IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RFA No. 1580 of 2012 (O&M)
Date of decision: 24.5.2016

Moti Sagar and others

.. Appellants

Vs.

State of Haryana and another

... Respondents

CORAM:HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. M.L. Sarin, Senior Advocate with
Mr. Nitin Sarin, Advocate
for the appellants
in RFA No. 1580 of 2012.

Mr. Shailendra Jain, Senior Advocate with
Mr. Sanjiv Gupta, Advocate
for the appellants
in RFA No. 305 to 325 of 2012.

Mr. Atul Yadav, Advocate
for the appellants
in RFA No. 618 to 625, 1570 and 1603 of 2012.

Mr. Amit Jain, Advocate
for the appellants
in RFA No. 771 and 894 of 2012.

Mr. Amit Sharma, Advocate for
Mr. Inder Pal Singh Doabia, Advocate
for the appellants in RFA No. 1578 of 2012.

Mr. Rajiv Sharma, Advocate
for the appellants in RFA No. 4062 of 2012.

Mr. Kunal Dawar, Advocate
for the appellants in RFA No. 888 of 2012.

Mr. B.R. Vohra, Advocate

for the appellants in RFA No. 1574 of 2012.

Mr. R.A. Yadav, Advocate
for the appellants in RFA No. 4728 of 2012.

Mr. Arun Beniwal, DAG, Haryana.

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1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

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RAMESHWAR SINGH MALIK, J. (Oral)

This bunch of 39 Regular First Appeals bearing RFA Nos. 305 to 325, 618 to 625, 771, 888, 894, 1570, 1574, 1578, 1580, 1603, 4062 and 4728 of 2012, all filed by the landowners, 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 facility of reference, facts are being culled out from RFA No. 1580 of 2012 (Moti Sagar and others Vs. State of Haryana and another).

Facts are hardly in dispute. State of Haryana sought to acquire land measuring 136.62 acres out of the revenue estate of village Budhera, Tehsil and District Gurgaon, at public expenses for public purpose namely; for Development and Utilisation of land for Extension of Water Works in Gurgaon. Accordingly, notification dated 19.5.2008 was issued under Section 4 of the Land Acquisition Act, 1894 ('the Act' for short), which was followed by notification dated 26.5.2008 under Section 6 of the Act.

The Land Acquisition Collector, ('LAC' for short), vide award dated 21.12.2009, assessed the market value of the acquired land at the uniform rate of Rs. 25 lacs per acre. Dissatisfied with the assessment of market value at the hands of LAC, landowners filed their objections under Section 18 of the Act and as a consequence thereof, 41 land references were forwarded. The learned reference court, vide its common award dated 16.11.2011, assessed the market value of the acquired land at the uniform rate of ₹41, 81,500/-per acre. Neither LAC adopted the belting system, nor it was adopted by learned reference court.

Feeling aggrieved against the abovesaid impugned award dated 16.11.2011 passed by the learned reference court, only the landowners have approached this Court by way of instant set of appeals, seeking further enhancement in the amount of compensation for their acquired land. That is how, all these 39 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, all these appeals filed by the landowners deserve to be partly allowed, suitably enhancing the compensation, for the following more than one reasons.

So far as location of the acquired land is concerned, it was situated on Delhi-Badli road and very close to Delhi Border. A bare perusal of final development plan for controlled areas of Gurgaon-Manesar, in the form of EX. P-62, available at page 595 of the lower court record ('LCR' for short) would make it clear that the acquired land was situated at prime location and it was having immense potentiality. There was 30 meter wide green belt on both sides of this road.

Regarding potentiality of the acquired land, learned reference court, in para 21 and 22 of the impugned award, observed as under:-

> 21. *"The acquired land is in the vicinity of NCR. It is situated at about 04 Kms from the Urban areas of Gurgaon City and at about 05 Kms, as crow flies, from KMP (Kundli-Manesar-Palwal) Expressway, a circular road to avoid the congestion of national capital. The purpose of acquisition was to make provision for the extension of water works to growing Gurgaon city. Thus, had there been any other vacant patch of 142.32 acres land in the entire periphery of Gurgaon city which could be considered as more nearer than the acquired land in question, then the State must have opted for the same instead of going for paving of drinking water pipe lines from Gurgaon city up to village Budhera. If the acquired land was found suitable by the State for a project meant for providing drinking water to Gurgaon City, then the high potential value of the land could be well presumed from the angle of private builders who are mushrooming around the Gurgaon city. Besides, the acquired land is adjacent to village Kherki Majra, Basai and Dhankot and it has been admitted by the witnesses from both the sides that all the land of village Dhankot, Basai and kherki Majra have same potentiality, situation and location and similar valuation as that of the acquired land. It is an open fact that villages Kherki Majra, Basai and Dhankot are surrounding the fully developed residential sectors 9, 9-A,*

10 and 10-A of HUDA. Likewise, village Basai and Kadipur are hardly at a distance of 05 Kms from the acquired land and the market value of the village Budhera and Basai, Kadipur and Dhankot is same. Villages Basai and Kadipur are now almost became the colonies of Gurgaon City. The above fact can be well verified from the Development Plan of Gurgaon. Therefore, Sectors 9, 9A, 10 and 10-A which were carved out from the land of villages Basai, Dhankot and Kherki Majra are not much away to the acquired land and have same potential value as the land in question.

22. There is befitting oral evidence also in support of the fact that potential value of the acquired land is very high on account of lot of development in the vicinity of the acquired land. It has come through witnesses that there exists Sultanpur lake [National Bird Park], factories, farm houses, hospitals etc. near the land in question. There is 22 feet wide rasta to the land. PW5-Ashok Kumar Patwari has brought the Akashshijra of village Budhera and deposed that Budhera village is adjoined to village Dhankot and Kherki Majra in the East. The acquired land and village Dhankot and Kherki Majra are similarly located and have similar potentiality and have similar market value. PW2 Nepal Singh Patwari has brought the Akashshijra EX.PW2/A of village Dhankot and deposed that the boundaries of village Dhankot, Budhera and Kherki Majra adjoins each other. Village Dhankot and Kherki Majra are a part of residential

> *zone. He admitted that prices of the land have increased after these villages became a part of R-Zone (residential zone). BPTP Company has constructed residential houses in village Kherki Majra and Dhankot. Distance between R Zone and acquired land is 1 ½ KM. PW1 Abhey Singh, Lumberdar of village Budhera, by proving photographs Ex.P1 to Ex.P13 deposed that there is rapid hike in the prices of Budhera due to above mentioned buildings and hospitals shown in the photographs. He also admitted that there is a Dental College and one Daya Vihar residential colony near the acquired land. There is also an eye hospital in village Dhankot, which is near the acquired land of village Budhera."*

So far as evidence produced by the respondent-State before the learned reference court is concerned, it has been referred in para 24 of the impugned award. These were sale deeds Ex. R1 to R3. However, it is also a matter of record that market price disclosed in all these three sale deeds was less than the amount awarded by LAC. In this view of the matter, all these three sale deeds relied upon by the State were not only hit by the provisions of Section 25 of the Act but also liable to be ignored on their individual merits. It is so said because all these sale deeds were result of either distress sales or these were undervalued transactions. In either of the two situations, these sale deeds are liable to be excluded from consideration, for the purpose of assessing the market value of the acquired land.

In this regard, relevant observations made by the Hon'ble Supreme Court in para 32 of its judgment in **Lal Chand vs. Union of India and another 2010 (3) RCR (Civil) 172,** which can be gainfully followed in the present case, 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"*

Before considering the evidence produced by the landowners before the learned reference court, it is necessary to decide CM No. 1826-CI-2013 filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908, ('CPC' for short). Notice of this application was issued vide order dated 19.2.2013. However, no reply has been filed on behalf of State of Haryana. After hearing learned counsel for the parties, coupled with the fact that instant application has not been opposed by the State by filing its reply, the same is allowed for the reasons stated therein. Award dated 29.9.2012 (Annexure A-1) passed by the learned reference court, pertaining to an earlier acquisition of adjoining villages, by way of notification dated 25.1.2008 under Section 4 of the Act, Aks Shazra (Annexure A-2) and site plan (Annexure A-3) are permitted to be placed on record. CM stands disposed of.

Placing reliance on the abovesaid award dated 29.9.2012 (Annexure A-1) and the site plans Annexure A-2 and A-3, learned senior counsel for the appellants-landowners submits that since this judicial precedent, deciding the earlier acquisition of adjoining revenue estate, was not available to the appellants, at the time of assessing the market value of their acquired land, when the impugned award was passed by the learned reference court, they are entitled to the benefit of this award dated 29.9.2012 (Annexure A-1), for the purpose of assessing the market value of their acquired land.

Learned senior counsel for the appellants-landowners has also placed reliance on notification dated 12.5.1995, whereby competent authority of State of Haryana, in exercise of powers conferred by clause (b) of sub-section (i) of section 4 of the Punjab Scheduled Roads and Controlled Areas Restriction of Un-regulated Development Act, 1963, declared the land of village Budhera and adjoining villages, Kheri Majra and Dhankot, as controlled area, submits that this was the reason that no sale deeds qua bigger chunks of land could took place out of the revenue estate of village Budhera, because it was declared agricultural zone. He also places reliance on another notification dated 5.2.2007 dealing with the Final Development Plan 2021 A.D., for the abovesaid controlled area.

Annexure-B of this notification dated 5.2.2007 deals with definitions and clause (I) thereof provides definition of 'Material Date', which means the date of publication of notification declaring various areas as controlled area, notification dated 12.5.1995 in the present set of appeals.

Para 9 of this notification dated 5.2.2007 deals with agricultural zone and the same reads as under:-

Agricultural Zone

> *A sizeable area has been reserved as agricultural zone. This zone however will not eliminate the essential building development within this area such as the extension of existing villages, contiguous to abadi*

deh, if undertaken under a project approved or sponsored by Government and other ancillary and allied facilities necessary for the maintenance and improvement of the area as an agricultural area."

Para (ix), (x) (xi) and (xvii) of this notification dated 5.2.2007 dealing with non-conforming uses, either existing or having valid CLU permission and discontinuance thereof as well as relaxation therein, read as under:-

IX. Non-conforming uses either existing or having valid CLU permission:

(1) With regard to the existing projects located in the zones other than conforming-use zone in the Development Plan, such non-conforming uses shall be allowed to continue for a fixed period to be determined by the Director, but not exceeding ten years; provided that the owner of the building concerned:

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X. Discontinuance of non conforming uses:

(1) If a non-conforming use of land has remained discontinued continuously for a period of two years or more, it shall be deemed to have been terminated and the land shall be allowed to be re-used or re-developed only according to the conforming use.

(2) If a non-conforming use building is damaged to the extent of 50 percent or more of its re-production value by fire, flood, explosion, earthquake, war, riot or any other natural calamity, it shall be allowed to be re-developed

only for a conforming use.

(3) After the discontinuance of projects included under Clause IX, the land shall be allowed to be redeveloped or used only for conforming use.

(4) After a lapse of period fixed under clause IX (1), the land shall be allowed to be redeveloped or used only for conforming use.

XI. The development to conform to sector plan and zoning plan:

Except as provided in regulation IX, no land with major land use shall be allowed to be used and developed for building purposes unless the proposed use and development is according to the details indicated in the sector plan and zoning plan or the approved colony plan in which the land is situated.

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XVII Relaxation of agricultural zone:

In the case of any land laying in Agriculture zone. Government may relax the provisions of this development plan-

(a) for use and development of the land into a residential or industrial colony provided the coloniser has purchased the land for the said use and developed prior to the material date and the coloniser secures permission for this purpose as per rules.

(b) for use of land as an individual site (as distinct from an industrial colony)

Provided that:

(i) the land was purchased prior to the material date;

(ii) the Government is satisfied that the need of the industry is such that it cannot await alternative allotment in the proper zone;

(iii) the owner of the land secures permission for building as required under the rules;

(iv) the owner of the land undertakes to pay to the Director, as determined by him, the proportionate charges as and when called upon by the Director in this behalf and during the interim period makes satisfactory arrangement for discharge of effluent.

Explanation:

The word 'Purchase' in the regulation shall mean acquisition of full proprietary right and no lesser title, such as agreement to purchase etc.

In support of his contentions, learned senior counsel for the landowners-appellants also places reliance on the judgment of the Hon'ble Supreme Court in **State of Goa Vs. Gopal Baburao Gaudo and others, 2009 (6) Supreme 680**. He concluded by submitting that since the landowners had no role to play, nor they had any say either in avoiding acquisition or opposing the abovesaid notifications dated 12.5.1995 and 5.2.2007, they cannot be made to suffer for none of their fault. In the alternative, he submits that the appellants would also be entitled for getting the market value of their land acquired assessed, at the same rate at which the market value of the land of adjoining revenue estate of village Dhankot has been assessed. The learned reference court vide its award dated 12.11.2012 (Ex. P14), assessed the market value of the land acquired vide notification dated 25.1.2008 under Section 4 of the Act, out of adjoining village Dhankot @ ₹1,26,00,000/- per acre, which has been further enhanced by this Court vide its order dated 20.5.2016 passed in RFA No. 4475 of 2012 (Ram Chander and another Vs. State of Haryana and others).

Per contra, learned counsel for the State, while placing reliance on the judgment of the Hon'ble Supreme Court in **Lal Chand's case** (supra)**,** contends that any increase in the value of the land on the ground of its being put to any use, which is prohibited by law or opposed to public policy, has to be neglected and ignored, while determining the market value of the acquired land. He further submits that in view of the law laid down by the Hon'ble Supreme Court in Lal Chand's case (supra), once the sale instances, though pertaining to small pieces of land, were available out of the revenue estate of village Budhera itself, judicial precedent pertaining to the revenue estate of village Dhankot cannot be made the basis for assessing the market value of the acquired land.

After giving anxious consideration to the abovesaid respective arguments raised by learned counsel for the parties and going through the record of the case, this Court is of the considered opinion that in the peculiar fact situation obtaining in the present case, the landowners-appellants would be entitled for the benefit of judicial precedent available in the form of Annexure A-1, i.e. award dated 29.9.2012 passed by the learned reference court, which has further been modified by this Court vide order dated 20.5.2016 passed in **Ram Chander's case** (supra). It is so said because the Hon'ble Supreme Court in **Mehrawal Khewaji Trust**

(Registered), Faridkot and others Vs. State of Punjab and others, (2012) 5 SCC 432, has held that the landowners are entitled to receive the best price for their acquired land.

The Hon'ble Supreme Court in para 17 and 18 of its judgment in **Udho Dass Vs. State of Haryana, 2010 (12) SCC 51,** held 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 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'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?

Further, in its recent judgment in the case of **Ashok Kumar and another etc. v. State of Haryana, (Civil Appeal No(s). 2714-2721 of 2012),** decided on 18.2.2016, the Hon'ble Supreme Court, while interpreting the scope of Section 25 of the Act and duty cast on the courts to grant just and reasonable compensation of the acquired land, even more than what was claimed by the landowners, observed as under:-

"Learned counsel appearing for the appellants however points out that in the matter of fixation of just and fair compensation, the Court is not bound by claim made by the owner. It is for the Court, in the facts and circumstances of each case, to award just and fair compensation.

XXX XXX XXX

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

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

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

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

> *"3. … It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here*

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

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

“17. Award being in this case between the dates 30th April, 1982 and 24th September, 1984 and as per the Union of India and Anr. v. 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."

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

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, REHABIITATION 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."*

A somewhat similar fact situation came up for consideration of this Court in RFA No. 1956 of 2010 (State of Haryana Vs. Hansraj and others) decided on 8.4.2016. In **Hansraj's case** (supra), the relevant judicial precedents were not available to the landowners, at the time of decision of their land references and benefit thereof was granted by this Court at the time of deciding first appeals like the present ones.

So far as fact situation obtaining in the present case is concerned, notification under Section 4 of the Act came to be issued on 19.5.2008, whereas the earlier acquisitions for the purpose of setting up Water Works in Gurgaon, out of the revenue estate of this very village, took place vide notification dated 13.3.2006 under Section 4 of the Act, thus, there was a time gap of more than two years.

Learned counsel for the State has tried to raise the argument that except only the increase for this time gap, present landowners are not entitled to place reliance on any kind of other evidence which might become available to them in the interregnum, including the abovesaid award dated 29.9.2012 (Annexure A-1). The contention raised by learned counsel for the State has been duly considered but has been found wholly misplaced and the same cannot be accepted. Denying the benefit of a judicial precedent which has become available to the landowners, during the relevant period, would be wholly unjustified and also contrary to the law laid down by the Hon'ble Supreme Court in its numerous judgments, referred to hereinabove.

However, learned senior counsel for the appellants submits that if his abovesaid argument based on award dated 29.9.2012 (Annexure A-1) is being opposed by the learned counsel for the State on the basis of abovesaid irrelevant and misplaced argument, then his alternate argument may be considered, assessing the market value of the acquired land on the basis of order dated 20.5.2016 passed by this Court in **Ram Chander's case** (supra). In view of the above, the alternative argument raised by learned senior counsel seems to be more plausible and deserves to be accepted.

It is a matter of record that learned reference court has assessed the market value of the acquired land @ ₹41,81,500/- per acre vide impugned award dated 16.11.2011, whereas the market value of adjoining village, i.e. Dhankot was assessed by the LAC vide its award dated 19.9.2008 Ex.P-14 @ ₹ 60 lacs per acre. Learned reference court vide its award dated 12.11.2012 assessed the value @ ₹1,26,00,000/-, which has been further enhanced by this Court vide its order dated 20.5.2016 passed in **Ram Chander's** case (supra) to ₹2,80,00,000/- per acre. This much huge difference in the market value of the land acquired out of the adjoining revenue estates, cannot be reconciled under any circumstances, particularly when the instant acquisition was later in a point of time and the time gap was about four months. This is where the law laid down by the Hon'ble Supreme Court in its judgment in **Ashok Kumar's** case (supra) would come to the rescue of the landowners, in the instant set of appeals.

The learned reference court proceeded on a patently illegal approach while taking average of market price of Ex.P-35 and Ex. P-36 and then applied cut thereon. In fact, learned reference court ought to have made award dated 19.9.2008 (Ex P-14) pertaining to village Dhankot as basis for assessing the market value of the acquired land. Although it is a matter of record that revenue estate of villages Dhankot and Budhera were adjoining with each other, yet, even if it is presumed, however, for the sake of argument only, that there is some distance between two pieces of land acquired out of the revenue estate of village Dhankot and the acquired land in the present cases, then the law laid down by the Hon'ble Supreme Court in **Ashrafi and others Vs. State of Haryana and others 2013 (5) SCC 527, Kashmir Singh Vs. State of Haryana and others, 2014 (2) SCC 165** and **Thakarsibhai Devjibhai and others v. Executive Engineer and another, AIR 2001 SC 2424** clearly supports the claim of the landowners.

In view of what has been discussed 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 landowners in the present set of appeals, cannot be denied the benefit of award Ex.P-14 dated 19.9.2008 passed by the LAC qua the land of adjoining village Dhankot, which was modified by the learned reference court vide its award dated 12.11.2012 and also by this Court vide its abovesaid order dated 20.5.2016 passed in **Ram Chander's case** (supra).

Accordingly, in the abovesaid facts and circumstances of the case, the order dated 20.5.2016 passed by this Court in **Ram Chander's** case (supra), assessing the market value of the land acquired out of revenue estate of village Dhankot, can be safely made the basis for assessing the market value of the acquired land herein. However, this Court would hasten to add that the landowners, in the present set of appeals, shall not be entitled for any increase for the time gap of about four months between the two acquisitions. Consequently, reiterating the same reasons and analogy adopted by this Court in **Ram Chander's case** (supra), market value of the acquired land is assessed at the uniform rate of ₹2,80,00,000/- per acre and the landowners are held entitled to receive the compensation for their acquired land at the uniform rate of ₹2,80,00,000/- per acre from the date of notification under Section 4 of the Act.

So far as judgment relied upon by learned counsel for the State in **Lal Chand's case** (supra) is concerned, after a close perusal thereof, the same has not been found of any help to the State for the reason that it was rendered in an entirely different fact situation. Further, 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 **Padmausundara and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

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 case noted above, coupled with the reasons aforementioned, this Court is of the considered view that all these appeals filed by the landowners deserve to be partly accepted and the same are allowed to the extent indicated above. The landowners are held entitled to receive the compensation for their acquired land at the uniform rate of ₹2,80,00,000/- per acre, from the date of notification under Section 4 of the Act. Besides this, the landowners shall be entitled for all the statutory benefits available to them under the relevant provisions of the Act.

In the facts and circumstances of the cases in hand, it would be appropriate to issue the directions, which were issued by the Hon'ble Supreme Court in para 28 of its judgment in **Haryana State Industrial Development Corporation Vs. Pran Sukh and others, (2010) 11 SCC 175**, and the same read as under:-

> "*(i) The Land Acquisition Collector shall depute officers subordinate to him not below the rank of Naib Tahsildar, who shall get in touch with all the landowners and/or their legal representatives and inform them about their entitlement and right to receive enhanced compensation.*
>
> *(ii) The officers concerned shall also instruct the landowners and/or their legal representatives to open savings bank account in case they already do not have such account.*
>
> *(iii) The bank account numbers of the landowners should be given to the Land Acquisition Collector within three months.*
>
> *(iv) The Land Acquisition Collector shall deposit the cheques of compensation in the bank accounts of the landowners."*

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

(RAMESHWAR SINGH MALIK)
JUDGE

24.5.2016
AK Sharma