IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA NO. 2322 of 2011 (O&M)
DECIDED ON : 28.03.2016

Usha Rani and others

...Appellants

versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Yash Paul Khullar, Advocate,
for the appellant in
RFA No. 2322 of 2011.

Mr. Vishal Ranjan, Advocate for
Mr. Anish Setia, Advocate,
for the appellant in
RFA No. 2313 of 2011.

Mr. Shailendra Jain, Senior Advocate with
Mr. Sanjeev Gupta, Advocate,
for the appellant (s) in
RFA Nos. 3402 and 3403 of 2011.

Mr. Rohit Rana, Advocate for
Mr. Kunal Dawar, Advocate,
for the appellant in
RFA No. 7483 of 2012.

Mr. M. S. Yadav, Advocate for
Mr. J. S. Hooda, Advocate,
for the appellant (s) in
RFA Nos. 2813 to 2818 of 2011,
225 and 1205 of 2012 and
No. 5660 of 2013.

Mr. Rajiv Sharma, Advocate,
for the appellant (s) in
RFA Nos. 7423 to 7434 of 2012.

Mr. Kul Bhushan Sharma, Advocate,
for the appellant in
RFA No. 684 of 2011.

Mr. Shiv Kumar, Advocate,
for the appellant (s) in
RFA Nos. 1069 to 1072 of 2011.

Mr. Abhinash Jain, AAG, Haryana.

Mr. Pritam Saini, Advocate,
for respondent-HSIIDC.

RAMESHWAR SINGH MALIK, J. (ORAL)

The instant batch of 50 appeals bearing RFA Nos.684 of 2011, 1069 to 1072 of 2011, 2313 of 2011, 2322 of 2011, 2813 to 2818 of 2011, 3402 and 3403 of 2011, 225 of 2012, 594 to 601 of 2012, 1152 & 1153 of 2012, 1205 of 2012, 1555 of 2012, 1564 of 2012, 5223 and 5224 of 2012, 7423 to 7434 of 2012, 7483 to 7488 of 2012 and 5660 of 2013 filed by the land-owners, is being decided vide this common order, as all these appeals arise out of same acquisition and raise identical question of law and facts. However, with the consent of learned counsel for the parties and for the facility of reference, the facts are being taken from **RFA No. 2322 of 2011** titled as, **"Smt. Usha Rani and others versus State of Haryana and others".**

Briefly put, the facts necessary for disposal of present bunch of appeals are that State of Haryana sought to acquire land measuring 299 acres 02 kanals 05 marlas, at public expenses for public purpose; namely for construction of Kundli-Manesar-Palwal Expressway (for short "KMP Expressway"), to be constructed by Haryana State Industrial and Infrastructure Development Corporation (for short "HSIIDC"). Accordingly, notification dated 25.08.2005 was issued under Section 4 of the Land Acquisition Act, 1984 (for short "the Act") which came to be followed by notification dated 14.10.2005 under section 6 of the Act. The land out of as many as 08 revenue estates was sought to be acquired and details thereof are as under :-

S.No.	*Name of village*	*ADJ Award Date*	*Area of land acquired*
1	Bamnika	22/12/2010	198 Kanals 12 Marlas
2	Chirawata	11/06/10	123 Kanals 09 Marlas
3	Khusrupur	06/10/10	50 Kanals 14 Marlas
4	Gelpur	26/02/13	285 Kanals 17 Marlas
5	Ratipur	20/09/10	400 Kanals 12 Marlas
6	Rajolka	16/10/10	210 Kanals 08 Marlas
7	Jodpur	31/08/10	180 Kanals 18 Marlas
8	Rehrana	30/11/11	443 Kanals 10 Marlas

The Land Acquisition Collector (for short "LAC"), vide his above said different but identical Awards, assessed the market value of the total acquired land at ₹12,50,000/- per acre. LAC did not resort to any belting system. Dissatisfied with the amount of compensation awarded by LAC, the land-owners filed their objections under Section 18 of the Act and as a consequence thereof, as many as 205 land references were forwarded. The learned reference Court vide its different but identical Awards passed between 11.06.2010 to 07.04.2013, dismissed all the land references of the land-owners.

Feeling aggrieved against the impugned Awards passed by learned reference Court, the land-owners have approached this Court by way of instant set of appeals. The land-owners are seeking enhancement in the amount of compensation for their acquired land.

Opening his arguments, learned senior counsel for the land-owners submits that the learned reference Court has misdirected itself while not considering the solitary sale instance contained in Exhibit P-1 for the purpose of assessing the market value of acquired land. He further submits that since the sale instances contained in Exhibit RW2/C and RW2/D relied upon by the respondent-State were pertaining to undervalue and distressed sales, both the sale instances were liable to be excluded from the consideration for the purpose of assessing the market value. Both these sale instances were not only hit by Section 25 of the Act, disclosing much less market value than the value assessed by LAC but these sale instances were also liable to be ignored on merit as well, because these were not disclosing the true market value and were pertaining to distress sales.

Learned senior counsel for the appellants/land-owners would next contend that since in many of the cases small pieces of land were acquired, which was the only land owned by the land-owners, the sale instance contained in Exhibit P-1, though pertaining to a piece of land measuring 02 kanals yet would be very relevant and applicable because of peculiar facts and circumstances of the case in hand. While referring to the provisions of law contained in Section 14, 15 and 50 of the Act, learned senior counsel for the land-owners submits that in fact the beneficiary department as well as the State had an opportunity to produce these sale deeds Exhibit RW2/C and RW2/D before LAC himself but they have chosen not to do so for the reasons best known to them. It is too late for the respondents to place reliance on these two sale deeds at this belated stage.

Placing heavy reliance on the sale instance Exhibit P-1, he submits that since the total acquired land was going to be put to its optimum use without wasting any part thereof, no cut is warranted to be imposed on the market value disclosed in the sale deed Exhibit P-1. In support of his contentions, learned senior counsel has placed reliance on the following judgments of Hon'ble Supreme Court and different High Courts including this Court :-

1. "Printers House Pvt. Ltd. vs. Mst. Saiyadan (Deceased) by her L.Rs 1994 AIR (SC) 1160;
2. "State of W.B vs. Secretary, Union Club, Purulia" 1972 AIR (Calcutta) 225;
3. "Zile Singh vs. State of Haryana and others" RFA No.1505 of 2003 decided on 26.04.2010.
4. "Thakarsibhai Devjibhai and others vs. Executive Engineer, Gujarat and another" AIR 2001 Supreme Court 2424.
5. "Harbans Singh and others vs. State of Punjab through the Land Acquisition Collector, Patiala" 2006 (1) RCR (Civil) 634;
6. "The General Manager, Oil and Natural Gas Corporation Limited vs. Rameshbhai Jivanbhai Patel and another" 2008 (14) Supreme Court Cases 745;
7. "Subh Ram and others vs. State of Haryana and another" 2010 (1) SCC 444;
8. "Haryana State Industrial Development Corporation vs. Pran Sukh and others" 2010 (11) SCC 175;
9. "Chiman Lal Hargovinddas vs. Special Land Acquisition Officer, Poona" 1988 AIR (SC) 1652;
10. "Lal Chand vs. Union of India and another" 2010 (3) RCR (Civil) 634;
11. "Mehrawal Khewaji Trust (Regd.) Faridkot and others vs. State of Punjab and others" 2012 (2) RCR (Civil) 893.

On the contrary, learned counsel for the beneficiary department (HSIIDC) has vehemently contended that sale deed Exhibit P-1 was not comparable sale instance being only of 02 kanals of land. Placing reliance on the other sale deeds Exhibit RW2/C and RW2/D, he submits that these could not be produced and relied upon by the State as well as beneficiary department before LAC because of the policy decision of the State government, which was binding on the beneficiary department as well. He further submits that the beneficiary department as well as the State were entitled to place reliance on these sale deeds before reference Court as well as before this Court, despite these being hit by Section 25 of the Act. He also submits that vide sale deed Exhibit P-1, the land measuring 02 kanal was purchased by the management of DAV School for the purpose of extension of existing school, because of which this deed has not disclosed true market value, hence cannot be relied upon.

In the alternative, learned counsel for the beneficiary department next contended that even if no development costs were involved, as no land was supposed to be left for carving out any park, green belt, or other sites of public utility, yet a reasonable cut is to be applied on the market value disclosed in sale deed Exhibit P-1. He further submits that the cut is applied due to smallness of land sold under sale deed Exhibit P-1. To buttress his above said argument, learned counsel for the beneficiary department places reliance on the following judgments :-

1. "Lal Chand vs. Union of India and another" 2010 (3) RCR (Civil) 172;

2. "Land Acquisition Officer, Revenue Divisional Officer, Chittoor vs. Smt. L. Kamalamma (dead) by Lrs. And others" 1998 AIR (SC) 781;

3. "Mehrawal Khewaji Trust (Regd.) Faridkot and others vs. State of Punjab and others" 2012 (2) RCR (Civil) 893;

4. "Nirmal Singh Etc. vs. State of Haryana through Collector" 2014 (4) RCR (Civil) 782;

5. "Union of India vs. Raj Kumar Baghal Singh (Dead) through Lrs and others" 2015 (1) SCC (Civil) 17;

6. "Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona" 1988 AIR(SC) 1652;

7. "Union of India and another vs. Ram Phool and another" 2003 (10) SCC 167;

8. "Collector of Lakhimpur vs. Bhuban Chandra Dutta" 1972 (4) SCC 236;

9. "Smt. Kausalya Devi Bogra and others vs. Land Acquisition Officer, Aurangabad and another" 1984 (2) SCC 324 and

10. "Administrative General of West Bengal vs. Collector, Varanasi" 1988 AIR (SC) 943.

Having heard learned counsel for the parties at considerable length, after careful perusal of the record and giving thoughtful consideration to the rival contentions of both the parties, this Court is of the considered opinion that the appeals filed by the land-owners deserve to be partly allowed suitably enhancing the amount of compensation for their acquired land. To say so, reasons are more than one, which are being recorded one after another.

Since the land-owners, in all these appeals, have placed heavy reliance on the sale instance Exhibit P-1, whereby the land measuring 02 kanals out of the revenue estate of village Khusrupur was sold, it would be appropriate to deal with first about the applicability of this material piece of evidence in the form of Exhibit

P-1. The authenticity or genuineness of this sale deed had never been questioned by the respondents, at any relevant point of time. The only argument raised by learned counsel for the beneficiary department in this regard is that this sale deed was not comparable because a small piece of land was sold through this sale deed and also that land by way of this sale deed Exhibit P-1 was purchased by the management of a School.

After giving anxious consideration to the argument raised by learned counsel for the beneficiary department in this regard, this Court is of the considered view that both the arguments raised by learned counsel for the beneficiary department are wholly misplaced and the same are to be noted to be rejected. It is so said because once the authenticity or genuineness of a particular sale deed has not been doubted even by the beneficiary department, it cannot be thrown out of consideration only for the reason that it was pertaining to a small piece of land. The sale deed Exhibit P-1 was pertaining to land measuring 02 kanals, which would be more than 1200 square yards and it cannot be said to be a very small piece of land to exclude it from consideration.

Except this sale deed Exhibit P-1, admittedly there is no other sale instance available on record which might be considered for the purpose of assessing the market value of the acquired land. The applicability of sale instances Exhibit RW2/C and RW2/D would be dealt with slightly later. Who were the parties to the sale deed and what was the purpose of purchase of land sold by way of Exhibit P-1 would be hardly of any consequence in view of law laid down by Hon'ble Supreme Court in **Pran Sukh's case (supra).** Having said that, this

Court feels no hesitation to conclude that the sale instance contained in Exhibit P-1 is very much applicable and is relevant piece of evidence for the purpose of assessing the market value of acquired land.

Coming to the applicability of sale instances contained in Exhibits RW2/C and RW2/D, sought to be relied upon by learned counsel for the beneficiary department, this Court is of the considered view that these cannot be taken into consideration for more than one reasons. A bare reading of the Award passed by LAC would show that although a senior officer of the rank of Deputy General Manager, HSIIDC, namely Shri Bhag Mal appeared before LAC yet neither these sale deeds were produced nor any reliance was placed on these sale deeds Exhibit RW2/C and RW2/D.

Despite there being an opportunity to place reliance on these documents, the beneficiary department thought it appropriate not to do so for the reasons best known to it. So far as the powers of LAC under the Act are concerned, he performs his duties as a civil Court as per Sections 14, 15 and 50 of the Act. The provisions contained in Sections 14, 15 and 50 of the Act deserve to be referred here for ready reference and the same read as under :-

> **14. Power to summon and enforce attendance of witnesses and production of documents –** For the purpose of enquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner as is provided in the case of a Civil Court under the [Code of Civil Procedure, 1908 (5 of 1908)].
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> **15. Matters to be considered and neglected –** In determining the amount of compensation, the Collector

shall be guided by the provisions contained in Sections 23 and 24.

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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 proceedings 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".

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It was not the duty of LAC to direct the beneficiary department to come with a particular piece of evidence in its favour. The onus would be on the litigating party to produce relevant evidence on which it was intending to place reliance. It is also a matter of record that LAC has awarded an amount of ₹12,50,000/- per acre, whereas the price disclosed in these two sale deeds was much less i.e only ₹3,13,027/- per acre.

Although learned reference Court as well as this Court would have no jurisdiction to grant the amount of compensation lessor than what had been assessed by the LAC, yet while deciding the claim of land-owners for further enhancement of compensation, the sale deeds relied upon by the beneficiary department or the State, Exhibit RW2/C and RW2/D in the present set of cases, can be considered for the purpose of assessing market value by this Court. Such sale deeds cannot be rejected only because these are hit by Section 25 of the Act. However, the sale instances can be excluded from the zone of consideration, on merits of such sale deeds, including being under value and distressed sales, in view of law laid down by Hon'ble Supreme Court in **Lal Chand's case (supra)**.

A bare glance and comparison of the Award passed by LAC, assessing the market value of the acquired land at the rate of ₹12,50,000/- per acre, with these two sale deeds Exhibit RW2/C and RW2/D, would leave no manner of doubt that both these sale deeds were the result of either under-valuation or being distressed sales. In either of the two situations, these two sale deeds are liable to be put out of consideration because of their own individual merits coupled with peculiar facts and circumstances of the cases in hand.

The above said view taken by this Court also finds support from law laid down in **Lal Chand's case (supra)** as well as **Subh Ram's case (supra)**. It is also supported by a Division Bench judgment of Calcutta High Court in **"State of W.B vs. Secretary, Union Club, Purulia" 1972 AIR (Calcutta) 225** which was followed by this Court in the case of **"Zile Singh vs. State of Haryana and others"** RFA No. 1505 of 2003 decided on 26.04.2010.

The relevant observations made by Hon'ble Supreme Court in **Lal Chand's case (supra)** which can be gainfully followed in present case, read as under :-

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23. The High Court also rejected Ex.R3 to R7 relied upon by the respondents, solely on the ground that the prices

therein were lower than the market value offered by Land Acquisition Collector and therefore, they had to be excluded under Section 25 of the LA Act. Section 25 provides that the amount of compensation awarded by a reference court shall not be less than the amount awarded by the Collector under Section 11. We fail to see how the said section has any relevance in regard to determination of market value as contrasted from award of compensation. If the sale deeds relied on by the respondents showed a particular market value, they cannot be ignored merely because the Collector had awarded compensation at a higher rate in regard to the acquired land. All that section 25 requires is that courts should not award an amount which is less than what is awarded by the Land Acquisition Collector, even if the evidence may show a lesser market value. So, the bar under section 25 of the LA Act is not in regard to determination of a market value, which is less than what was awarded by the LAO. The bar is only upon the reference court (or any higher court) reducing the compensation awarded by the Land Acquisition Collector. The fact that the the Land Acquisition Collector has awarded compensation at a particular rate does not mean that the sale deeds which are otherwise reliable, cannot be relied upon to find out what was the real market value. Further the very assumption that all awards made by the Collector were at a rate higher than what was disclosed by the sale deeds (Ex.R3 to R7) is also not correct. The Land Acquisition Collector awarded a sum of ₹2600/- to ₹3800/- per bigha in regard to acquisitions under notifications dated 13.02.1981 and 20.02.1981, ₹6500/- in regard to acquisition under notification dated 13.03.1981. These amounts were certainly lower than the market value shown by Ex.R3 to R7. Even in regard to the acquisition under notification dated 13.12.1981, the award by the Collector at ₹7,000/- and ₹9,000/- were lower than the value disclosed by Ex.R3 to Ex.R7. As noticed above, these sale deeds show that the market value was around Rs.9000/- per bigha in February to June 1981 and 10,000 to 11,000 per bigha between July, 1981 and November, 1981. The Land Acquisition Officer awarded ₹10,840/- (which is more than the price shown by Ex.R3 to Ex.R7) in regard to only some lands acquired under the December, 1981 acquisition. Be that as it may. As the sale deeds (Ex.R3 to Ex.R7) relate to sales of lands in Rithala Village, they cannot be excluded from consideration merely on the ground that what has been awarded by the Land Acquisition Collector was higher in regard to some of the acquired lands. We accordingly find that the ground on which the High Court excluded the sale deeds Ex.R3 to R7 is not sound. The question whether these deeds (Ex.R3 to R7) should be excluded on any other relevant ground will be considered later.

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30. This takes us to the value of "undervalued" sale deeds. When the respondents rely upon certain sale deeds to justify the value determined by the Land Acquisition Collector or to show that the market value was less than what is claimed by the claimants, and if the claimants produced satisfactory evidence (which may be either with reference to contemporaneous sale deeds or awards made in respect of acquisition of comparable land or by other acceptable evidence) to show that the market value was much higher, the sale deed relied upon by the respondents showing a lesser value may be inferred to be undervalued, or not showing the true value. Such deeds have to be excluded from consideration as being unreliable evidence. A document which is found to be undervalued cannot be used as evidence.

31. But we have noticed a disturbing trend in some recent cases, where a court accepts the sale deed exhibited by the claimants as the basis for ascertaining the market value. But then, it also accepts a contention of the claimants that the general tendency of members of public is not to show the real value, but show a lesser value to avoid tax/stamp duty and therefore the sale deeds produced and relied on by them, should be assumed to be undervalued. On such assumption, some courts have been adding some fancied percentage to the value shown by the sale deeds to arrive at what they consider to be 'realistic market value'. The addition so made may vary from 10% to 100% depending

upon the whims, fancies, and the perception of the learned Judge as to what is the general extent of suppression of the price in sale deeds. Such increase, in the market value disclosed by the sale deeds, on the assumption that all sale deeds show a 'depressed' market value instead of the real value, is impermissible. The court can either accept the document as showing the prevailing the market value, in which event it has to be acted upon. Or the court may find a document to be undervalued in which it should be rejected straightway as not reliable. There is no third way of accepting a document, by adding to the market value disclosed by the document, some percentage to off-set the under-valuation. There is no legal basis to proceed on a general assumption that parties, without exception, fail to reflect the true consideration in the sale deeds, that there is always under valuation or suppression of the true price and that consequently, all sale deeds reflect a depressed value and not the real market value and therefore, some percentage should be added to arrive at the real value. Such a course also amounts to branding all venders and purchaser as dishonest person without any evidence and without hearing them. It ignores the fact that government has fixed minimum guideline values and whenever a registering authority is of the view that a sale deed is undervalued, proceedings are initiated for determination of the true market value. It also ignores the fact that a large number of sale deeds are accepted by the registering authorities as disclosing the current market value. Be that as it may.

Whether valuation by the High Court is proper ?

32. The existence of several other sale deeds showing a much higher value and the fact that the Land Acquisition Collector chose to award a higher rate in regard to some of the acquired lands, leads to an inevitable inference that Ex. R3 to R7 were either undervalued or were distress sales. Whatever be the reason, they are liable to be excluded from consideration.

Similarly, observations made by Hon'ble Supreme Court in **Subh Ram's case (supra),** which aptly apply to the facts and circumstances of the present case, read as under :-

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4. Ex.R2 dated 27.11.1984 relied on by the LAC relates to sale of one acre of land for a price of Rs.30,000/- per acre. This is for less than the compensation that was offered by the LAC. Having regard to the larger variance between the market value disclosed by the twelve sale deeds exhibited and relied upon the claimants (average of which is Rs.78/85) and the market value disclosed by Ex.R2 (Rs.6/19 per square yard) relied upon by LAC and having regard to the fact that the value disclosed Ex.R2 was even less than what was offered by the LAC, it has to be inferred that Ex.R2 was either grossly undervalued or was a distress sale and has to be excluded from consideration,

as being unreliable.

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The next equally important question of law that falls for consideration of this Court is, whether any particular percentage of cut is warranted to be applied, on the market value disclosed in the sale deed Exhibit P-1. Applying any particular percentage of cut on given market value disclosed by way of relevant sale deed, is not an absolute rule. Neither it is possible nor desirable to lay down any straightjacket formula in this regard which can be made applicable in every given situation. It is equally true that the peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgment law thereto. Sometimes difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) and others vs. State of Tamil Nadu and others" 2002 (3) SCC 533.**

So far as the peculiar facts and circumstances of the instant case are concerned, the land was acquired for construction of an expressway known as KMP Expressway. Except the construction of road, no other development was required to be carried out by the beneficiary department. Learned senior counsel for the land-owners has been found fully justified in contending that since no land was going to be wasted, in carving out any public parks or other sites of public utility and total acquired land was going to be put to its optimum use, no cut is warranted to be imposed on market value disclosed in the sale deed Exhibit P-1.

The view that has been taken by this Court is also supported by law laid down by a Division Bench of this Court in **Harbans Singh and others' case (supra),** which was, in turn, based the law laid down by Hon'ble Supreme Court. The relevant observations made by the Division Bench in para nos 12 and 13 of the judgment, read as under :-

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12. There is no quarrel with the proposition, as has been laid down by the Hon'ble Apex Court in ***Administrator General of West Bengal v. Collector's case*** *(supra),* that where the sale instance relied upon by the claimants comprised of small plot of land, then a cut has to be applied while evaluating a large tract of land. However, in our considered view, the aforesaid proposition of law would not be attracted to the present case. As has been noticed by the learned reference Court as well as by the learned Single Judge, it is clear that the acquired land was situated within the municipal limits. G.T. Road was situated on one side of the acquired land whereas on the other side of the acquired land a by-pass road connecting Sirhind town with the G.T Road was situated. There were certain shops, workshops, and petrol-pumps near the acquired land. In this view of the matter, certain observations made by the Hon'ble Apex Court in ***Bhagwathula Samanna and others v. Special Tehsildar and Land Acquisition Officer, 1992 (1) RRR 257; 1992 L.A.C.C 314*** may be noticed:

"The proposition that large area of land cannot possibly fetch a price at the same rate at which shall plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted. With regard to the nature of the plots involved in these two cases, it has been satisfactorily shown on the evidence on record that the land has facilities of road and other amenities and is adjacent to a developed colony and in such circumstances it is possible to utilise the entire area in question as house sites. In respect of the land acquired for the road, the same advantages are available and it did not require any further development. We are, therefore, of the view that the High Court has erred in applying the principle of deduction and reducing the fair market value of land from Rs.10/- per square yard to Rs.6.50 per square yard. In our opinion, no such deduction is justified in the facts and circumstances of these cases."

13. Following the aforesaid dictum laid down by the Hon'ble Supreme Court of India, a Division Bench of Madras High Court in ***Special Tehsildar (Adi Dravidar Welfare) v. Abdul Reguman, 1996 L.A.C.C 394*** held as follows :-

> "In our view the observation made by the Supreme Court is squarely applicable to the case in hand. Admittedly, the land in question is already a developed area and situated in an advantageous position and quite suitable for building purpose. It is also proved in evidence that the land in question has all the amenities such as roads, drainage, electricity, communications etc. Therefore, we are of the view that the learned Subordinate Judge is not justified in deducting 20% from the market value. We, therefore, set aside that part of the order of the learned Subordinate Judge, fixing the market value at ₹1325/- less 20%. The cross-objection is, therefore, allowed and the order of the Subordinate Judge is modified to this extent."

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In addition to the above, the Hon'ble Supreme Court in its judgment, on this very issue, in case of **Thakarsibhai Devjibhai's case (supra),** held as under :-

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"11. After accepting this award Ex.16 as the foundation, while fixing the compensation, it fell into error when it reduced the compensation by 25%. The reason for this doing so by the High Court is reproduced below :

"Therefore, if award Ex.16 is to be taken as basis for the purpose of determination of the market value of the acquired lands in the present case, some deduction will have to be made. At the same time, because of distance between the village site and the acquired lands, which was more than the distance between the village site and acquired lands of award Ex.16, some deduction shall also have to be made. In our opinion, if the deduction of large area and small area coupled with further deduction for distance is made in the present case, then it would be reasonable to deduct 25% from the market price arrived at in respect of the acquired lands of award Ex.16.

12. 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 kms 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 Ex.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 ₹10/- per square meter cannot be sustained.

13. For the aforesaid reason, we find, so far the appeals by the claimants has merit. The judgment and order of the High Court to the extent it reduced the compensation by ₹10/- per square meter is set aside and the findings recorded by the Referring Court is upheld. On the other hand, in view of the findings recorded hereinbefore for the same reasons the appeal filed by the State has no merit and are hereby dismissed, cost on the parties."

Again, the Hon'ble Supreme Court in para 8, 9, 11 and 13 of its judgment in Subh Ram's case (supra) held as under:-

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8. Therefore, when deduction is made from the value of a small residential plot towards the development cost, to arrive at the value of a large tract of agricultural or undeveloped land with development potential, the deduction has nothing to do with the purpose for which the land is acquired. The deduction is with reference to the price of the small residential plot, to work back the value of the large tract of undeveloped land. On the other hand, where the value of acquired agricultural land is determined with reference to the sale price of a neighbouring agricultural land, no deduction need be made towards "development cost".

9. It is no doubt true that this Court in some decisions has observed that purpose of acquisition will also be relevant. But it is made in a different context. The Land Acquisition Collectors in some cases adopt belting methods for valuation of land, with reference to a focal point, that is, either with reference to the distance from the main road, or distance from a developed area. Lands that adjoin a developed area or a main road are given a higher value than a land farther away from the road or the developed area. The Land Acquisition Collectors also award different compensation depending upon whether the acquired land is a dry land or wet/irrigated land. When different categories of lands (or lands with different situational advantages) are acquired for the same purpose, say for forming of a residential layout, courts have sometimes felt that determination of their value with reference to previous status or situation should be avoided and a uniform rate of compensation should be awarded for all lands acquired under the same notification. The logic employed by the court is that categorising the lands acquired for a common purpose, say for a residential colony, into high value

irrigated land and low value dry lands is meaningless, as all lands are to be levelled and used for the same purpose, that is, for formation of a residential layout and once the layout is form, it makes no difference whether the land was previously a land with irrigation facilities or a dry land. It is in this context, in some cases, to avoid the need to differentiate the lands acquired under a common notification for a common purpose, and to extend the benefit of a uniform compensation, courts have observed that the purpose of acquisition is also a relevant factor. The said observation may not apply in all cases and all circumstances as the general rule is that the land owner is being compensated for what he has lost and not with reference to the purpose of acquisition.

xx xx xx

11. Deduction of "development cost" is the concept used to derive the "wholesale price" of a large undeveloped land with reference to the "retail price" of a small developed plot. The difference between the value of a small developed plot and the value of a large undeveloped land is the "development cost". Two factors have a bearing on the quantum (or percentage) of deduction in the "retail price" as development cost. Firstly, the percentage of deduction is decided with reference to the extent and nature of development of the area/layout in which the small developed plot is situated. Secondly, the condition of the acquired land as on the date of preliminary notification, whether it was undeveloped, or partly developed, is considered and appropriate adjustment is made in the percentage of deduction to take note of the developed status of the acquired land. The percentage of deduction (development cost factor) will be applied fully where the acquired land has no development. But where the acquired land can be considered to be partly developed (say for

example, having good road access or having the amenity of electricity, water, etc.) then the development cost (that is, percentage of deduction) will be modulated with reference to the extent of development of the acquired land as on the date of acquisition. But under no circumstances, will the future use or purpose of acquisition play a role in determining the percentage of deduction towards development cost.

xx xx xx

13. The legal position is therefore, clear and well settled. But in Atma Singh, after reiterating the said principle regarding deduction of development cost, this court made an observation that no deduction need be made having regard to the purpose of acquisition, which requires to be clarified. We extract the relevant portion below: (SCC pp. 576-77, para 15)

"15. The question to be considered is whether in the present case those factors exist which warrant a deduction by way of allowance from the price exhibited by the exemplars of small plots which have been filed by the parties. The land has not been acquired for a Housing Colony or Government Office or an Institution. The land has been acquired for setting up a sugar factory. The factory would produce goods worth many crores in a year. A sugar factory apart from producing sugar also produces many by-products in the same process. One of the by-products is molasses, which is produced in huge quantity. Earlier, it had no utility and its disposal used to be a big problem. But now molasses is used for production of alcohol and ethanol which yield lot of revenue. Another by product begasse is now used for generation of power and press mud is utilized in manure. Therefore, the profit from a sugar factory is substantial. Moreover, it is not confined to one year but will accrue every year so long as the factory runs. A housing board does not run on business lines. Once plots are carved out after acquisition of land and are sold to public, there is no scope for earning any money in future. An industry established on acquired land, if run efficiently, earns money or makes profit every year. The return from the land acquired for the purpose of Housing Colony, or Offices, or Institution cannot even remotely be compared with the land which has been acquired for the purpose of setting up a factory or industry. After all the factory cannot be set up without land and if such land is giving substantial return, there is no justification for making any deduction from the price exhibited by the exemplars even if they are of small plots. It is possible that a part of the acquired land might be used for construction of residential colony for the staff working in the factory. Nevertheless, where the remaining part of the acquired land is contributing to production of goods yielding good profit, it would not be proper to make a deduction in the price of land shown by the exemplars of small plots as the reasons for doing so assigned in various decisions of this Court are not applicable in the case under consideration."

The above observations in ***Atma Singh, (2008)2 SCC 568*** no doubt seem to suggest that where the acquisition is for a residential layout, deduction towards development cost is a must, but if the acquisition is for an industry which does not require forming a layout of sites, the market value of small residential plots may be adopted without any cuts towards development cost. The said observations are made with reference to the special facts of that case. If they are read out of context to support a contention that the purpose of acquisition is a relevant factor to avoid the deduction of development cost in valuation, it may then be necessary to consider the said observations as having been made per incuriam, as they overlook a mandatory statutory provision' section 24

> (clause fifthly) of the Act and the series of decisions of larger Benches of this Court which hold that when value of large tracts of undeveloped lands is sought to be determined with reference to small residential plots in developed area, it is mandatory to deduct an appropriate percentage towards development cost. But it may be unnecessary to consider whether the observations are per incuriam as para 15 of the decision makes it clear that what is stated therein, is with reference to the special facts of that case, with a view not to disturb the smaller deduction of 10% by the High Court, and not intended to be statement of law.

To be fair to learned counsel for the beneficiary department, there is no dispute about the law laid down in the above said judgments relied upon by him. However, on close perusal of the cited judgments, none of them have been found to be of any help to the beneficiary department, these being distinguishable on facts. Reliance in this regard is placed on the law laid down by Hon'ble Supreme Court in **Padmausundara Rao (Dead) and others' case (supra).**

Reverting to the facts and circumstances of the instant set of appeals and respectfully following the law laid down by Hon'ble Supreme Court, other High Courts, as well as Division Bench of this Court in the cases referred to herein above, it is unhesitatingly held that the sale instance Exhibit P-1 deserves to be taken into consideration for the purpose of assessing market value of the acquired land and no cut is warranted to be imposed on the market value disclosed therein.

The market value disclosed in the sale deed Exhibit P-1 is ₹38,72,000/- though it has been recorded by the learned reference Court on pages 31 and 32 of the paper-book as ₹38,91,200/- per acre. The sale deed Exhibit P-1 was dated 08.08.2003 and there was a time gap of slightly more than two years between this sale deed and the date of notification under Section 4 of the Act which was issued on 25.08.2005. Thus, the land-owners would be entitled for benefit of annual increase of this time gap of two years. By now, it is the general principle to grant the benefit of 12% annual increase, for the time gap.

The Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Regd.) Faridkot and others' case (supra)** has held that the land-owners are entitled for best price of their land acquired. Again, in **"Udho Dass vs. State of Haryana and others" 2010 (12) SCC 51**, the Hon'ble Supreme Court has held that land-owners hardly get duly compensated in the matters of compulsory acquisition. In **General Manager, Oil and Natural Gas Corporation Limited's case (supra)**, the Hon'ble Supreme Court has held that annual increase for urban and semi urban areas could be upto 15% whereas for rural areas 12% annual increase would be reasonable. It was also held in **General Manager, Oil and Natural Gas Corporation Limited's case (supra)** as well as in "**Ashok Kumar and others vs State of Haryana and others" 2015 (3) Scale 242**, that the land-owners would be entitled for annual increase on cummulative basis.

In view of the above said law laid down by the Hon'ble Supreme Court and while striking a balance between the parties, this Court is of the considered view that the land-owners in the instant set of appeals, would be entitled for the benefit of only 12% annual increase for the above said time gap. After granting 12% annual increase on cumulative basis, on the market value disclosed in sale deed Exhibit P-1, the amount comes to ₹48,57,000/- per acre. Accordingly, the land-owners are held entitled to receive the amount of compensation at the uniform rate of ₹48,57,000/- per acre, from the date of notification of Section 4 of the Act.

Let it be specifically recorded here that no better evidence or other judicial precedent was pressed into service nor any other argument was raised on behalf of either of the parties.

Since the appeal bearing RFA No. 2322 of 2011 relates to village Khusrupur and the land-owners of all the other villages place reliance on this very sale deed Exhibit P-1 for the purpose of assessing market value of their acquired land, the claim of land-owners of remaining village have to be dealt with accordingly. It has gone undisputed before this Court that all the above said 08 villages, out of whose revenue estates the land was acquired by way of instant acquisition, were adjoining each other. The purpose of acquisition was the same.

In this view of the undisputed fact situation, coupled with the law laid down by Hon'ble Supreme Court in the cases of **"Ashrafi and others versus State of Haryana 2013 (5) SCC 527, Kashmir Singh versus State of Haryana 2014 (2) SCC 165 and Thakarsibhai Devjibhai's case (supra),** the land-owners of all the remaining 07 villages deserve to be equated with the land-owners of village Khusrupur. Granting any lessor amount of compensation to them would be wholly inadequate.

Considering the peculiar facts and circumstances of the cases noted above, coupled with the law laid down by Hon'ble Supreme Court, as well as different High Courts including this Court, this Court is of the considered view that the appeals filed by the land-owners deserve to be partly accepted and the same are hereby allowed to the extent indicated above. The land-owners are held entitled to receive compensation for their acquired land at the uniform rate of Rs.48,57,000/- per acre, from the date of notification under Section 4 of the Act. Besides this, the land-owners shall also be entitled for all the statutory benefits available to them under the relevant provisions of the Act.

Resultantly, with the observations made above, all these appeals stand disposed of in the above said terms, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

MARCH 28, 2016
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