

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

**RFA No.3356 of 2010 and connected matters
Date of decision:5.5.2016**

State of Haryana and another

...Appellants

Versus

Santokh Singh and others

...Respondents

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.Randhir Singh, Addl.A.G., Haryana assisted by
Mr.Abhinash Jain, AAG, Haryana.

Mr.Avnish Mittal, Advocate for the appellant(s) in
RFA Nos.3071 and 3073 to 3083 of 2010, 3907 & 3908 of
2010.

Mr.Munish Mittal, Advocate for the appellant(s) in
RFA Nos.6831 to 6834, 7847, 8100, 8627, 8876, 8877, 8878,
9025, 9354, 9355, 9549, 9718, 9764 and 9829 of 2014.

Mr.Robin Dutt, Advocate for the appellant(s) in
RFA Nos.2743 to 2746 of 2010, 3292 to 3295 of 2010,
4074 of 2010, 5087, 5088 of 2010, 1214 of 2011,
7100, 7171 to 7174 of 2013, 512 to 514 of 2014, 8859 of 2014,
2305 to 2307 of 2015, 2707 of 2015, 3151, 3152 of
2015 and for respondents No.1 in RFA No.2197 of 2010, 2200,
2201, 2199 of 2010, respondents No.1 to 4 in RFA
No.2659 of 2010, respondents No.3 to 5 in RFA No.2198 of
2010 and for respondents No. 1 to 3 in RFA No.1220 of 2014.

Mr.S.S.Dinarpur, Advocate for the appellant(s) in
RFA Nos.2743 of 2010, 4166 to 4168, 5293, 5301, 5810, 5814,
5817, 5818, 5821, 5826, 5830, 5837, 5839, 5840, 6953 to
6955, 7648, 7938 and 7939 of 2014.

Mr.Sanjay Verma, Advocate for the appellant(s) in
RFA Nos.6948 to 6950 of 2014.

Mr.Vivek Aggarwal, Advocate for the appellant(s) in
RFA Nos.8165, 8720 to 8723 of 2014.

Mr.Krishan Singh, Advocate for the appellant(s) in RFA No.2342 of 2011 and for the respondent(s) in RFA No.3226 of 2010.

Mr.Bhag Singh, Advocate for the appellant(s) in RFA Nos.5288 of 2010 and 675 of 2011 and for the respondent(s) in RFA Nos. 3229 and 3230 of 2010.

Mr.Rajinder Helwa, Advocate for
Mr.Aman Pal, Advocate for the appellant(s) in RFA Nos.2743 of 2010 & 5061 to 5068 of 2010

Mr.R.K.Dhiman, Advocate for the appellant(s) in RFA No.5396 of 2010.

Mr.V.B.Aggarwal, Advocate for the appellant(s) in RFA Nos.8165, 8720 to 8723 of 2014 and for the respondent(s) in RFA Nos. 4373 and 4378 of 2014.

Mr.Ashok Kumar Khubbar, Advocate for the appellant(s) in RFA No.8633 of 2014.

Mr.Maharaj Kumar, Advocate for the appellant(s) in RFA Nos. 6703, 7295, 7296 and 10059 of 2014.

Mr.Ranjit Saini, Advocate for the appellant(s) in RFA Nos. 3550 and 3551 of 2010 and RFA No.903 of 2012.

Mr.Pankaj Gupta, Advocate for the appellant(s) in RFA Nos.1769 to 1776 of 2011 and 1779 of 2011 and for the respondent(s) in RFA Nos.2216 to 2221 of 2010 and 2627 of 2010.

Mr.V.D.Sharma, Advocate for the appellant(s) in RFA Nos.5491 to 5493 of 2010.

Mr.Jitender S.Chahal, Advocate for the appellants in RFA Nos.5045 of 2010, 548 of 2011, 2752, 2753, 2852 to 2856 of 2014 and 4644 and 4645 of 2014 and for the respondent(s) in RFA Nos.3352, 3371, 3375 of 2010, 6057 of 2013 and 1215 and 1217 of 2014.

Mr.Sandeep Singh, Advocate for
Mr.Ravinder Bangar, Advocate for the respondent(s) in RFA Nos.6044 and 6052 of 2013.

RAMESHWAR SINGH MALIK, J. (Oral)

This batch of 276 Regular First Appeals, out of which appeals

bearing RFA Nos.2197 to 2201, 2215 to 2221, 2546 to 2554, 2627, 2659, 3224 to 3230, 3348 to 3382, 4103 to 4109 of **2010**, 1 of **2012**, 6043 to 6059 of **2013**, 1212 to 1221, 4373 to 4380, 5808 to 5840, 7648, 7938, 7939 and 10075 of **2014** and 3603 to 3608 of **2015** filed by the State of Haryana and remaining appeals bearing RFA Nos.2743 to 2746, 3071, 3073 to 3083, 3275 to 3277, 3292 to 3295, 3550, 3551, 3907, 3908, 4072 to 4074, 5045, 5061 to 5068, 5087, 5088, 5288, 5396 and 5491 to 5493 of **2010**, 548, 675, 1214, 2342 and 1769 to 1776 and 1779 of **2011**, 903 of **2012**, 6610 to 6612, 7100, 7171 to 7174 of **2013**, 512 to 514 of 2014, 2752, 2753, 2852 to 2856, 4166 to 4168, 4644, 4645, 5293, 5301, 6703, 6831 to 6834, 6948 to 6950, 6953 to 6955, 7295, 7296, 7847, 8100, 8165, 8627, 8633, 8720 to 8723, 8859, 8876 to 8878, 9025, 9354, 9355, 9549, 9718, 9764, 9829 and 10059 of **2014**, 2305 to 2307, 2707, 3151 and 3152 of **2015** filed by the land owners and Cross-Objections Nos.233-CI of 2010 and 247-CI of 2016 is being decided 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.3356 of 2010 (**State of Haryana and another v. Santokh Singh and others**).

Briefly put, facts necessary for disposal of present set of appeals are that the State of Haryana sought to acquire the land out of many revenue estates, at public expenses for public purpose; namely for Dadupur-Nalvi Canal, also known as Shahbad Feeder. Accordingly, notification dated 20.9.2004 came to be issued under Section 4 of the Land Acquisition Act, 1894 ('the Act' for short), which was followed by notification dated 4.11.2004 under Section 6 of the Act.

Land acquisition collector ('LAC' for short), vide his different

awards, assessed the market value for different villages at different rates. One such LAC Award No.27 is dated 27.10.2005. LAC adopted the belting system and assessed the market value of the acquired at the rate of Rs.5 lacs per acre for Chahi land and Rs.12 lacs per acre for prime land.

Dissatisfied with the above-said awards passed by LAC, land owners filed their objections under Section 18 of the Act. Consequently, very many land references were forwarded to the learned reference court. Learned reference court also passed different awards maintaining the belting system and assessing the market value of the acquired land at the rate of Rs.8 lacs per acre for Chahi land and Rs.14 lacs per acre for prime land. Market value of the land in some of the villages was assessed at higher rate as well. One of the impugned awards passed by the learned reference court is dated 17.3.2010, whereby very many land references were decided together.

Both the parties felt aggrieved against the above-said different awards passed by the learned reference court. State of Haryana is seeking reduction in the amount of compensation granted to the land owners, whereas land owners are seeking further enhancement in the amount of compensation for their acquired land. That is how, all these appeals are being decided together.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case 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 have been found without any merit 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.

Before proceeding further on merits, it is pertinent to refer to order dated 25.1.2016 passed by this Court in CM-7713-CI-2015 in RFA No.3356 of 2010 (State of Haryana and another v. Santokh Singh and others), moved by the State of Haryana under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, to lead additional evidence. After notice having been issued in this application vide order dated 5.8.2015 and when no reply thereto was filed, this application was allowed by this Court vide order dated 25.1.2016. It is also relevant to note here that the State of Haryana has placed on record only some site plans and layout plan. Annexure-I shows the status of ground water in different blocks falling in the area in Hatinikund Barrage Division No.1, Jagadhri, Dadupur Nalvi Irrigation Scheme. Annexure-II is the layout plan of Dadupur-Nalvi Irrigation Scheme. Annexure A-3 is Index plan H.K.B Circle, Jagadhri.

Annexure A-4 is a copy of an official communication dated nil, issued by the Land Acquisition Collector, PWD Irrigation Branch to the District & Sessions Judge, Yamunanagar and subject whereof is reference under Section 18. Copy of application under Section 18 of the Act moved by Santokh Singh and Sukhwant Singh is also attached with Annexure A-4. Annexure A-5 is also a site plan seems to be based on google map, showing the distance of Sectors 17, 18, Police Station, Bus Stand and boundary of MC Jagadhri. Again, A-6 is almost the copy of Annexure A-5. In addition to the above site plans placed on record by way of above-said misc. application, learned counsel for the State also placed before the Court a

Revised Draft Development Plan for controlled area prepared on 31.5.2006, by the Department of Town and Country Planning, Haryana. This detailed site plan was produced by the learned counsel for the State during the course of hearing, wherein different residential and commercial sectors developed by HUDA have been shown in different colours. Dadupur-Nalvi canal has also been shown in a different colour on this development plan.

A careful perusal of different site plans, layout plan and development plan, referred to hereinabove, would make it crystal clear about the prime location and potentiality of the acquired land. Learned counsel for the land owners have strenuously argued that the total acquired land is now part of municipal area. This fact has been denied by the learned counsel for the State. However, none of the learned counsel for the parties could refer to any relevant document in this regard. Be that as it may, location of the acquired land has been clearly depicted on the above-said different site plans available on record.

Crux of the arguments raised by all the learned counsel for the land owners is that since the acquired land was situated adjoining to the land earlier acquired for Police Line, Yamunanagar and the appeals arising out of said acquisition had already been decided by this Court, vide order dated 4.10.2012 passed in **RFA No.1955 of 2005 (Swaran Singh v. State of Haryana)**, which has been upheld by the Hon'ble Supreme Court as well, order dated 4.10.2012 deserves to be followed in the instant set of appeals. In this regard, it is pertinent to note here that land measuring 43 acres, out of the revenue estates of villages Bhatauli and Khera was acquired vide notification dated 28.4.1999 under Section 4 of the Act, for establishment of Police Line and quarters for police staff at Yamunanagar. Market value of

the land acquired for establishment of police line, came to be assessed by this Court at Rs.1560/- per square meter vide its order dated 4.10.2012 passed in **Swaran Singh's** case (supra). It has also not been in dispute that the order passed by this Court in **Swaran Singh's** case (supra) has been upheld by the Hon'ble Supreme Court. In the instant acquisition, land measuring about 45.17 acres has been acquired, out of the same revenue estate of village Khera itself, besides the other land acquired from adjoining villages, but vide same notification dated 20.9.2004 and for the same purpose as well.

Before accepting the above-said arguments raised on behalf of the land owners, the arguments raised by the learned counsel for the State are to be dealt with. Placing heavy reliance on the above-said layout plan, site plans and draft development plan, particularly for the purpose of pointing out of distance between the land acquired in **Swaran Singh's** case (supra) and the land acquired by way of instant acquisition, learned counsel for the State would contend that the order passed by this Court in **Swaran Singh's** case (supra) has no relevance and it cannot be made the basis for assessing the market value of the acquired land, under any circumstances. Learned counsel for the State next contended that the land owners can be held entitled at best to that amount of compensation which has been claimed by them, on the basis of different sale-deeds particularly Ex.P2 and ExP8 (Sale Deed No.5674 dated 11.8.2004). He submits that since two these sale-deeds were registered immediately before notification under Section 4 of the Act, these were the most relevant sale instances. He concluded by submitting that once the sale exemplars from the different villages were available on record, only those sale-deeds should be made the basis for

assessing the market value of the acquired land, instead of placing reliance on the order passed in **Swaran Singh's** case (supra).

Giving anxious consideration to the above-said arguments raised on behalf of the State, this Court feels no hesitation to conclude that despite making his best efforts, learned counsel for the State could not substantiate any of his arguments. It is so said because the State or the beneficiary department did not make any kind of effort to produce any kind of evidence before the learned reference court, for the reasons best known to them. All the evidence produced by the land owners has gone completely un rebutted and uncontroverted on record. When confronted with this fact situation, learned counsel for the State has no answer and rightly so, it being a matter of record. Further, interestingly learned counsel for the State did not make even a passing reference to sale-deed dated 24.8.2004 Ex.P5 which discloses the highest market value of the acquired land. So far as the distance between the land acquired for Police Line in **Swaran Singh's** case (supra) and the acquired land, in the present set of appeals is concerned, it is also a matter of record. Maximum distance, as pointed out by learned counsel for the State was 2.55 kms which has not been found more than 3 kms, from any angle.

Perusal of the impugned award passed by the learned reference court makes an interesting reading, particularly the findings recorded in paras 36, 38 and 40 thereof. Sale-deed Ex.P5 pertaining to village Bhatauli, whereby land measuring 5 kanals was sold on 24.8.2004 at the rate of Rs.48 lacs per acre, has been ignored by the learned reference court, saying that it was not adjoining to revenue estate of village Khera. There is no denying the fact that village Bhatauli and village Khera were adjoining with each other,

as clear from abovesaid site plans. The learned reference court has proceeded on a factually incorrect approach, while saying that villages Darajpur and Khera were adjoining with each other, which was contrary to record. This finding recorded in para 38 of the impugned award has been found to be a perverse finding. Learned reference court has failed to appreciate the topography of the area and the distance between villages Khera and Darajpur, because there were other villages in between, thus, villages Darajpur and Khera cannot be said to be adjoining with each other. Such a patently illegal finding cannot be upheld, under any circumstances.

Now the next question that arises for consideration of this Court is, whether a judicial precedent available in the form of order dated 4.10.2012 passed by this Court in **Swaran Singh's** case (supra), is to be given preference over and above the above-said sale deeds produced on record by the land owners. So far as the evidence on the part of State is concerned, no evidence, whatsoever, has been produced, as noticed hereinabove, of course, except the above-said layout plan, site plans and development plan.

Hon'ble Supreme Court in more than one cases including in the case of **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 to receive the best price for their acquired land. Similarly, the observations made by the Hon'ble Supreme Court in paras 17 and 18 of its judgment in **Udho Dass v. State of Haryana, 2010 (12) SCC 5**, which can be gainfully followed in the present case, 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 this regard, it is also relevant to refer to the new Land Acquisition Act known as 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the New Act'). The legislature has found the Land Acquisition Act, 1894 (for short 'the Old Act') to be an outdated law, because of which it was thought appropriate to bring the new piece of legislation in the form of the New Act. The statement of objects and reasons for framing the New Act are not being reproduced here for the sake of brevity and only highlights thereof would suffice, which read as under:-

“HIGHLIGHTS OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 (30 OF 2013)

- *Payment of compensation upto four times the market value in rural area and two times the market value in urban areas.*
- *To address historical injustices, the Law applies retrospectively to cases where no land acquisition award has been made.*
- *No one shall be dispossessed until and unless all payments are made and alternative sites for the resettlement and rehabilitation have been prepared.*
- *Compensation to those who are dependent on the land being acquired for their livelihood.*

- *In cases where Public-Private Partnership PPP projects are involved or acquisition is taking place for private companies, the Act requires the consent of not less than 70 per cent and 80 per cent respectively (in both cases) of those whose land is sought to be acquired.*
- *To safeguard Food Security and to prevent arbitrary acquisition, the Act directs States to impose limits on the area under agricultural cultivation that can be acquired.*
- *In case, land remains unutilized after acquisition, the new Act empowers State to return the land either to the owner or to the State Land Bank.*
- *No income-tax shall be levied and no stamp duty shall be charged on any amount that accrues to an individual as a result of the provisions of the new Law.*
- *Where acquired land is sold to a third party for a higher price then 40 percent of the appreciated land value (or profit) will be shared with the original owners.*
- *The Act requires a Social Impact Assessment study to be conducted for every acquisition of land.”*

Bare reading of abovesaid highlights of the New Act would show that some of its provisions have been made applicable retrospectively with a view to address historical injustices, which were being done to the land owners under the Old Act.

So far as the distance between the land acquired in **Swaran Singh's** case (supra) and in the present set of appeals is concerned, the judgments rendered by the Hon'ble Supreme Court in **Smt.Ashrafi and others v. State of Haryana and others, 2013 (5) SCC 527, Kashmir Singh Vs. State of Haryana, 2014 (2) SCC 165** and **Thakarsibhai Devjibhai and others v. Executive Engineer, Gujarat and another, AIR 2001 SC 2424** clearly support the claim of the appellants-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 aptly apply to the facts of 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.”

Since this Court in **Swaran Singh's** case (supra) has already

examined all the relevant positive as well as negative determinative factors for assessing the market value of the land acquired out of village Khera itself, this Court feels no hesitation to conclude that the said judicial precedent deserves to be given preference over and above the sale instances produced on record by the land owners. The argument raised by the learned counsel for the State in this regard that the land owners cannot be granted higher compensation than what they have claimed, has been found wholly misplaced, being contrary to the law laid down by the Hon'ble Supreme Court, in its very recent judgment dated 18.2.2016, rendered in **Civil Appeal No.2714-2721 of 2012 (Ashok Kumar and another etc. v. State of Haryana)**.

Interpreting the scope and ambit of the duty cast on the Court for granting just and fair amount of compensation for the acquired land and referring to Section 25 of the Act, Hon'ble Supreme Court held as under:-

“It is for the Court, in the facts and circumstances of each case, to award just and fair compensation. Prior to amendment Act 68 of 1984, the amount of compensation that could be awarded by the Court was limited to the amount claimed by the applicant.

Section 25 read as under -

“Section 25. Rules as to amount of compensation -

(1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the court shall not be less than, and may exceed, the amount awarded by the Collector.”

The amended Section 25 reads as under:

“Section 25. Amount of compensation awarded by Court not to be lower than the amount awarded by the Collector- The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11.”

The amendment has come into effect on 24.09.1984.

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[1] 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[2], 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[3], 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. Raghubir 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.” Further, in Bhimasha v. Special Land Acquisition Officer and others[4], 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. In the case of the appellants herein, it is an admitted position that the properties do not abut the national highway. Admittedly, it is situated about 375 yards away from the national highway and it appears that there is only the narrow

Nahan Kothi Road connecting the properties of the appellants to the national highway.”

Learned counsel for the State raised another argument that even if the order passed in **Swaran Singh's** case (supra) is to be followed then a reasonable cut should be applied. However, this argument is to be noted to be rejected. The reason to say so is that while deciding **Swaran Singh's** case (supra), this Court had already applied a reasonable cut. Further, the judgment of this Court in **Swaran Singh's** case (supra) has already been upheld by the Hon'ble Supreme Court. In such a situation, another cut is not warranted to be imposed in the present set of appeals.

Learned counsel for the State has also placed reliance on an order dated 8.12.2008 passed by this Court in RFA No.6 of 2008 (State of Haryana v. Seema Rani and others), which has also been upheld by the Hon'ble Supreme Court, vide its order dated 20.11.2014 passed in **SLP (C) No.25438 of 2009 (State of Haryana v.Thakurdwara Gunjawala and others)**. However, the order passed by this Court in **Seema Rani's** case has not been found to be of any help to the learned counsel for the State, for the reason that the same is distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundra (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

Further, when **Seema Rani's** case (supra) was decided by this Court, the judgment in **Swaran Singh's** case (supra) was not even available as it was rendered about four years later. It is also pertinent to note in this

regard that the land owners of a later acquisition cannot be denied the benefit of any evidence, including by way of a judicial precedent, which was either not available to the land owners of an earlier acquisition, as in the cases in hand, or could not be availed for the reasons best known to such land owners. Any litigant who is vigilant about his/her rights, while pursuing a litigation, cannot be made to suffer for none of his/her fault, only because a similarly situated but negligent litigant could not avail the similar benefit.

Keeping in view the totality of facts and circumstances of the case noticed hereinabove and proceeding on a holistic, pragmatic and constructive approach, with a view to complete and substantial justice between the parties, this Court is of the considered view that the land owners in the instant set of appeals are entitled for the benefit of the order dated 4.10.2012 passed by this Court in **Swaran Singh's** case (supra).

As noticed above, land in **Swaran Singh's** case (supra) was acquired vide notification dated 28.4.1999, whereas in the present case, it was acquired vide notification dated 20.9.2004, thus, there was a time gap of about 5 ½ years, to be precise 5 years and 5 months. As per the law laid down by the Hon'ble Supreme Court in **The General Manager, Oil & Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel & another, 2008(14) SCC 745** and **Smt.Ashrafi and others v. State of Haryana and others, 2013 (5) SCC 527**, as well as in **Ashok Kumar and others v. State of Haryana, 2015 (3) Scale 242**, the land owners would be entitled for 12% annual increase, on cumulative basis, for this time gap of 5 years and 5 months. Granting the benefit of 12% annual increase on cumulative basis, which by now is a general rule, for the above-said time gap of 5 years and 5 months, on the market value assessed by this Court in

Swaran Singh's case (supra), amount comes to Rs.2886.70 paise per square meter and the same is rounded off to Rs.2887/- per square meter. Accordingly, the land owners are held entitled to receive the compensation for their acquired land, at the rate of Rs.2887/- per square meter from the date of notification under Section 4 of the Act.

Coming to the belting system, it was wrongly adopted by LAC and illegally upheld by the learned reference court. It is not in dispute that the total land was acquired for one and the same purpose and by the same notification. Every piece of acquired land was going to be put to the same use i.e. for construction of Dadupur-Nalvi Canal. In such a situation, exact location of any piece of land out of the acquired land, would be hardly of any consequence, particularly when the total acquired land was situated at prime location and very close to Jagadhri City.

Land of village Khera was abutting the National Highway No.73. Revenue estates of all other villages were adjoining with each other including the village Khera. Different site plans would show that villages Khera, Sudhal as well as Sudhail were adjoining with each other. Similarly, the revenue estates of other villages were also adjoining. It is not even the argued case on behalf of the State of Haryana that there was any revenue estate coming in between wherefrom land might have not been acquired for construction of this Shahbad Feeder. In this view of the matter, it can be safely concluded that the belting system was not warranted to be adopted in the present case. The finding recorded by the learned reference court in this regard, cannot be sustained and the same is hereby set aside.

The above-said view taken by this Court, on the belting system, also finds support from more than one following judgments, of the Hon'ble

Supreme Court as well as this Court: -

1. **Union of India Vs. Harinder Pal Singh and others,**
2005 (12) SCC 564;
2. **Udho Dass Vs. State of Haryana,** 2010 (12) SCC 51;
3. **Ashrafi and others Vs. State of Haryana and others,**
2013 (5) SCC 527;
4. ***Kehar Singh Vs. Punjab State, 1992 (1) R.R.R. 81 (P&H);***
5. ***Harinderpal Singh Vs. Punjab State through the Collector, Amritsar, 1997 (3) RCR (Civil) 431 (P&H);***
6. ***Union of India Vs. Dr. Balbir Singh, 1999 (2) RCR (Civil) 546 (P&H);***
7. ***Pawan Kumar and another Vs. Land Acquisition Collector and others, 2001 (1) RCR (Civil) 598 (P&H);***
8. ***Harjit Singh @ Kaka Singh (died) Vs. State of Punjab and another, 2004 (1) RCR (Civil) 484 (P&H);***
9. ***Smt. Mahabiri Devi and others Vs. State of Haryana and another, 2005 (4) RCR (Civil) 142 (P&H);***
10. ***Gulzar Singh Vs. State of Haryana, 2006 (3) RCR Civil) 174 (P&H);***
11. ***Kashmira Singh and others Vs. Land Acquisition Tribunal Ludhiana Improvement Trust through its President and others, 2006 (2) L.A.R. 69.(P&H);***
12. ***Gursher Singh and others Vs. President, Improvement Trust Tribunal, Jalandhar and others, 2007 (1) RCR (Civil) 429 (P&H);***
13. ***Baru Ram and others Vs. State of Haryana and***

another, 2010 (3) RCR (Civil) 754. (P&H).

Another equally important question of law that falls for consideration of this Court is whether the land owners are entitled for severance charges. In the very nature of things, construction of canal would bifurcate the land of land owners. It is clear from the site plans that construction of Dadupur-Nalvi Canal, has, as a matter of fact, bifurcated the land of the land owners. It goes without saying that neither it would be feasible nor practically possible for the authorities of the Irrigation Department, to provide culverts to the land owners at short distances and in the absence thereof, the land owners will have to cover long distance to approach their unacquired land for the purpose of cultivation. Covering long distances by the land owners will add to expenses for cultivation, to be incurred by the land owners, which would substantially reduce the net agricultural income. In such a situation, the land owners would be entitled for a reasonable compensation on account of severance charges.

Since the land owners will have to face the serious difficulty, as noticed hereinabove, while cultivating their unacquired land and that too for all times to come, it would be just and reasonable to grant 30% of the above-said market value, as compensation, on account of severance charges. Should there be any ambiguity, it is clarified that only those land owners would be entitled for the compensation on account of severance charges whose land, as a matter of fact, stood bifurcated because of instant acquisition. Ordered accordingly.

Let it be specifically recorded here that no other better evidence or 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 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 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.2887/- per square meter, from the date of notification under Section 4 of the Act. The land owners are also held entitled to receive 30% of the above-said market value, as compensation, on account of severance charges. Besides this, the land owners shall be entitled to all the statutory benefits available to them under the relevant provisions of the Act.

Resultantly, with the observations made above, all the appeals as well as cross-objections stand disposed of, in the afore-said terms, however, with no order as to costs.

5.5.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE