HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.3733 of 2011 (O&M) and other connected matters
Date of decision:2.6.2016

State of Haryana and others

...Appellant(s)

Versus

Ashok Kumar and another

...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.Rajesh K. Sheoran, Addl.A.G., Haryana.
None for the appellant(s) in RFA No.6102 of 2011.
Mr.Pratap Singh, Advocate for the respondent(s) in RFA No.3733 of 2011.

RAMESHWAR SINGH MALIK, J. (Oral)

This batch of 5 Regular First Appeals, out of which four appeals bearing RFA Nos.3733 of 2011 and 9451 to 9453 of 2014, filed by the State of Haryana and one appeal bearing RFA No.6102 of 2011, filed by the land owners, 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.3733 of 2011 **(State of Haryana and others v. Ashok Kumar and another).**

Facts are hardly in dispute. State of Haryana sought to acquire the land measuring 62 Kanals and 2 Marlas, at public expenses for public purpose namely; for extension of existing Bus Stand at Kaithal. Land was acquired out of two revenue estates. 51 Kanals and 18 Marlas was acquired out of the revenue estate known as Patti Gaddar and remaining land measuring 10 Kanals and 4 Marlas was acquired out of the revenue estate of village Patti Kayasth Seth. Accordingly, notification dated 30.6.2006 came to be issued under Section 4 of the Land Acquisition Act, 1894 (`the Act' for short), which was followed by notification dated 5.12.2006 under Section 6 of the Act. Land acquisition collector (`LAC' for short), vide his common Award No.1 dated 6.10.2008, assessed the market value at the uniform rate of Rs.8,50,000/- per acre.

Dissatisfied with the market value assessed by the LAC, 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 for its decision. Learned reference court, vide its impugned award dated 21.3.2011, decided one land reference and assessed the market value of the acquired land at the rate of Rs.2,000/- per square yard. Remaining three land references were decided by the learned reference court, vide its later award dated 31.1.2014, which was passed following the above-said impugned award dated 21.3.2011. Market value of the acquired land in the later three land references was also assessed at the same rate of Rs.2,000/- per square yard.

Both the parties felt aggrieved against the above-said impugned awards passed by the learned reference court. State of Haryana has filed four appeals, seeking reduction in the amount of compensation granted to the land owners. Three land owners, whose small parcels of land were acquired, have not approached this Court by filing their independent appeals. Land owners, in their above-said appeal, 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 of Haryana have been found without any merit and the same are liable to be dismissed. However, the appeal filed by the land owners deserves 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 hereinafter.

So far as the location and potentiality of the acquired land is concerned, it had never been in dispute. In fact, the learned reference court in paras 22 and 23 of the impugned award has discussed the relevant evidence in this regard, including site plan Ex.P16 available on the Lower Court Record (`LCR' for short). The relevant observations made by the learned reference court in paras 22 and 23 of the impugned award read as under:-

> *"In the wake of the above said evidence it can be readily concluded that the acquired land of the petitioners is adjoining General Bus Stand Kaithal and the acquired land is having frontage of two acres which is abutting National Highway No. 65 i.e. form Ambala to Hisar. It also stands clarified on the records of the case that on one side of the acquired land there is 60 feet wide road which leads to various residential colonies on the rear of the General Bus Stand Kaithal and one side of the acquired land is abutting General Bus Stand, Kaithal. It is also crystal clear that cross the road from the acquired land there is a fully developed Sector 19 and from the testimony of PW8 Balbir Singh Assistant Estate Officer, HUDA Kaithal it can be readily inferred that Haryana Urban Development Authority had been selling commercial sites in Sector 19 almost at the rate of Rs. One lac per sq. yard.*

23. In the first instance the court is to hold whether the acquired land was agricultural land or it is commercial land. The reference can be made to the award itself which has been passed in the present case by the Land Acquisition Collector. The close scrutiny of the award clarifies that absolutely no compensation was awarded by the Land Acquisition Collector towards crops which might be standing in the acquired land. It means that in the year 2006/2008 when the acquisition proceedings were being taken by the Land Acquisition Collector, there were absolutely no crops in the acquired land. From the evidence led on the records of the case and from the site plan Ex. P16, which is the plan of extended municipal limits of Urban Area of Kaithal, it is clear that the acquired land is within the municipal limits. To the mind of this court when the land comes within the municipal limits of Kaithal it looses its significance as the agricultural land and it can always be used for residential or commercial purposes. The acquired land, as a matter of fact, is sandwitched between the Railway Line and the Bus Stand and the acquired land is having frontage of two acres and the rest of the acquire land is abutting on the road having width of 60 feet leading to the residential colonies on the back of General Bus Stand Kaithal. Thus the acquired land is abutting two main roads and could always be developed or reshaped for commercial activities. By no stretch of imagination it can be said that the acquired land is agricultural land. No Khasra Girdawar has been placed on the record by the respondent indicating if the acquired land was being used for agricultural purposes. It is a matter of common sense that any land near the General Bus Stand of particular city starts developing within no time. The acquired land was having thus potentiality and could have been developed into the shopping Malls, Plazas and for allied purposes.

A bare perusal of the above-said observations made by the learned reference court would show that the acquired land was situated at a prime location and was having immense potentiality. It was no more a simple agricultural land. Owing to its location and potentiality, the acquired land could have been easily put to commercial use as it was situated in most happening area. It is also an admitted fact situation that the acquired land was within the municipal limits of Kaithal.

So far as the evidence produced by the State of Haryana is concerned, all the three sale instances relied upon in the form of Exhibits R4 to R6, were rightly discarded by the learned reference court, all having been found hit by the provisions of Section 25 of the Act. It is a matter of record that all the three sale-deeds relied upon by the State were disclosing much less market price than what was awarded by the LAC. However, this Court is not ignoring all these three sale-deeds relied upon by the State before the learned reference court, only on the ground that these were hit by the provisions of Section 25 of the Act, but the same are also being kept out of consideration on their individual merits, as well. It is so said because these three sale-deeds were either undervalued sale transactions or were the result of distress sales. In either of these two situations, all these three sale-deeds relied upon by the State of Haryana have to be kept out of consideration, in view of the judgment of the Hon'ble Supreme Court, passed in **Lal Chand Vs. Union of India and another, 2009(15) SCC 769**.

The relevant observations made by the Hon'ble Supreme Court in para 30 of its judgment in **Lal Chand's** case (supra), which can be gainfully followed here, read as under:-

> "*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."

Coming to the evidence produced by the land owners, they have duly proved on record collector rates in the form of Ex.P9. The list of collector rates was issued by the competent authority for the year 2005-06, which were prevalent at the time of instant acquisition. Besides this, land owners-appellants have also produced sale examplers, which have been referred by the learned reference court in para 24 of the impugned award. There was another relevant piece of evidence duly proved on record by the land owners in the form of Ex.P1 which was a copy of plaint of civil suit. One of the claimants-appellants have entered into an agreement to sell on 30.5.2016 for the acquired land itself with one builder known as `M/s Pink City Buildwell Private Limited, at the rate of Rs.1,48,51,000/- per acre.

This agreement to sell was executed just one month before the date of notification under Section 4 of the Act. The date of execution and registration of sale-deed was mutually fixed between the parties as 30.11.2006. However, before the said date for execution and registration of sale-deed could come, land came to be acquired by the State of Haryana vide notification dated 30.6.2006. Since the land owners have received an amount of Rs.25 lacs towards part payment on account of earnest money and that too by way of cheques, agreement to sell has been duly proved on record and the cogent findings recorded by the learned reference court in para 26 in this regard, deserve to be upheld.

It is also pertinent to note here that market price of the acquired land, as disclosed in the above-said agreement to sell between one of the land owners and M/s Pink City Buildwell Pvt. Limited, as well as the one disclosed in collector rates was almost the same. So far as genuineness of this agreement to sell is concerned, the learned reference court recorded well reasoned finding that authenticity of this document was duly proved on record and there was no scope of any doubt about its genuineness. However, in the peculiar facts and circumstances of the case noticed hereinabove, collector rates Ex.P9 would be the best piece of evidence and it can be safely made the basis for assessing the market value of the acquired land.

It goes without saying that collector rates are always issued by the competent authority of the State and authenticity thereof cannot be doubted. Further, once the authorities themselves have fixed the minimum rate for sale transactions, there cannot be any better evidence than such collector rates. In the present case, Ex.P9 was issued by the competent authority and the collector rates were fixed for the financial year of 2005-2006. Notification under Section 4 of the Act came to be issued during the next financial year, i.e. 2006-07, thus, it can be safely concluded that the collector rates issued vide Ex.P9 were prevalent rates at the time of present acquisition.

As noticed hereinabove, owing to its location and potentiality, the acquired land could have been easily put to commercial use. As rightly noticed by the learned reference court, the acquired land was fit for developing into shopping malls, plazas and for other allied purposes. The collector rate for new bye-pass on which the acquired land was situated was Rs.3,000/- per square yard. It has been so clarified at page 289 of LCR. At the end of this document, the competent authority has clarified as to how the commercial rates shall be applied to a particular area and up to what depth from the road. Para 3 at page 303 of LCR is relevant in this regard.

It has been so clarified that any land abutting on a road in the municipal area, would be treated as commercial up to depth of 50 feet from the road and commercial rates would be applicable for such land. It has been further clarified that till a definite proof is available to the effect that said area was not a commercial but residential area, total area shall be treated to be commercial area even beyond the depth of 50 feet. A bare reading of this document clinches the issue in favour of the land owners. Since this document Ex.P9 disclosing the collector rates for the acquired land, has been issued by the competent authority of the State of Haryana, applicability and authenticity thereof cannot be doubted.

The Hon'ble Supreme Court in **Mehrawal Khewaji Trust (Registered), Faridkot and others v. State of Punjab and others, (2012) 5 SCC 43** and in its recent judgment dated 18.2.2016 passed in **Civil Appeal No.2714-2721 of 2012 (Ashok Kumar and another etc. v. State of Haryana)** held that the land owners are entitled to receive the best price for their acquired land.

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 in **Ashok Kumar's case (supra),** 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 that 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."

Similarly, the Hon'ble Supreme Court in paras 17 and 18 of its judgment in **Udho Dass v. State of Haryana, 2010 (12) SCC 5** held that landowners hardly get due compensation in the matters of compulsory acquisition and the relevant observations 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 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 driblets. 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 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?"

During the course of hearing, when learned counsel for the State was confronted with the above-said factual as well as legal position, he had no answer and rightly so, it being a matter of record. Applicability of collector rates cannot be opposed under any circumstances. The solitary argument raised by the learned counsel for the State that since the acquired land was agricultural land, the collector rates for commercial land cannot be made applicable in the present case is to be noted to be rejected. It is so said because it has already been discussed hereinabove, that owing to its location and potentiality, acquired land was capable of commercial use. It was no more simple agricultural land. Admittedly, it was situated within the municipal area. The acquired land was suitable for shopping malls, plazas and other allied commercial purposes, as rightly observed by the learned reference court as well. In this view of the matter, contention raised by the learned counsel for the State has been found wholly misplaced.

In fact, a bare reading of Ex.P9, which is an official communication disclosing collector rates, itself recognises the nature of the acquired land to be commercial, for the reason that land abutting Jind bye-pass was to be treated as commercial in nature. There is no denying the fact that the acquired land was situated on this Jind bye-pass itself. The second argument raised by the learned counsel for the State was that this case would be covered by the order dated 1.6.2016 passed by this Court in RFA No.3906 of 2006 (Som Nath and others Vs. State of Haryana and others), because the only difference in that case and in the present case, was a time gap of about four years.

This argument raised by the learned counsel for the State has been found without any merit for the reason that the land owners, whose land has been acquired at a later point of time, as in the present case, cannot be denied the benefit of relevant evidence, which was not available to the land owners of earlier acquisition. In the present case, prevailing collector rates by way of Ex.P9, which is being made the basis for assessing the market value of the acquired land, was, as a matter of fact, not available to the land owners of earlier acquisition.

Although, the learned reference court rightly followed the above-said document as Ex.P9 for assessing the market value of the acquired land, yet it misdirected itself while placing reliance on collector rates meant for a different road, i.e., Karnal Road, which was at a distance of 4 kilometers from the acquired land. This patently illegal finding recorded by the learned reference court is not sustainable and the same is hereby set aside. Once the same document Ex.P9 was squarely covering the case of land owners in the present acquisition, the learned reference court ought not have made the collector rates meant for the land situated on Karnal Road, as the basis for assessing the market value of the acquired land. The learned reference court could have and should have easily made the collector rates meant for Jind bye-pass as the basis for assessing the market value of the acquired land, because admittedly the acquired land was situated on Jind bye-pass.

During the course of hearing, learned counsel for the land owners has been found well justified in contending that land owners, in three other land references, whose small pieces of land were acquired, total being 10 Kanals and 4 Marlas out of revenue estate of village Patti Kaisth, could not come to this Court because of bonafide reasons, which were beyond their control. One of the reasons was that they received very meager amount of compensation for their acquired land because very small pieces of land owned by them were acquired.

In view of the above-said undisputed fact situation obtaining in the present case, instant one has been found to be a fit case for invoking the powers under Order 41 Rule 33 of the Code of Civil Procedure, at the hands of this Court. In somewhat similar circumstances, Hon'ble Supreme Court vide its order dated 17.1.2012 passed in **Civil Appeal No.707 of 2012 titled as `Bhagwan Vs. State of Haryana and other**s, observed as under:-

> *"With a view to obviate further litigation in the matter, we also direct that the official respondents shall pay compensation at the same rate to other similarly situated persons who may not have approached the High Court or this Court on account of illiteracy, ignorance, poverty and other similar reasons."*

Scope of Order 41 Rule 33 CPC also fell for consideration before the Hon'ble Supreme Court in the following judgments:-

1 **Pralhad and others Vs. State of Maharashtra and another, 2010 (10) SCC 458**

2. **K.S. Paripoornan Vs. State of Kerala, (1994) 5 SCC 593,**

3. **Union of India Vs. Zora Singh, (1992) 1 SCC 673,**

4. **Prem Chand Vs. Union of India, 2010 (2) RCR (Civil) 622**

5. **Vanarsi Vs. Ramphal, AIR 2004 SC 1989**

6. **Samundra Devi Vs. Narendra Kaur, (2008) 9 SCC 100.**

The relevant observations made by the Hon'ble Supreme Court in para Nos. 17 to 19 of its judgment in **Pralhad's** case (supra), read as under:-

> *"Now, the only question which remains is whether the landowners, without filing an appeal before the High Court from the order of the Reference Court, are entitled*

to the aforesaid benefit on the basis of their application under Order 41 Rule 33 of CPC.

The provision of Order 41, Rule 33 of CPC is clearly an enabling provision, whereby the Appellate Court is empowered to pass any decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case may require. Therefore, the power is very wide and in this enabling provision, the crucial words are that the Appellate Court is empowered to pass any Order which ought to have been made as the case may require. The expression 'Order ought to have been made' would obviously mean an Order which justice of the case requires to be made. This is made clear from the expression used in the said Rule by saying 'the court may pass such further or other Order as the case may require.' This expression 'case' would mean the justice of the case. Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law.

In fact, the ambit of this provision has come up for consideration in several decisions of this Court. Commenting on this power, Mulla (CPC, 15th Edition, pg. 2647) observed that this Rule is modelled on Order 59, Rule 10(4) of the Supreme Court of Judicature of England, and Mulla further opined that the purpose of this rule is to do complete justice between the parties."

In view of the above, while invoking the power under Order 41 Rule 33 CPC, land owners who could not come to this Court because of their illiteracy, ignorance, poverty or any other reasons, are also held entitled to receive the compensation for their acquired land at the same rate of Rs.3,000/- per square yard, from the date of notification under Section 4 of the Act. The concerned authorities of the State including Collector, Kaithal, are directed to ensure payment of same amount of compensation to those land owners for which land owners herein have been found entitled.

In view of what has been discussed hereinabove, this Court feels no hesitation to conclude that Ex.P9, being the best piece of evidence, can be safely made the basis for assessing the market value of the acquired land. As noticed above, collector rates of land abutting Jind bye-pass were Rs.3,000/- per square yard. This Court has found no reason nor any such reason has been pointed out by the learned counsel for the State as well, as to why the land owners in the instant set of appeals, be not held entitled to receive the compensation for their acquired land at these collector rates of Rs.3,000/- per square yard, if not more. Although, there was a time gap of about three months because collector rates issued vide Ex.P9 were for the financial year 2005-06 and date of notification in the present set of appeals was issued on 30.6.2006 and the land owners may be entitled for the benefit of annual increase for this period, yet since time gap was not a substantial one, no benefit of annual increase is being granted to the land owners.

Keeping in view the totality of facts and circumstances of the cased noticed hereinabove and proceeding on a holistic, pragmatic and constructive approach, with a view to do complete and substantial justice between the parties, this Court is of the considered view that the land owners are entilted to receive the compensation for their acquired land at collector rates, provided under the above-said official document available at page 285 of LCR in the form of Ex.P9. Ordered accordingly. Land owners are held entitled to receive the compensation for their acquired land at the rate of Rs.3,000/- per square yard, from the date of notification under Section 4 of the Act.

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 appeal filed by the land owners deserves to be partly accepted and the same is allowed to the extent indicated above. Consequently, the land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.3,000/- per square yard, from the date of notification under Section 4 of the Act. As already noticed hereinabove, the land owners who could not approach this Court, seeking further enhancement in the amount of compensation for their acquired land, shall also be entitled for the same rate of compensation at Rs.3,000/- per square yard, from the date of notification under Section 4 of the Act. Besides this, the land owners shall also 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 stand disposed of, in the afore-said terms, however, with no order as to costs.

2.6.2016 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**