (D) by LRs. And others v. State of Karnataka and another, 2015 AIR (SC) 2908;
5. Birinder Singh and others v. State of Haryana, 1990 PLJ 90 (P&H);
6. Arjan Singh v. State of Punjab and others, 1989 (2) RRR 266 (P&H);
7. Narinder Nath v. Union of India, 1989 PLJ 698 (P&H);
8. M/s.Raj Dhani Land and Finance (P) Ltd. v. State of Haryana, 1994(2) RRR 87 (P&H);
9. Brij Gopal and others v. State of Haryana, 2006(3) RCR (Civil) 388;
10. Thakarsibhai Devjibhai and others v. Executive Engineer, Gujarat and another, 2001 (9) SCC 584;
11. Uttar Pradesh Government v.H.S.Gupta, 1957 AIR (SC)

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12. Om Parkash and others etc. v. State of Haryana (CA Nos.1071-1073/2012) decided on 17.2.2016 (SC);
13. Bhimasha v. Special Land Acquisition Officer and another, (2008) 10 SCC 797;
14. Ashrafi and others v. State of Haryana and others, 2013 (5) SCC 527;
15. State of Punjab v. Harchal Singh (dead) through LRs, 2001 (9) SCC 584;
16. RFA No. 1955 of 2005 (Swaran Singh v. State of Haryana) decided on 4.10.2012;
17. Tara Devi v. State of Haryana, PLR 234;
18. K.Krishna Reddy and others v. Special Deputy Collector, Land Acquisition UNIT II (1988) 4 SCC 163;
19. General Manager, Oil and Natural Gas Corporation Limited v. Rameshbhai Jivanbhai Patel and another (2008) 14 SCC 745;
20. Mehrawal Khewaji Trust (Registered), Faridkot and others v. State of Punjab and others (2012) 5 SCC 432;
21. Devendra Singh and others v. State of Uttar Pradesh and others, (2011) 9 SCC 551;
22. P.Ram Reddy etc. V. Land Acquisition Officer, Hyderabad etc. 1995 LACC 184;
23. Valliyammal and another v. Special Tahsildar (Land Acquisition) and another (2011) 8 SCC 91;
24. RFA No.1030 of 1999 (Meher Singh and others v. The

Collector and another) decided on 2.3.2009;

25. Shaik Saidulu alias Saida v. Chukka Yesu Ratnam and others, AIR 2002 SC 749;
26. State of M.P. and another v. Anshuman Shukla, 2014 (4) Law Herald 3500 (P&H);
27. M/s Sonia Overseas Pvt. Ltd. V. Union of India and others, 2015 (1) LAR 662;

Learned senior counsel for the appellants prays for dismissal of the appeals filed by the State of Haryana and for allowing the appeals filed by the land-owners, modifying the impugned award passed by the learned reference court, suitably enhancing the amount of compensation for the acquired land.

Strongly opposing the above-said application moved on behalf of the allottees of HUDA for impleading as co-appellants with State of Haryana, learned senior counsel for the non-applicants-land owners submit that the applicants have no locus standi in the matter, being strangers to the acquisition. Referring to different definitions contained in Section 3(aa) “local authority”, (b) “person interested”, (cc) “corporation owned or controlled by the State”, (e) “company”, (f)(iv) “public purpose”, Sections, 18, 20, 21 Part VII, 50, 53 and 54 of the Act, learned senior counsel for the land owners contended that the applicants cannot be impleaded as co-appellants under any circumstances. The judgments relied upon by the learned counsel for the applicants are of no help to them, as the same have been rendered in different fact situation and most of them in favour of the companies or local authorities for whose benefit the land had been acquired. In support of their contentions, learned counsel for the non-applicants-land owners placed reliance on the following judgments of the Hon'ble Supreme Court as well

as of this Court:-

1. Hindu Kanya Maha Vidyalaya, Jind v. Municipal Committee, Jind, 1988 AIR (SC) 2139;
2. Haryana State Industrial Development Corporation v. Pran Sukh, 2012 (7) SCC 721.
3. Himalaya Tiles and Marble (P) Ltd. v. Frzndis Victor Coutinho (dead) by LR's., 1980 (3) SCC 223;
4. Delhi Development Authority v. Bhola Nath Sharma (D) by L.Rs. And others, 2011 (2) SCC 54;
5. U.P.Awas Evam Vikas Parishad v. Gyan Devi (Dead) by LR's. And others, (1995) 2 SCC 326;
6. M/s.Neyvely Lignite Corpn, Ltd. v. Special Tahsildar (Land Acquisition) Neyvely, 1995(1) SCC 221;

Learned senior counsel for the land owners-non-applicants pray for dismissal of the above-said application for impleadment, with costs.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the totality of facts and circumstances of these cases, the appeals filed by the State as well as the application for impleadment bearing CM No.16299-CI of 2015 in RFA No.1956 of 2010 have been found to be wholly misconceived and the same are liable to be dismissed. However, the appeals filed by the land owners deserve to be partly accepted, suitably enhancing the amount of compensation for their acquired land. To say so, reasons are more than one, which are being recorded hereinafter.

Let the application bearing No.16299-CI of 2015 in RFA No.1956 of 2010, filed on behalf of the allottees of HUDA, seeking impleadment as co-appellants with the State of Haryana, be decided first.

Applicants-proposed appellants No. 3 and 4; namely House Owners Welfare Association, Sector-27, Panchkula through its President and House Owners Society, Sector-28, Panchkula, through its President, respectively have not been found either necessary party or proper party, because they are not the persons interested as per the relevant provisions of law contained in Section 3 (b) of the Act. All the judgments, relied upon by the learned counsel for the applicants, except in **Madan Pal's** case (supra) and **Karam Devi's** case (supra), have been rendered by the Hon'ble Supreme Court in entirely different set of facts, deciding the application Order 1 Rule 10 CPC moved by the Companies, for whose benefit the land was acquired. So far as the judgments rendered by this Court in **Madan Pal's** case (supra) and **Karam Devi's** case (supra) are concerned, since the relevant provisions of law were not even referred, there was no occasion for this Court to consider and decide the true import of the said provisions of law contained in the Act. In this undisputed fact situation, the judgments rendered by this Court in **Madan Pal's** case (supra) and **Karam Devi's** case (supra) are clearly per incurium.

It is pertinent to refer to the provisions of the Act, particularly those which are directly relevant for deciding the controversy involved herein. The provisions contained in Section 3 (aa), (b), (cc), (e) and (f) iv are reproduced here for ready reference:-

“Section 3(aa)

(aa) the expression “local authority” includes a town planning authority (by) whatever name called) set up under

any law for the time being in force;

Section 3(b)

the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;

Section 3(cc)

the expression “corporation owned or controlled by the State” means anybody corporate established by or under a Central, Provincial or State Act, and includes a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, being a society established or administered by Government and a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, being a co-operative society in which not less than fifty-one per centum of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;]

Section 3(e)

the expression “company” means–

(i) a company as defined in section 3 of the Companies Act, 1956 (1 of 1956), other than a Government company referred to in clause (cc);

(ii) a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, other than a society referred to in clause (cc);

(iii) a co-operative society within the meaning of any law relating to co-operative societies for the time being

in force in any State, other than a co-operative society referred to in clause (cc);]

Section 3(f)(iv)

the provision of land for a corporation owned or controlled by the State.”

Further the provisions contained in Sections, 18, 20 and 21, 50, 53 and 54 of the Act, read as under:-

“Section 18 Reference to Court.--(1) *Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.*

(2) *The application shall state the grounds on which objection to the award is taken:*

Provided that every such application shall be made,—

(a) *if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;*

(b) *in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.*

Section 20 Service of notice.-- *The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:-*

(a) *the applicant;*

(b) *all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and*

(c) in the objection is in regard to the area of the land or to the amount of compensation, the Collector.

Section 21.-- Restriction on scope of proceedings.-- *The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.*

Section 50-- Acquisition of land at cost of a local authority or Company.

(1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of any incidental to such acquisition shall be defrayed from or by such fund or Company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.

Section 53 Code of Civil Procedure to apply to proceedings before Court. —*Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the ¹²⁹ [Code of Civil Procedure, 1908 (5 of 1908)] shall apply to all proceedings before the Court under this Act.*

Section 54. Appeals in proceedings before Court.--*Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the [Supreme Court] subject to the provisions con-*

tained in section 110 of the Code of Civil Procedure, 1908, and in Order XLIV thereof.”

A combined reading of the above-said provisions of law would make it crystal clear that the applicants, being the allottees of HUDA, are totally strangers to the acquisitions proceedings. Part VII of the Act deals with the acquisition of land for companies and a different procedure has been laid down for the said purpose. As per the provisions of the Haryana Urban Development Authority Act, 1977, HUDA is a local authority which comes within the purview of definition contained in Section 3 (aa) of the Act. The above-said definition of “person interested” contained in Section 3(b) of the Act refers to two types of persons who can be said to be persons interested. First category includes all persons claiming interest in compensation to be made on account of acquisition of the land under this Act. Second category is that a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

The applicants herein, being the allottees of HUDA, cannot be said to be person interested falling in either of the above-said two categories by any stretch of imagination. Applicants have referred to the terms and conditions of allotment and apprehended demand notice to be issued by HUDA against them in para 6 of the application and the same read as under:-

“...As per the terms & conditions of the said allotment letters, the price fixed by HUDA is tentative price and it is specifically stipulated in the said allotment letter that in case of enhancement of the cost of the land awarded by the competent authority the same shall be payable by the allottees within 30 days of its demand. The relevant clause of allotment letter is reproduced here as under:-

“3. The above price is tentative to the extent that any enhancement in the cost of land awarded by the competent authority under the Land Acquisition Act shall also be payable proportionately, as determined by the Authority. The additional price determined shall be paid within thirty days of its demand.”

Reading of the above-said terms and conditions of allotment which amounts to a concluded contract between HUDA and its allottees, like the applicants herein. It has gone undisputed before this Court that such conditions of allotment letters issued by HUDA had been subject matter of consideration before this Court as well as before the Hon'ble Supreme Court and the same has been duly upheld up to the Hon'ble Supreme Court, holding that HUDA has every right to recover the proportionate amount from its allottees, on account of enhanced compensation granted by the court of competent jurisdiction.

Further, the applicants are party to the allotment and once they have accepted the terms and conditions thereof, they cannot be permitted to turn around and say that one of the conditions of allotment letter was onerous. Allottees have accepted all the terms and conditions of allotment with their open eyes and they are not even alleging any concealment or misrepresentation on the part of HUDA authorities in this regard. If one of the conditions of a contract between the parties is onerous qua one party or prejudicial to some extent to the interest of said party, such party to the contract cannot be permitted to blow hot and cold in the same breathe, challenging only one condition of such contract which does not suit it. It was so observed by a Division Bench of this Court in **M/s M.P.S. Ltd. and others vs. State of Haryana and others** and the said judgment was, in turn, based on the law laid down by the Hon'ble Supreme Court. The relevant

observations made by the Division Bench which aptly here, read as under:-

“We have given our careful consideration to the submissions made at the Bar and perused the record. Two questions arise for our consideration. These are-

Question No.1 Whether the petitioner-liquor contractors can maintain the present writ petitions for avoidance of their contractual obligations especially when they have unconditionally accepted the stipulations enumerated in the contracts and drawn benefits offered to them under the same.

Question No.2 What is the true nature of the demand raised against the petitioners and whether there is any legal bar to the enforcement of the same either under the provisions of the Excise Act or on any other juristic principle.

We shall deal with the questions ad seriatim.

That the liquor contractors have entered into contracts with the State in connection with the transfer of the privilege to sell liquor in their favour is not in dispute. It is also not in dispute that one of the stipulations which the contracts executed between the parties contained was that in the event the contractors failed to lift the minimum guaranteed quota, the licensee shall have to pay additional licence fee on the short-lifted quantity. Clause 36 of the terms of the auction which forms a part of the contracts executed between the licensees and the State reads as under:-

“Quota of Indian Made Foreign Liquor shall be fixed for each group/district. Lifting of quota of Indian Made Foreign Liquor shall be obligatory on quarterly basis. In case a licensee fails to lift the quota of a quarter in the same quarter then he shall have to pay additional licence fee equal to the excise duty on short lifting to quota by 20th of the month following immediately after the end of that quarter. In respect of last quarter, the

quota shall be lifted by 10th of March and the licensee shall have to pay additional licence fee equal to the excise duty in short lifting of quota in that quarter by 20th of March.” (Emphasis owns)

It is also not in dispute that the contractors did not find fault with the above stipulation at any stage till the time the same was sought to be enforced against them. This implies that they took advantage of the contracts allotted in their favour to the extent the same were to their benefit but now seek to avoid the liabilities arising therefrom. The extraordinary writ jurisdiction of this Court cannot, in our opinion, be invoked by a party for any such purpose. In Har Shankar vs. Deputy Excise & Taxation Commissioner, AIR 975 SC 1121 the Apex Court had in almost similar circumstances held that the writ jurisdiction of the High Court under Article 226 could not be exercised to facilitate avoidance of obligations voluntarily incurred. That too was a case in which the liquor contractors had questioned the legality of the action taken against them for recovery of the unpaid bid amounts. Repelling the challenge the Supreme Court observed:-

“Those interested in running the country liquor vends offered their bids voluntarily in the auction held for granting licences for the sale of country liquor. The terms and conditions of auctions were announced before the auctions were held and the bidders participated in the auctions without a demur and with full knowledge of the commitments which the bids involved. The announcement of the conditions governing the auctions were in the nature of an invitation to an offer to those who were interested in the sale of country liquor. The bids given in the auctions were offers made by prospective vendors to the

government. The Government's acceptance of those bids was the acceptance of willing offers made to it. On such acceptance, the contract between the bidders and the Government became concluded and a binding agreement came into existence between them. The successful bidders were then granted licences evidencing the terms of contract between them and the Government under which they became entitled to sell liquor. The licensees exploited the respective licences for a portion of the period of their currency, presumably in expectation of a profit. Commercial considerations may have revealed an error of judgment in the initial assessment of profitability of the adventure but that is a normal incident of trading transactions. Those who contract with open eyes must accept the burdens of the contract along with its benefits. The powers of the Financial Commissioner to grant liquor licences by auction and to collect licence fees through the medium of auctions cannot by writ petitions be questioned by those, who had their venture succeeded, would have relied upon those very powers to found a legal claim. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract could ever have a binding force. (page 263)”

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“By attempting to exploit the licences without the burden of assessed fees originally attaching to them under the rules framed by the Financial Commissioner, the appellants are seeking to work

the licences on such terms as they find convenient. The writ jurisdiction of High Courts under Article 226 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred. That however, will not estop the appellants from contending that the amended Rules are not applicable as their licences were renewed before the amendments were made.”

*To the same effect is the decision of Supreme Court in **State of Haryana and others vs. Jage Ram and others** 1980 (3) SCC 599 where their Lordships declared that the contractors who had offered their bids voluntarily with full knowledge above the terms and conditions attached to the auctions, cannot be permitted to wriggle out of the contractual obligations arising out of the acceptance of their bids. The court observed:-*

“Those who offer their bids voluntarily in auctions do so with a full knowledge of the terms and conditions attaching to the auctions and they cannot be permitted to wriggle out of the contractual obligations arising out of the acceptance of their bids. The occurrence of the commercial difficulty, inconvenience or hardship in the performance of those conditions, like the sale of liquor being less in summer than in winter, can provide no justification for not complying with the terms of the contract which they had accepted with open eyes. Such vendees, therefore, cannot invoke the writ jurisdiction of the High Court to avoid the contractual obligations incurred by them voluntarily.”

The Court expressed a similar sentiment in State of Orissa vs Narayan Prasad and others and observed:-

“21. The approach adopted in this decision has to be borne in mind in every such case. It is also to be kept in mind that while the decisions referred to hereinbefore are by smaller Benches, this decision is by a Constitution

Bench. A person who enters into certain contractual obligations with his eyes open and works the entire contract, cannot be allowed to turn round, according to this decision, and question the validity of those obligations or validity of the Rules which constitute the terms of the contract. The extra-ordinary jurisdiction of the High Court under Article 226, which is of a discretionary nature and is exercised only to advance the interests of justice, cannot certainly be employed in aid of such persons. Neither justice nor equity is in their favour.”

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“Lastly we may also invoke the holding in Har Shankar and Jageram that the writ petitioners, having entered into agreements voluntarily, containing the conditions aforesaid and having done the business under the licences obtained by them cannot be allowed to either wriggle out of the agreements nor can they be allowed challenge validity of the Rules which constitute the terms of the contract. The High Court should not have exercised its extra-ordinary discretionary jurisdiction under Article 226 of the Constitution in aid of such licencees.”

It is in the light of the above pronouncements difficult to appreciate how the contractors can invoke the writ jurisdiction of this Court after having worked the contracts allotted to them to their benefit for the period covered thereby. Allowing them to do so would amount to bringing about a situation where the party to a contract voluntarily entered into by him works out and the contract to the extent the same was to his benefit but disowns and rejects the same in so far as the it casts obligations or create liability for the contractor. Neither in law nor equity would countenance such a situation. Our answer to question No.1 is accordingly in the negative.”

The contentions raised by the learned counsel that the applicants deserve sympathetic consideration, at the hands of this Court, has been duly considered but found without any merit. Any misplaced sympathy which seeks to change the direction of law is not permissible and would cause more harm to the system than advancing cause of justice. It was so held by the Hon'ble Supreme Court in **M/s Teri Oat Estates (Pvt.) Ltd. v. U.T. Chandigarh, 2004 (2) SCC 130**. The relevant observations made by the Hon'ble Supreme Court in paras 36 to 39, read as under:-

"We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extra- ordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order, which would be in contravention of a statutory provision.

*As early as in 1911, Farewell L.J. in **Latham v. Richard Johnson & Nephew Ltd. [1911-13 AER reprint p. 117]** observed :*

"We must be very careful not to allow our sympathy to affect our judgment with the infant plaintiff. Sentiment is a dangerous will O' the wisp to take as a guide in the search for legal principles."

*[See also **Ashok Saha v. State of West Bengal & Ors. - CLT 1999(2) H.C. 1]**.*

*In **Sairindhri Ddolui v. State of West Bengal [2000(1) SLR 803]**, a Division Bench of the Calcutta High Court (wherein one of us Sinha, J. was a Member), followed the aforementioned dicta.*

*This Court also in **C.B.S.E. and Another v. P. Sunil Kumar and Others, 1998(2) S.C.T. 788 : [(1998) 5 SC 377]** rejecting a contention that great injustice would*

perpetrate as the students having been permitted to appear at the examination and having been successful and certificates had been issued in their favour, held :

".....We are conscious of the fact that our order setting aside the impugned directions of the High Court would cause injustice to these students. But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students....."

The harmonious and purposeful construction of the above-said provisions of law is that neither the applicants fall in the category of local authority nor a company concerned, which may bring them within the ambit of Section 50(2) of the Act, reproduced hereinabove. Any contrary interpretation would amount to violate the legislative intent. Again, to bring the allottees like the present applicants within the purview of “person interested”, as defined in Section 3(b) of the Act, is the exclusive domain of the legislature. This Court would be exceeding its jurisdiction, while impleading the applicants as co-appellants with the State of Haryana.

In fact, the applicants have got no locus standi, whatsoever, because they do not fall within either of the definitions of “person interested” or “local authority” or a “company”, and they cannot be impleaded as co-appellants with the State of Haryana, in view of the provisions contained in Section 53 and 54 of the Act. Similarly, Sections 18, 20 and 21 of the Act refers only to the “person interested”. Since there has not been found even a remotest scope by this Court to declare the applicants

as persons interested, as per the above-said provisions of the Act, the application moved by them has been found wholly misconceived. The above-said view taken by this Court also finds support from more than one judgments rendered by the Hon'ble Supreme Court as well as this Court.

An identical fact situation came up for consideration before the Hon'ble Supreme Court in the case of **Hindu Kanya Maha Vidyalaya, Jind** (supra) and the same did not find favour with the Hon'ble Supreme Court. Similarly, an application moved by the allottees of Haryana State Industrial Development Corporation in **Pran Sukh's** case (supra) came to be dismissed by the Hon'ble Supreme Court observing as under:-

“The application filed by IMT Industrial Association is wholly misconceived. The members of the applicant are beneficiaries of the acquisition of the land because plots have been allotted to them out of the acquired land which belong to the respondents and others. Therefore, they do not have the locus standi to be heard in the proceedings relating to determination of market value of the acquired land and that too in a petition filed by the Corporation for review of the judgment of this Court. It is not the pleaded case of the applicant that its members were not aware of the fact that the plots have been carved out of the land acquired by the State Government for and on behalf of the Corporation and that the price mentioned in the allotment letter was tentative and further that in paragraph 5 of the allotment letter, it was specifically mentioned that they will have to pay additional price in the event of enhancement in the compensation. It is quite surprising that members of the applicant-Association paid price of the plots at the rate of Rs. 2200/- per square yard and they are objecting to the payment of compensation to the land owners at the rate of less than Rs. 500/- per square yard. This shows that members of the applicant want to take advantage of the measure taken by the State Government for

compulsory acquisition of the land of the farmers and want to deprive them of just and reasonable compensation. Consequently, the impleadment application is dismissed.”

In its recent judgment in the case of **Peerappa Hanmantha Harijan’s case (D)** by LRs the Hon'ble Supreme Court had an occasion to deal with similar application. The Hon'ble Supreme Court, in para 28 of its judgment, formulated more than one issues, after detailed discussion on each and every relevant aspect of the matter and the same were answered against the allottees, like the present applicants, in paras 59 to 61 of the judgment. The relevant observations made by the Hon’ble Supreme Court in paras 28 and 59 to 61 of its judgment, read as under:-

“On the basis of the rival legal contentions, the following points would arise for our consideration:

- 1) Whether the allottee Company (M/s Ultra Tech Cement Ltd.) is either a beneficiary or interested person entitled for hearing before determination of the market value to award just and reasonable compensation in respect of the acquired land of the appellants either before the Deputy Commissioner or Reference Court?*
- 2) Whether the Writ Petition filed by the allottee Company before the High Court is maintainable in law?*
- 3) Whether the order of remand allowing the Writ Petition of the allottee Company to the Reference Court is legal and valid?*
- 4) Whether the owners of the land are entitled for the enhanced compensation?*
- 5) If so, what award?*

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Further, the learned Judge of the High Court has erroneously held that the allottee Company is a beneficiary of the acquired land of the appellants, which

finding of the learned Judge is not correct both on facts and in law. The findings and reasons recorded by the High Court in the impugned judgment in allowing the Writ Petition and quashing the award of the Reference Court and remanding it back to the Reference Court and allowing the Company to participate in the proceedings for re-determination of compensation for the acquired land is wholly impermissible in law and the same are in contravention of the provisions of the KIAD Act, L.A. Act, the KIADB Regulations and the lease agreement, which has been executed by the KIADB in favour of the Company and therefore, the impugned judgment and order is liable to be set aside by allowing the appeals of the owners.

Further, the learned single Judge of the High Court has further committed an error in law in not appreciating Section 54 of the L.A. Act, which provision provides the right to appeal to the land owners, or state government and beneficiaries of the acquired land but not to the Company which is the lessee. When the company does not have the right to file an appeal against the award it also has no right to file a writ petition. The KIADB has filed the belated appeal after disposal of the appeal filed by the appellants by the High Court and against which award it has filed the present appeal questioning the correctness of the same and prayed for enhancement of compensation and the said appeal is being disposed of by this common judgment after adverting to the rival legal contentions urged on behalf of the parties. The High Court has rightly dismissed the belated appeal filed by the KIADB.

Therefore, the appeal filed by KIADB questioning the order of remand passed in the Writ Petition and Review Petition is liable to be set aside. The appeal has been filed by the KIADB as it is aggrieved of the findings and certain observation recorded against them by the

High Court and it has got reasonable apprehension that the Reference Court may not appreciate the facts and evidence that may be produced before it. For the reasons stated above, the appeal filed by the KIADB has no merit and they have become unnecessary hence, the same are liable to be dismissed. Accordingly, we dismiss the same.

This Court, in paras 4 to 7 of its judgment in **Avtar Singh's** case (supra), while reiterating its earlier view taken in **Prem Chand v. State of Haryana and others, 2005 (1) RCR (Civil) 499**, held as under:-

“The only contention raised on behalf of the petitioners is that the petitioners being the allottees of plots have every right to be impleaded as party in the aforesaid References pending before the learned Additional District Judge, Amritsar inasmuch as it is they, who will have to ultimately pay the enhanced amount of compensation, if any, awarded by the Court, as per terms and conditions of allotment letter, given by the Corporation. In support of his this contention, learned Counsel for the petitioners has also relied upon Udmi and Ors. v. State of Haryana and Anr. (2002-3) 132 P.L.R. 381, Union of India v. Sher Singh and Ors. (1994-1) 106 P.L.R. 216 and Union of India v. Kartar Singh and Ors. (2000-3) 135 P.L.R. 23.

On the other hand, learned Counsel for the Corporation has repelled the aforesaid point of arguments raised of behalf of the petitioners and has also relied upon Prem Chand v. State of Haryana and Ors. (2004-3) 138 P.L.R. 326. In paragraph 6 of this judgment, relied upon by learned Counsel for the Corporation, it has been observed by his Lordship as under:

6. Under the scheme of the Act, land can be acquired by the State Government for a public purpose which includes acquisition for a local authority of a Corporation owned or controlled by the State Government or for the

benefit of a company. Under Section 50(1) of the Act, it is contemplated that where the land is being acquired at the cost of any fund controlled or managed by a local authority or of any company, the charges of any incidental to such acquisition shall be defrayed from or by such fund or company. Since the charges are to be defrayed by or from the fund of such local authority or a company, Sub-section (2) of Section 50 of the Act contemplates that such local authority or a company may appear before the Collector or the Court and adduce evidence for the purposes of determining the amount of compensation. It is provided that no such local authority or company shall be entitled to demand a reference under Section 18 of the Act. It is, thus, apparent that the local authority or a company, who is to defray the expenses of acquisition alone can appear and adduce evidence for the purposes of determination of compensation and not a total stranger to the acquisition, such as the applicants. The applicants are neither the owner nor acquisition has been made for the benefit of the applicant's co-operative society. The acquisition is for the benefit if a local authority i.e. Haryana Urban Development Authority, a local authority under the Haryana Urban Development Authority Act, 1977. It is that authority alone who is to defray the expenses on acquisition in terms of Section 50 of the Act and is entitled to adduce evidence for the purposes of determining the amount of compensation.

In this ruling, His Lordship has also discussed the aforesaid rulings cited by learned Counsel for the petitioners.

After going through the aforesaid rulings relied upon by the parties, it is made out that where the land has been acquired by the State for the benefit of a Company, only that

company is an interested person and as such is the necessary party and none else. Herein, in the instant case, the petitioners are the subsequent allottees of the plots which were given to them (petitioners) by the Corporation for whose benefit, the land was acquired by the State of Punjab.

Here, it will be relevant to observe that if such like subsequent allottees are allowed to be impleaded as necessary parties by the Reference Court, then, I feel, it will open flood gates of litigation for the landowners/claimants and, as such, they would not be able to get their references for enhancement of compensation under Section 18 of the Act decided expeditiously.

Reverting to the facts of case in hand and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court, in the cases referred to hereinabove, it is unhesitatingly held that the present application for impleadment is bereft of merit and without any substance, thus it must fail. Applicants have failed to make out any case for impleadment. Accordingly, instant application is dismissed, however, with no order as to costs.

Coming to the merits of the case, so far as the judicial precedents, relied upon by the learned counsel for the State, including in the cases of **O.P.Makhija** (supra), **Prem Wati** (supra), **Harkirat Singh** (supra) and **Narota** (supra), besides other evidence contained in Ex.P9, Ex.P74 and the site plans, are concerned, the same is a matter of record. Similarly, the judicial precedents, relied upon by the learned counsel for the appellants-land owners, particularly contained in the case of **Santokh Singh** (supra) passed by this Court, which has been upheld by the Hon'ble Supreme Court, in the cases of **Ashok Kumar** (supra) and **Ashok Kumar-II** (supra) are concerned, the same are also a matter of record.

However, the important question of law that falls for consideration of this Court is as to whether the land owners are entitled for assessing the market value of their acquired land at the same rate at which the Hon'ble Supreme Court as well as this Court have assessed the market value of the land acquired from the adjoining revenue estates. Another equally important issue to be considered by this Court is as to whether the land owners, in the present acquisition, can be denied the benefit of the evidence available today, in the form of judicial precedents in the cases of **Santokh Singh** (supra) and **Ashok Kumar** (supra), the benefit of which could not be taken by the land owners in the cases of **O.P.Makhija** (supra), **Prem Wati** (supra), **Harkirat Singh** (supra) and **Narota** (supra), because of its non-availability at that point of time.

There is a detailed document prepared by the office of Director, Town and Country Planning, Haryana, Chandigarh, which was placed before this Court, during the course of hearing and the said document refers to the development plan of Panchkula Extension. The development plan bearing Drawing No.599 dated 11.8.2000, relied upon by the learned counsel for the State in the form of Mark 'C' referred to hereinabove, also finds mentioned in this document, the relevant part of which contained in paras 1, 2, 5 and 6 (i) read as under:-

“The development of main Panchkula town as conceived in the interim Master Plan of Panchkula is almost at completion stage. In order to cope with the increasing demand of public for planned and developed urban estates, it was decided to develop the area situated across the Ghaggar River. The said unbanisable area situated between river Ghaggar and TBRL boundary is called Panchkula Extension. So, far planned urban

development is concerned, a development plan of this area was prepared vide Drawing No.DTP (P) 599/2000 dated 11.08.2000. Later on certain changes have been necessitated, keeping in view the recent decisions taken by the government, which are as follows:

- (a) Earmarking of the land use of 162.44 acres from recreational to industrial in Sector-32 for development of second phase of IT Park.
- (b) Change in land use of Sector-22 from Special Zone to Industrial (IT Park).
- (c) Spot Zoning of land approved for residential licence in favour of M/s Bhoomi Infrastructure Co.
- (d) Spot Zoning of the existing commercial in Sector-27 to residential (Group Housing).

In order to incorporate the above mentioned amendments in the Development Plan, the revised development plan has been prepared vide drawing no.DTP(P) 1127/09 dated 8.09.2009.

PHYSIOGRAPHY OF PANCHKULA EXTENSION AND PROPOSALS RELTING THERETO.

Being located along the Ghaggar River, the area of Panchkula Extension is roughly in irregular linear strip boundary by river Ghaggar in West and the Shivalik foothills in the East. This area forms undulating topography, cliffs at higher terrace and gentle rolling plain at lower terrace along Ghaggar River. Some of the creeks like Nandha Choe and

Nadda Choe are passing through Sectors 22, 23, 24, 25 and 31. Besides, there are certain Nallahs flowing in Sectors, 25, 26, 27, 28 and 32. The Ghaggar River and its tributaries i.e. Nandna Choe and Nadda Choe have been proposed to be preserved with proper protection bundhs and channelization if any required as such in the Development plan, so that the drainage system of this area may be sustained. The alignments of Nallahs flowing in Sectors 25, 26, 27, 28 and 32 may be redefined and channelized if such changes are required for better utilization of this area, at the time of preparation of layout plans of individual sectors, which may also protect human habitation.

The cliffs of higher terrace occurring in sectors 22, 23, 25, 26, 27 and 28 have become part of unrainsable area, would be brought under tolerable gentle slope to the satisfaction of Director, Town and Country Planning, Haryana and this work would be considered part of development of these sectors. However, the cliffs lying along Ghaggar river bank, particularly in Sectors 22, 23 and 32 would be preserved in such a way so that no land sliding/erosion of said cliffs may take place.

In order to protect the urbanisable area from the flood, a 60 meter road i.e. M2 road has been proposed, which may act as protection bandh for Panchkula Extension from river Ghaggar. Besides some green recreational land may be developed along Ghaggar River bank as well as green belt

along the bank of Nandna Choe and nadda choe, wherever necessity arises. In Sector 23 and 25 Nandna Choe and nadda choe are spreading width wise in large areas. Some portions of land of these choes are proposed to be reclaimed to the satisfaction by the Chief Engineer, Drainage, Haryana by realigning the bank of said choes (i.e. by confining the width of said choes to a normal workable width).

CIRCULATION SYSTEM

Since, “Panchkula Extension” area is a part of main Panchkula town, therefore, in addition to existing approach from Panchkula-Barwala road, the Panchkula Extension has also been linked with main Panchkula town through 60 Mts. Wide road i.e. M2 road leading from Sectors 3/21 to 23/24 through 2nd bridge as conceived in the Development plan. The Panchkula Extension forms a single row of sectors bounded by 60 mtrs. wide roads.

DESCRIPTION OF LAND USES

(i) RESIDENTIAL

In the development plan, seven residential sectors i.e. 23 (part), 24, 25, 26, 27, 28 & 31 have been proposed. These sectors are proposed to be developed on normal population density of 100 persons per acre for plotted development and 250 persons per acre for group housing. Similarly, the already approved colony of Banna Madanpur, Housing Building Society has been proposed to be developed on the basis of population density of 120 persons per acre. The

village abadies falling in Panchkula Extension area will also accommodate a population of about 5000 persons.”

A bare reading of the above-said relevant part of the document prepared by Director, Town and Country Planning, Haryana, Chandigarh, coupled with the numerous site plans, relied upon by both the parties, would make it crystal clear that so far as the topography of the area including the acquired land is concerned, it had never been in doubt. All the villages whose land was acquired and appeals arising therefrom were decided by this Court as well as by the Hon’ble Supreme Court, in the cases referred to hereinabove, relied upon by both the parties, were adjoining with each other. It was so observed by this Court, while passing the above-said remand order as well.

Further, keeping in view the location of the acquired land and the fact that it was situated on both sides of National Highway No.75 going from Chandigarh to Dehradun, the acquired land was having immense potentiality for its use as residential, commercial as well as institutional purposes. Very many commercial and residential establishments were already existing on this very road, including ITBP residential colony, Tribune Colony, ITBP Office Complex and 200 KV sub-station of HSEB. Some other commercial shops, Govt. School, Private Hospital etc. were also situated near the acquired land. Famous Nadda Sahib Gurudwara, situated in the revenue estate of village Nadda, is also not far away from the acquired land, Nadda being the adjoining revenue estate.

In view of what has been discussed hereinabove, it can be safely concluded that the acquired land was highly potential and could have been easily put to residential as well as commercial use. Other sectors of

Panchkula situated between Ghaggar river and National Highway No.22, which goes from Ambala to Shimla, have also been connected with the acquired land with a 60 meter wide road. It is known as M2 road leading from Sector 3-21 to Sector 23-24, being part of the above-said development plan. Recreational zone of the area, including Panchkula Golf Course, HUDA Sports Complex and IT Park are also not far away from the acquired land. All the above-said peculiar facts and circumstances of the case would show that the acquired land was a part of most happening area at the relevant point of time, having been situated in close proximity of Panchkula.

Hon'ble the Supreme Court in **Mehrawal Khewaji Trust (Registered), Faridkot and others v. State of Punjab and others, (2012) 5 SCC 432** has held that the land owners are entitled for the best price for their acquired land. Again, the law laid down by the Hon'ble Supreme Court in **Udho Dass v. State of Haryana, 2010 (12) SCC 51** aptly applies to the facts of the present case, because the land owners are fighting in the courts for the last more than 26 long years, for getting due compensation for their acquired land. The relevant observations made by the Hon'ble Supreme Court in paras 17 and 18 of its judgment in **Udho Dass's case (supra)**, read as under:-

“Although, in the present matter, sale instances around or near abouts the date of Notification of the present acquisition are available yet these cannot justify or explain the potential of a particular piece of land on the date of acquisition as the potential can be recognized only some time in the future and it is open to a landowner claimant to contend that the potential can be examined first at the time of the Section 18 Reference, the first Appeal in the High Court or in the Supreme Court in appeal as well. We must also highlight that Collectors, as agents of the State Government, are

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

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

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

the basis for compensation?”

In case the land owners in the instant set of appeals are permitted to get the market value of the acquired land assessed at the prevailing market rate as on date, in view of the law laid down by the Hon'ble Supreme Court in **Udho Dass's** case (supra), the market value would go many fold higher than what is being claimed by the land owners, on the basis of above-said judgments rendered by this Court in **Santokh Singh's** case (supra) as well as by the Hon'ble Supreme Court in **Ashok Kumar's** case (supra). So far as the distance between the land acquired in **Santokh Singh's** case (supra) as well as **Ashok Kumar's** case (supra) and the acquired land in the instant acquisition is concerned, the judgments rendered by the Hon'ble Supreme Court in the cases of **Ashrafi** (supra), **Kashmir Singh v. State of Haryana and others, 2014 (2) SCC 165**, **Thakarsibhai Devjibhai** (supra) and **Ashok Kumar-II** (supra) clearly support the case of the land owners.

The relevant observations made by the Hon'ble Supreme Court in para 12 of its judgment in **Thakarsibhai Devjibhai's** case (supra), which can be gainfully followed in the present case, read as under:-

“As we have said above the High Court fell into error by reducing the quantum of compensation on this basis. The reduction has been made for two reasons, one that the present acquisition is of larger area and the second the distance between the land under acquisition and Ex. 16 is about 5 kms. With reference to question of acquisition being of a larger area, the error is, when we scan we find for the acquisition of each land owner, it could not be said that the acquisition is of a large area. Largeness is merely when each land holders land is clubbed together then the area becomes large. Each landowners holdings are of small area. Even otherwise

visioning in the line with submission for the State we find Ex.16 is about two hectares of land which cannot be said to be of small piece of land. So far the other question of distance between the two classes of lands, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior. However, distance between the land under Ex. 16 and the present land even if they are 5 kms. apart would not be relevant, the relevancy could be, their distances from the Viramgam town. We find, as per map produced by the State the present acquired land is about 3 kms. away from it, while the land under Ex. 16 is about two kilometers away from it. This difference is not such to lead to reduce the rate of compensation, specially on the facts of this case. In the present case, as we have recorded above, it has been found that the quality including potentiality of land between Exh. 16 and the present one are similar. No evidence has been led on behalf of the State to find difference between the two. In view of this, the inference drawn by the High Court for reducing the compensation by Rs. 10/- per sq. mtr. cannot be sustained.”

Similarly, while interpreting the scope of Section 25 of the Act, Hon'ble Supreme Court has held that cap of maximum amount of compensation has been omitted and the cap which has been provided is only on the minimum. It was further held that it is the duty of the court to award just and fair compensation, taking into consideration the true market value and other relevant facts, irrespective of the claim made by the owners. The observations made by the Hon'ble Supreme Court in paras 5, 7 and 8 to 11 of its recent judgment dated 18.2.2016 rendered in **Ashok Kumar-II's** case (supra), which aptly apply here, read as under:-

“Learned counsel appearing for the appellants however points out that in the matter of fixation of just and fair compensation, the Court is not bound by claim made by the

owner. It is for the Court, in the facts and circumstances of each case, to award just and fair compensation.

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The pre-amended provision put a cap on the maximum; the compensation by court should not be beyond the amount claimed. The amendment in 1984, on the contrary, put a cap on the minimum; compensation cannot be less than what was awarded by the Land Acquisition Collector. The cap on maximum having been expressly omitted, and the cap that is put is only on minimum, it is clear that the amount of compensation that a court can award is no longer restricted to the amount claimed by the applicant. It is the duty of the Court to award just and fair compensation taking into consideration the true market value and other relevant factors, irrespective of the claim made by the owner.

Although in the context of the Motor Vehicles Act, 1988, this Court in **Sanjay Batham v. Munna Lal Parihar** held that

“17. It is true that in the petition filed by him under Section 166 of the Act, the Appellant had claimed compensation of Rs. 4,20,000/- only, but as held in *Nagappa v. Gurudayal Singh*, (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident.”

In **Bhag Singh and Others v. Union Territory of Chandigarh**, this Court held that there may be situations where the amount higher than claimed may be awarded to the claimant. The Court observed –

“3. ... It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed

can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where, as for instance, under' agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution, be deprived of land which is not being personally cultivated by him or which is in excess of the ceiling area with payment of little compensation or no compensation at all, but where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms, declares that he shall be paid such market value. ...”

*In **Krishi Utpadan Mandi Samiti v. Kanhaiya Lal**, this Court held that under the amended provisions of Section 25 of the Act, the Court can grant a higher compensation than claimed by the applicant in his pleadings –*

“17. Award being in this case between the dates 30th April, 1982 and 24th September, 1984 and as per the

Union of India and Anr. v. Raghbir Singh (Dead) by LRs. etc. (Supra), the amended provisions would be applicable under which there is no restriction that award could only be upto the amount claimed by the claimant. Hence High Court order granting compensation more than what is claimed cannot be said to be illegal or contrary to the provisions of the Act. Hence the review itself, as is confined for the aforesaid reasons, has no merit.”

11. Further, in **Bhimasha v. Special Land Acquisition Officer and others**, a three-Judge bench reiterated the principle in **Bhag Singh** (supra) and rejected the contention that a higher compensation than claimed by the owner in his pleadings cannot be awarded by the Court. In that case, the High Court had concluded that although the market price of the land was Rs 66,550/- per acre, since the appellant had only claimed compensation at the rate of Rs. 58,500/- per acre in his pleadings, therefore he could only be awarded compensation limited to his claim. This Court, while reversing the decision of the High Court, awarded the petitioner the market value, i.e., Rs. 66,550/- per acre thereby holding that the award would not be limited to the claim made by him.”

After giving anxious consideration to the peculiar fact situation obtaining in the instant set of cases, this Court feels no hesitation to conclude that in spite of the availability of judicial precedents in the form of **O.P.Makhija's** case (supra), **Prem Wati's** case (supra), **Harkirat Singh's** case (supra) and **Narota's** case (supra), the judgments of **Ashok Kumar's** case (supra) and **Santokh Singh's** case (supra), rendered by the Hon'ble Supreme Court and this Court, respectively, deserve to be preferred for assessment of better market value, in favour of the land owners. It is so said, because the land owners are entitled to receive the best price for their acquired land, as held by the Hon'ble Supreme Court in **Mehrawal**

Khewaji Trust's case (supra). Accordingly, the first question formulated hereinabove, is answered against the State and in favour of the land owners, holding them entitled for the benefit of market value assessed by this Court in **Santokh Singh's** case (supra) as well as by the Hon'ble Supreme Court in **Ashok Kumar's** case (supra).

A litigant who has been negligent qua his rights or had gone in slumber, cannot blame others, if he does not get his due in time, for which he might be entitled in law. If the land owners in the above-said cases of **O.P.Makhija** (supra), **Prem Wati** (supra), **Harkirat Singh** (supra) and **Narota** (supra), had not been vigilant enough to seek the best price for their acquired land, either because of laxity on their part or for non availability of the judicial precedents like **Santokh Singh's** case (supra) and **Ashok Kumar's** case (supra), land owners in the present set of appeals, arising out of instant acquisition, cannot be denied the benefit of **Santokh Singh's** case (supra) and **Ashok Kumar's case** (supra), for none of their fault. Thus, the second question posed hereinabove, is also decided in favour of the land owners and they are held entitled for the benefit of the judicial precedents available in their favour in the form of **Santokh Singh's** case (supra) and **Ashok Kumar's** case (supra).

Law must keep pace with the time. The law which is static, would become obsolete if it will not change with the changing time. Similarly, fact situation also keeps on changing. These two above-said most relevant judicial precedents in the form of **Santokh's Singh** case (supra) and **Ashok Kumar's** case (supra), were not available to the land owners in the instant set of appeals, at the time of first round of litigation, when their numerous appeals of the year 1999 including **RFA No.1281 of 1999**

(**Gurdev Singh and others Vs. State of Haryana**) were decided by this Court and the matter was remanded back vide order dated 27.10.2006. However, by time the second round of litigation, in the form of present set of appeals, became mature for regular hearing, the cases of **Santokh Singh's** (supra) and **Ashok Kumar's** case (supra) had already been decided by this Court and the Hon'ble Supreme Court, respectively and the same have become readily available judicial precedents, in favour of the land owners. Further, in view of the law laid down by the Hon'ble Supreme Court in the cases of **Mehrawal Khewaji Trust** (supra), **Udho Dass** (supra), **Asharfi** (supra), **Ashok Kumar-II** (supra), **Kashmir Singh** (supra) and **Thakarsibhai Devjibhai** (supra), all rendered by Hon'ble Supreme Court of India, the judgments in **Santokh Singh's** case (supra) and **Ashok Kumar's** case (supra) deserve to be followed and the same can be safely made the basis for assessing the market value of the acquired land.

As noticed above, judgment rendered by this Court in **Santokh Singh's** case (supra) has been upheld by the Hon'ble Supreme Court vide its order dated 1.7.2015 passed in Special Leave to Appeal (Civil) No.31279-31280/2013 (State of Haryana and another etc. V. Santokh Singh (Deceased) through LRs and others. In the peculiar fact situation of the cases in hand, this Court has found no reason much less cogent reason to deny the benefit of the cases of **Santokh Singh** (supra) and **Ashok Kumar** (supra) to the appellants-land owners in these appeals, arising out of the instant acquisition. It is very important to note here in this regard that the Hon'ble Supreme Court itself followed its judgment in **Ashok Kumar's** case (supra) while deciding Civil Appeals Nos.2231 to 2242 of 2015, pertaining to later acquisition dated 26.4.1995 of villages Maheshpur and

Fatehpur. Market value assessed in **Ashok Kumar's** case (supra) was taken as basis and benefit of 12% annual increase on cumulative basis was granted.

So far as the above-said four judgments in the cases of **O.P.Makhija** (supra), **Prem Wati** (supra), **Harkirat Singh** (supra) and **Narota** (supra) as well as two sale-deeds Ex.P9 and Ex.P74, relied upon by the learned counsel for the State are concerned, the same would not be of much relevance, in view of the law laid down by the Hon'ble Supreme Court in the cases, referred to hereinabove, particularly in the cases of **Mehrawal Khewaji Trust** (supra), **Udho Dass** (supra), **Kashmir Singh** (supra) and **Ashok Kumar-II** (supra). Vide Ex.P9, available at page 369 of LCR, a very small piece of land measuring only 6 marla was sold, out of the revenue estate of village Ramgarh, by way of sale-deed dated 14.2.1986, whereas notification under Section 4 of the Act came to be issued after more than 3 years and 4 months. Similarly, vide sale-deed dated 11.8.1988 Ex.P74 available at page 1037 of LCR, land measuring 1 kanal was sold, out of the revenue estate of village Bana Madanpur. Keeping in view the prime location of the acquired land and its immense potentiality for residential, industrial, institutional as well as commercial purposes, these sale-deeds were nothing but the result of either under valued transactions or distress sales. In either of the situations, both these sale-deeds are liable to be excluded from consideration, in view of the law laid down by the Hon'ble Supreme Court in para 32 of its judgment in **Lal Chand's** case (supra).

It is a matter of record that **Narota's** case (supra) was decided by this Court vide order dated 8.10.2003 and **O.P.Makhija's** case (supra)

was decided vide order dated 20.7.2005. Similarly, **Prem Wati's** case (supra) was decided vide order dated 24.1.2007 and **Harkirat Singh's** case (supra) was decided vide order dated 7.2.2011. However, **Santokh Singh's** case (supra) came to be decided by this Court on 14.3.2013 and the Hon'ble Supreme Court decided **Ashok Kumar's** case (supra) on 17.2.2015. This was the reason that while deciding all the above-said four cases, relied upon by the learned counsel for the State, judicial precedents in **Santokh Singh's** case (supra) and **Ashok Kumar's** case (supra) could not be considered by this Court, which was none of the faults of the present land-owners, therefore, for this reason also, they cannot be denied the benefit of the cases of **Santokh Singh** (supra) and **Ashok Kumar** (supra), rendered by this Court and the Hon'ble Supreme Court, respectively.

Had the decisions in **Santokh Singh's** case (supra) and **Ashok Kumar's** case (supra) been available before this Court, while rendering the judgments in above-said four cases; namely **O.P.Makhija** (supra), **Prem Wati** (supra), **Harkirat Singh** (supra) and **Narota** (supra), results might have been totally different. However, since the land owners in the instant set of appeals had no role to play in this regard, they cannot be denied the benefit of these two judgments in **Ashok Kumar's** case (supra) and **Santokh Singh's** case (supra), for no fault on their part.

This Court, in the case of **Birinder Singh and others v. State of Haryana, 1990 PLJ 90**, has held that fate of landowners is not sealed by awards to which they were not parties. The relevant extract of the observations made by this Court in paras 5 to 7 of its judgment in **Birinder Singh's** case (supra), read as under:-

“Before applying one formula or the other, it has

became essential for this Court in the first instance to settle question of law which has arisen and which, as far this Court is concerned, appears not to have been settled until now. No judicial pronouncement of this Court was cited on the point as to whether the Award under the provisions of the Land Acquisition Act can be said to be that much binding on this Court that it cannot and should not rely upon the sale transactions of that very village and vicinity where the land is acquired. Call the fate of landowner-claimants be said to be sealed by an Award to which they were not parties ? Is the Award of the Court only relevant leaving the parties to ask the Court in another matter to determine the market value of their acquired land on the basis of the sale deeds brought on the record by them or is it that their sale deeds cannot be examined? In other words, should the Award of the Court be preferred over the sale deeds brought by the landowners in a given case ? To put it in others words, should the Court prefer the Award over the sale transactions produced in the very case, the Court is called upon to examine or is it that the landowners can legally tell the Court that the evidence brought by them should be preferred over the Award.

After giving my thoughtful consideration to the questions which stare this Court, I am of the considered view that the valuation in the stare this Court, I am of the considered view Award though very important and relevant will not bind the claimants in another case. The claimants can takes advantage for determination of compensation on the basis of the sale deeds which they have brought on the record of the case. They cannot be debarred from leading superior evidence or evidence of the nature of such transactions of sale as can be more comparable in valuation of the acquired land than the Award of the Court. Such claimants can surely show the Court that their lands have got better potential and that they are entitled to the determination of the market value on the basis of the sale deeds which they have produced on the record of a particular

case. It has commonly been seen that some litigants are not careful and rather they may be negligent in producing evidence. On the other hand, the other persons take a keener interest in pursuing the cases before the Courts of law. If such persons are told that well, their lands would also be evaluated on the same rate which has already been determined, it would amount to denying them the right of hearing. In other words, they would be condemned unheard.

In my opinion the Award of the Land Acquisition Court or of the Collector does not bind the parties and that the same can be only said to be relevant and can also be taken advantage of if no other evidence of comparable sales is available for determining the market value of a particular piece of land. The matter can be examined by the Court from another angle as well. If the Courts were to consider the Award within the ambit and meaning of Section 23 of the Act as finally conclusive, such a view would come in conflict with settled principles of law laid down by various judicial pronouncements. It has been settled by the Apex Court and other Courts in a plethora of authorities that determination of compensation for compulsory acquisition is governed by Section 23 of the Act. For determination of such compensation the main criteria would be that a willing vendee would pay to a willing vendor. In other words, the compensation has to be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser.

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The Award can be easily described to be a judicial document given by a Court upon examination of the sale transactions and other evidence made available to it by the parties. It can be cited as an instance to be followed by another Court provided better evidence of comparable nature qua the acquired land is not available. It cannot be cited as a precedent as has been so held by a Division Bench of Mysore High Court in Additional

Special Land Acquisition Officer, Mangalore v. P. Anantha Bhat, AIR 1972 Mysore 313. Their Lordships of the Mysore High Court went to the extent of describing the Award to be a piece of evidence. The relevant observations of the Division Bench can conveniently be reproduced as under :

It is now fairly established that in matters relating to land acquisition, a judgment of a Court in regard to similar lands or properties would be a relevant piece of evidence. This is not to say that such a judgment is binding as a precedent. The Award in L.A. case is essentially a decision on a question of fact depending on the facts and circumstances of such case, unless a question of law or principle has been settled therein. Whenever such a judgment is sought to be used as a piece of evidence, it must satisfy the usual test of relevancy and application to the facts and circumstances of the case in which it is relied on."

Again, this Court in para 4 of its judgment in the case of **Narinder Nath Sharma and another v. Union of India, 1989 PLJ 698**, held as under:-

*"Before parting with the judgment it is necessary to deal with the reasoning recorded by the District Judge on the basis of which Rs. 700 /-per acre have been evaluated as the market value of the acquired land. The sole basis of fixation of Rs. 700/- per acre as the market value. of the acquired land is the award given by this Court in **Partap Singh and another v. Union of India, Regular First Appeal No. 245 of 1972, decided on April 2, 1979.** May be the notification was issued on March 13,1964, the award given by this Court cannot be made the basis of fixation of market value in the present case for the simple reason that the sale instances brought by the claimants in the present case were not subject matter or discussion in the award given by this Court. On the other hand, a copy of the mutation evidencing the sale of 54 Kanals 14*

Marlas of land in village Raipur Khurd for a sum of Rs. 3,942/- was made the basis of the fixation of market value at the rate of Rs. 700/-, per acre in Partap Singh's case (supra). It has come in evidence in the present case in the shape of statement of PW4 Raj Kumar, Patwari, who has stated on oath that village Raipur Khurd is situated at a distance of five kilometres from the acquired land. This being the factual position, I am disinclined to place any reliance upon the reasoning of the District Judge. Surely, the appellants, who were not parties in the proceedings in Partap Singh's case (supra) either before the Land Acquisition Collector or before the Court as well, cannot be said to be bound by any award given in their absence. Any claimant in a land acquisition case can, after leading evidence, show to the Court of law that he is entitled to the evaluation of his land which has been acquired on the basis of evidence which has been brought by him. He cannot be made to suffer for any lapse on the part of any other landowner who has not brought the relevant evidence while having his land evaluated in a separate award. The claimant may or may not take benefit of any other award but it cannot be said either in law or in equity that once an award, may be, it is relevant one for determination of the market value has been given, the same is that much binding upon another claimant that he cannot lead any evidence for the determination of facts and reasonable market value of the land owned by him."

Reiterating its above-said view expressed in **Birinder Singh's** case (supra), this Court in the case of **M/s. Raj Dhani Land and Finance (P) Ltd. V. State of Haryana, 1994(2) RRR 87** held that the land owners, who have brought better evidence can ask to evaluate their land on the basis of such evidence and to ignore the awards based on inferior evidence. Awards of the Land Acquisition Courts are only admissible in evidence and cannot be binding on the parties. It was also held that parties can always

insist that particular awards be ignored and determination of market value be made on the basis of evidence brought by them. It was concluded by observing that some litigants bring superior evidence on record and others may not be able to lead such evidence, thus, a litigant who brought on record superior evidence is always entitled to take benefit thereof.

Somewhat similar fact situation fell for consideration before a Division Bench of this Court in **Brij Gopal and others v. State of Haryana, 2006 (3) PLJ 260** and the relevant observations made by the Division Bench, read as under:-

“The facts stated above are not disputed and clearly emanate from the record. Admittedly Exh.P-15 was taken as the basis for determining the price on which an increase of 50% was granted by the Addl. District Judge in his award dated 30.9.1985. This award was maintained in first appeal as well in the L.P.A. with the learned Benches observing that Exh.P-15 was the proper basis for determining the compensation. Admittedly the compensation given by Exh.P-15 was enhanced by this Court in R.F.A. No. 7 of 1982 from Rs. 15.59 to Rs. 37/- per square yard. We are thus of the opinion that the 50% increase is to be taken on Rs. 37/- per square yard. It is also relevant that the judgment in R.F.A. No. 7 of 1982 was produced on record vide Civil Misc No. 1013 of 1990 way back in the year 1990, but had not been produced before the L.P.A. Bench which disposed of L.P.A. No. 1513 of 1989 with two other connected appeals. In this situation, we are of the opinion that the judgments cited by Mr. Sarin become extremely relevant. In paragraph 15 of the judgment in M/s. Raj Dhani Land & Finance (P) Ltd's case (supra), it has been observed as under :

*"15. It has been held by this court in **Birinder Singh and others v. State of Haryana and another, 1990(2) R.R.R. 47 : 1989(2) Revenue Law Reporter 391**, that the*

awards of the Land Acquisition Courts are only admissible in evidence and cannot be binding on the parties and that such awards cannot shut out the consideration of other evidence of comparable nature. It was further held that the party (party ?) can always insist that particular awards be ignored and determination of market value be done on the basis of the evidence brought by them. This Court while making the aforementioned observations, relied upon certain other judicial (sic) joint and severable. This aspect seems to have been adjudged in different cases depending upon the nature/source of rights, the cause of action, (sic) the contradictory nature of decrees impossible of execution, likely to result when considered differently. It is for this reason any standardised formula was avoided and the matter left for the consideration of courts, on the peculiar nature of the cases coming for determination. Having regard to the peculiar facts and circumstances noticed by us that the appellant claimants have each their own distinct, separate and independent rights, the principles enumerated in Harihar Prasad case and Indian Oxygen Ltd. case squarely apply with all force. The appeals even de hors the claims of the deceased and others who have not chosen to approach the High Court or this Court, were neither rendered incapable of consideration nor impossible of according any relief nor could be held difficult to enforce the decree that may be passed, in favour of the remaining appellants without suffering the vice of inconsistency. Even if it is likely to result in two different sets of judgments of varying content, purport or reason, as long as enforcement of the decrees passed therein is not rendered impossible due to mutual contradiction in terms of self-destructive nature, there is no justification whatsoever to assume them to be inconsistent or

contradictory decrees, at all. The mere fact that in a set of similar or identical nature of cases two different nature or type of decrees were necessitated is no reason to treat them to be inconsistent or contradictory decrees, so long as both can be executed and enforced without either of them being destructive of the other. Contradictory or inconsistent decrees, consequently, could be held to have resulted only in a given case when the relief granted in one cannot be enforced/realized without denying the relief in the other or totally nullifying or setting at naught the relief granted in the other, and in no other class of cases.

33. Even assuming that the decree appealed against or challenged before the higher forums is joint and several but deals with the rights of more than one recognized in law to belong to each one of them on their own and unrelated to the others, and the proceedings abate in respect of one or more of either of the parties, the courts are not disabled in any manner to proceed with the proceedings so far as the remaining parties and part of the appeal is concerned. As and when it is found necessary to interfere with the judgment and decree challenged before it, the court can always declare the legal position in general and restrict the ultimate relief to be granted by confining it to those before the court only rather than denying the relief to one and all on account of a procedural lapse or action or inaction of one or the other of the parties before it. The only exception to this course of action should be where the relief granted and the decree ultimately passed would become totally unenforceable and mutually self-destructive and unworkable vis-a-vis the other part, which had become final. As far as possible, courts must always aim to preserve and protect the rights of parties and extend help to enforce them rather than deny relief

and thereby render the rights themselves otiose, "ubi jus ibi remedium" (where there is a right, there is a remedy) being a basic principle of jurisprudence. Such a course would be more conducive and better conform to a fair, reasonable and proper administration of justice."

While deciding the case of **Santokh Singh** (supra), this Court followed the law laid down by the Hon'ble Supreme Court in **Chandershekhar Vs. Land Acquisition Officer, 2012 (1) SCC 39**, to the effect that amongst the sale deeds relied upon, the sale which has fetched the highest price, must be taken. The observations made by this Court in **Santokh Singh's** case (supra), read as under:-

*"...In the manner fixing the valuation the land-owner who loses the property has to be treated as a preferred party for obtaining the maximum bargain possible. It has been held to be so in a judgment of the Supreme Court in **Chandershekhar Vs. Land Acquisition Officer 2012 (1) SCC Page 39**. The Court has held that amongst the sale deeds the sale which has fetched the highest price must be taken. I will therefore find no reason to take the sale deed under Ex.R-1 as representative of the value of the property which is acquired and the only point that has to be seen is whether a valuation of a property on one side of a National Highway could be treated as appropriate for determining the valuation of just property on the other side of the Highway. If the location of a property as amenable for non-agricultural use and a prospect of increase of prices by the very fact that it was proximate to the city of Chandigarh and was on the way to another State capital Shimla, they were sufficient to provide for a homogenous valuation..."*

As noticed above, since the acquired land was situated at a prime location on National Highway in close proximity to Chandigarh, its

immense potentiality had never been in doubt. This used to be the most happening area. The cardinal principle of law in the matters of assessing the market value of the acquired land is that the courts should make an endeavour to reach closest to the truth. In this regard, the court has to keep in mind the basic rule that a prospective buyer would be willing to purchase the land and a prospective seller would be ready to sell, with a view to assess the market value of the acquired land.

Keeping in view the above-said principles of law, if the law laid down by the Hon'ble Supreme Court in **Udho Dass's** case (supra) is strictly made applicable here, the market value of the acquired land would be many fold higher than what is being claimed by the land owners, on the basis of judgments in **Santokh Singh's** case (supra) and **Ashok Kumar's** case (supra). However, proceeding on a holistic, pragmatic and positive approach, with a view to do complete and substantial justice between the parties, this Court is of the considered view that instead of granting the benefit of **Udho Dass's** case (supra), the land owners are entitled for the benefit of judicial precedents of **Santokh Singh's** case (supra) and **Ashok Kumar's** case (supra).

This Court assessed the market value of the land of village Nadda, which was the adjoining revenue estate, at the rate of Rs.332.50 per square yard, date of notification under Section 4 of the Act being 5.4.1988. Hon'ble the Supreme Court in **Ashok Kumar's** case (supra) assessed the market value at the rate of Rs.394/- per square yard, for the land of villages Fatehpur, Maheshpur, Kundi and Rally, again the adjoining revenue estates, date of notification under Section 4 of the Act being 29.1.1990, whereas in the present case the date of notification under Section 4 of the Act was

26.6.1989. Since the acquisition in **Santokh Singh's** case (supra) was 14 months earlier than the instant acquisition, it would be safer to follow the judicial precedent of **Santokh Singh's** case (supra), with a view to assess the market value of the acquired land.

Undoubtedly, there was a time gap of 14 months between the acquisition in **Santokh Singh's** case (supra) and the present acquisition, because of which, the land owners in the cases in hand, would be entitled for the benefit of 12% annual increase for this time gap of 14 months. Granting the benefit of 14% for this time gap of 14 months, on the market value assessed by this Court in **Santokh Singh's** case (supra) at Rs.332.50/-, the market value comes to Rs.379/- per square yard which is rounded off to Rs.380/- per square yard. Accordingly, the land owners in the cases in hand are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.380/- per square yard from the date of notification under Section 4 of the Act.

Let it be specifically recorded here that neither any better evidence or other judicial precedents were pressed into service nor any other argument was raised on behalf of either of the parties.

Considering the peculiar facts and circumstances of the cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that the appeals filed by the State of Haryana, as well as the application bearing CM No.16299-CI of 2015 in RFA No.1956 of 2010 for impleadment, filed by the allottees of HUDA, are wholly misconceived, bereft of merit and without any substance, thus, these must fail and the same are hereby dismissed.

The appeals filed by the land owners deserve to be partly accepted and the same are hereby allowed to the extent indicated above. Accordingly, the land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.380/- per square yard from the date of notification under Section 4 of the Act. Besides this, the land owners shall also be entitled for all other statutory benefits available to them, under the relevant provisions of the Act.

As prayed by the learned senior counsel for the land owners, direction issued by the Hon'ble Supreme Court in para 22 of its judgment in Pran Sukh's case (supra) are also issued herein, which read as under:-

With a view to ensure that the land owners are not fleeced by the middleman, we deem it proper to issue following further directions:-

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

Resultantly, with the observations made above and directions issued, all the appeals stand disposed of, in the abovesaid terms, however, with no order as to costs.

8.4.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE