**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RFA No. 2189 of 2012 (O&M)
Date of decision: 13.5.2016**

Executive Engineer/Construction, Northern Railway Rohtak

.. Appellant

Vs.

Mamchand and others

... Respondents

CORAM:HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Nitin Kumar, Advocate
for the Northern Railway, Rohtak.

Mr. B.K. Bagri, Advocate
for the cross objectors in OXBJR Nos. 32-CI, 38-CI of 2014, 23-CI to 25-CI of 2015.

Mr. Arun Yadav, Advocate
for the appellants
in RFA Nos. 4370, 4371 of 2012, 2597 of 2015.

Mr. Ram Darshan Yadav, Advocate
for the appellants in RFA Nos. 2784 to 2786 of 2012 and for the cross-objectors in XOBJR No. 29-CI-2013 in RFA No. 6306 of 2012.

Mr. Sarvjit Singh Khurana, Advocate for the appellants
in RFA No. 3296 to 3301, 4059, 4060, 7193 of 2012.

Mr. Shashi Kumar Yadav, Advocate for
Mr. Gurinder Pal Singh, Advocate for the appellants
in RFA No. 2787 to 2796 of 2012
4815, 4929 to 4932, 5368 to 5373, 7272 and 7273 of 2012.

Mr. Roopak Bansal, Advocate for
Mr. S.K. Bansal, Advocate and
Mr. Ajay Aggarwal, Advocate for the appellants
in RFA Nos. 4843, 6485, 6486, 7171, 7172 of 2012.

Mr. Anil Kumar, Advocate

for the appellants in RFA No. 1715 of 2016.

Mr. Arun Beniwal, DAG, Haryana.

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 batch of 205 Regular First Appeals, out of which 153 appeals bearing RFA Nos. 2189 to 2323, 4894, 4895, 6306 to 6319, 6644, 6645 of 2012 filed by the beneficiary-Railway Department and 52 appeals bearing RFA Nos. 2784 to 2796, 3296 to 3301, 3318, 3319, 4059, 4060, 4370, 4371, 4815, 4843, 4929 to 4932, 5368 to 5373, 6485, 6486, 7170 to 7172, 7193 , 7272 and 7273 of 2012; 454, 483, 2576 to 2578 of 2013, 2597 of 2015 and 1715 of 2016, filed by the landowners, alongwith cross objections Nos. 29-CI-2013, 32-CI-2014, 38-CI-2014, 23-CI-2015, 24-CI-2015 and 25-CI-2015 is being decided vide this common order, as all these appeals and cross objections 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. 2189 of 2012 (Executive Engineer/Const. Northern Railway Rohtak Vs. Mamchand and others).

Briefly put, facts necessary for disposal of instant bunch of appeals are that State of Haryana sought to acquire land measuring 55.756 acres out of the revenue estate of village Palhawas, 14.575 acres out of the revenue estate of village Chandanwas and 2.656 acres from the revenue estate of village Rohrai, Tehsil and District

Rewari, at public expenses for public purpose namely; Rohtak-Jhajjar-Rewari New Railway Line. Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 ('the Act' for short) came to be issued on 28.6.2007, which was followed by notification dated 12.7.2007 under Section 6 of the Act. The Land Acquisition Collector, ('LAC' for short), vide his award No. 12 dated 26.9.2007, assessed the market value of the acquired land of village Palhawas. Similarly, vide his award No. 10 dated 14.9.2007, LAC assessed the market value of the land of village Chandanwas and Rahori. LAC, vide his separate but identical awards, assessed the market value of the acquired land of all these abovesaid three villages at the uniform rate of ₹16 lacs per acre, without resorting to any belting system. However, no compensation on account of severance charges was granted.

Dissatisfied with the assessment of market value of the acquired land at the hands of LAC, the landowners filed their objections under Section 18 of the Act and as a result thereof, numerous land references were forwarded to the learned reference court for its decision. The learned reference court, vide its impugned award dated 21.3.2012, decided as many as 140 land references pertaining to village Pahlawas and assessed the market value of the acquired land at the uniform rate of ₹20 lacs per acre, without resorting to the belting system. However, no compensation was awarded on account of severance charges. While rendering its identical award but on a later date, i.e. 30.4.2012, learned reference court followed the abovesaid award dated 21.3.2012 and decided the land references pertaining to the villages Chandanwas and Rohrai, awarding the same compensation at the uniform rate of ₹20 lacs per acre.

Both the parties felt aggrieved against the impugned awards dated 21.3.2012 and 30.4.2012 passed by the learned reference court. The Railway Department is seeking reduction in the amount of compensation awarded to the landowners, whereas the landowners have approached this Court seeking further enhancement in the amount of compensation for their acquired land. That is how, all these appeals are being decided together.

Having heard learned counsel for for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that so far as appeals filed by the beneficiary-department are concerned, the same have been found bereft of merit and are liable to be dismissed. The appeals filed by the landowners deserve to be partly allowed, suitably enhancing the compensation for their acquired land and also granting reasonable compensation on account of severance charges. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the impugned awards passed by the learned reference court would show that the best evidence available in favour of the landowners have been illegally discarded by the learned reference court and that too, without assigning any cogent reasons. As many as 27 sale deeds were produced by the landowners which have been referred to in para 19 of the impugned award. Similarly, 13 sale examplers were produced by the Railway Department which have been referred in para 21 of the impugned award. The best sale deed relied upon by the Railway Department was Ex. R-13 dated 19.1.2007 bearing sale deed No. 8562, whereby the land measuring 1 kanal was sold out of the revenue estate of village Palhawas @ ₹2,42,000/- per acre.

However, when this sale deed is compared with two sale deeds Ex.P-13 and Ex.P-15, produced by the landowners, for the land of village Palhawas itself, the only inevitable conclusion is that the sale deed Ex.R-13 relied upon by the Railway Department was the outcome of a distress sale. It is so said because the market price disclosed in sale deed Ex. P-15 dated 3.11.2006 was ₹64,61,538/- per acre, whereas in sale deed Ex.P-13 dated 21.8.2006, the market value disclosed was ₹1,06,66,666/-. Further, both these sale deeds Ex. P-13 and P-15 were pertaining to a larger area in comparison to the area sold by sale deed Ex.R-13.

It is also pertinent to note here that in spite of the fact that the sale deed Ex.R-13 was registered at a later point of time, still the market value disclosed therein was about three to five times less than the market price disclosed in earlier sale deeds Ex.P-13 and Ex.P-15. In this view of the matter, it can be safely concluded that the sale deed Ex.R-13 was either an under-valued transaction or was a result of distress sale. In either of these two situations, this sale deed Ex.R-13 has to be excluded from consideration, as per law laid down by the Hon'ble Supreme Court in **Lal Chand vs. Union of India and another 2010 (3) RCR (Civil) 172.**

In this regard, relevant observations made by the Hon'ble Supreme Court in para 32 of its judgment in **Lal Chand's case** (supra), 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.*

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. 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 compensation, 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.*
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> *XXX XXX XXX*
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> *The pre-amended provision put a cap on the*

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

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

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

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

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

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

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

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

Again, in the case of **Udho Dass Vs. State of Haryana, 2010 (12) SCC 51,** the Hon'ble Supreme Court has held that landowners hardly get compensated in true sense of word in the matters of compulsory acquisition, because they had no role to play either in the price fixation policy adopted by the State or to avoid the acquisition. Relevant observations made by the Hon'ble Supreme Court in paras 17 and 18 of its judgment in **Udho Dass's case** (supra), which deserve to be noticed here, read as under:-

"Although, in the present matter, sale instances around or near abouts the date of Notification of the present acquisition are available yet these cannot justify or explain the potential of a particular piece of land on the

date of acquisition as the potential can be recognized only some time in the future and it is open to a landowner claimant to contend that the potential can be examined first at the time of the Section 18 Reference, the first Appeal in the High Court or in the Supreme Court in appeal as well. We must also highlight that Collectors, as agents of the State Government, are extraordinarily chary in awarding compensation and the land owners have to fight for decades before they are able to get their due. We take the present case as an example. The land was notified for acquisition in May 1990. The collector rendered his award in May 1990 awarding a sum of Rs. 2,00,000/- per acre. The Reference Court by its award dated January 2001 increased the compensation to Rs. 125 per square yard for the land of the road behind the ECE factory and Rs. 150 per square yard for the land abutting the road which would come to Rs. 6,05,000/- and Rs. 7,26,000/- respectively for the two pieces of land. This itself is a huge increase vis-a-vis the Collector's award. The High Court in First Appeal by its judgment of 24th September 2007 enhanced the compensation for the two categories to Rs. 135 and 160 respectively making it Rs. 6,53,400/- and Rs. 7,74,400/-. In other words, this is the compensation which ought to have been awarded by the Collector at the time of his award on 12th May 1993. This has, however, come to the land owner for the first time as a result of the judgment of the High Court which is under challenge in this appeal; in other words, a full 17 years from the date of Notification under Section 4 and 14 years from the date of the award of the Collector on which date the possession of the land must have been taken from the landowner. Concededly, the Act also provides for the payment of the solatium, interest and an additional amount but we are of the *opinion, and it is common knowledge, that even these payments do not keep pace with the astronomical rise in prices in many parts of India, and most certainly in North India, in the land price and cannot fully compensate for the acquisition of the land and the payment of the compensation in 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?

In view of what has been discussed hereinabove, the only relevant sale instances which can be safely made the basis for assessing the market value of the acquired land are Ex.P-13 and Ex.P-15. Since the sale deed Ex.P-13 discloses the highest market price, the same has to be considered in view of the law laid down in **Mehrawal Khewaji Trust's case** (supra). However, since the land measuring 1 kanal 11 marlas was sold vide this deed Ex.P-13, a reasonable cut is warranted to be imposed on the market price disclosed in this sale deed.

Keeping in view the totality of facts and circumstances of the cases 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 it would be reasonable to apply 40% cut on the market price disclosed in this sale deed Ex.P-13. After applying 40% cut on the market price disclosed in sale deed Ex.P-13, amount comes of ₹64 lacs per acre.

It is also a matter of record that there was a time gap of 10 months between the date of this sale deed Ex.P-13 and date of notification under Section 4 of the Act. In view of the law laid down by the Hon'ble Supreme Court in **The General Manager, Oil and Natural Gas Corporation Limited vs. Rameshbhai Jivanbhai Patel and another" 2008 (14) Supreme Court Cases 745** and **Ashok Kumar and others Vs. State of Haryana and others, 2015 (3) Scale 242**, the landowners will be entitled to 12% annual increase on the abovesaid market value. Since there was a time gap of 10 months only, they would be entitled for 10% increase, which comes to ₹6,40,000/-. By adding that amount, total amount comes to ₹70, 40,000/- per acre. Accordingly, the landowners are held entitled to receive the amount of compensation for their acquired land at the uniform rate of ₹70,40,000/- per acre from the date of notification under Section 4 of the Act.

Another equally important question of law that falls for consideration of this Court is, as to whether the landowners are entitled for compensation on account of severance charges. It has gone undisputed before this Court that villages Palhawas, Chandanwas and Rohrai were having adjoining revenue estates. Even if it is presumed, however, only for the sake of arguments, that there was some distance, 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 fact, neither any factual difference has been pointed out either about the situation of the land or about its potentiality, nor any other distinguishing feature is available on record, so as to deny the benefit of the same market value to the landowners of villages Rohrai and Chandanwas. In this view of the matter, the landowners of all these three villages, whose land was acquired for same purpose and vide same notification, are held entitled to be treated at par for the purpose of assessing the market value of their acquired land.

After considering the matter in the abovesaid fact situation obtaining in the present set of appeals, this Court is of the considered view that answer to the question posed hereinabove is and has to be in the affirmative. There is no denying the fact that the beneficiary-department was going to lay down railway line on the acquired land. In the very nature of things, the land would be bifurcated. Neither it would be feasible nor practically possible for the Railway Department to provide underpasses or over-bridges at short distances, so as to enable the landowners to approach their unacquired land for the purpose of its cultivation. In the absence of underpasses or over-bridges, the landowners will have to cover long distances to reach their unacquired land with a view to cultivate the same. Covering long distances will add to the expenses, including transportation charges to be incurred by the landowners, which will substantially reduce the net agricultural income and that too, for all times to come. The landowners will face this disadvantageous position for none of their fault. Having said that, this Court feels no hesitation to conclude that it would be just and expedient to grant 50% of the abovesaid market value to the landowners, as compensation, on account of severance charges.

The abovesaid view taken by this Court also finds support from the following judgments of this Court in the cases of **Smt. Bindu Garg Vs. State of Haryana, 1999 (2) RCR (C) 261, State of Haryana Vs. Kartar Singh, 2010 (2) RCR (C) 443, Chanan Singh Vs. State of Punjab, 2010 (5) RCR (C) 283** and **State of Punjab and another Vs. Ishar Singh, 2010 (5) RCR (C) 239**. The relevant observations made by this Court in para Nos. 14 and 15 of its judgment in **Chanan Singh's case** (supra), which aptly apply in the present case, read as under:-

> *"Reverting back to the second argument of the learned counsel for the appellant that severance charges allowed by the learned Reference Court @ 25% of the market value of the un-acquired land should have been 50%. I am in full agreement with the argument raised by the learned counsel for the appellants that in view of the decision of this Court rendered in the cases of* ***State of Haryana v. Rajinder Kumar, 2000(1) All India Land Acquisition & Compensation Cases 360****,* ***Punjab State v. Gurbachan Singh and others, 1988 PLJ 490****,* ***Smt. Narinder Kaur v. The State of Punjab and others, 1980***

***PLR 473**, **State of Punjab through Collector, Hoshiarpur and another v. Gopal Singh, (2002-2) PLR 843** and **State of Punjab through Collector, Hoshiarpur v. Radha Krishan, 1989 All India Land Acquisition and compensation Cases 667**, **Tehal Singh and others v. The State of Punjab and another, 1987 All India Land Acquisition & Compensation Cases 491** and **Bishan Dass v. State of Punjab, 1997 (2) PLJ 416.** (supra), severance charges has to be awarded @ 50% of the market value of the unacquired land instead of 25%. In view of above, the finding of the learned Reference Court on issue No. 2 is modified and the appellants are held entitled to the severance charges @ 50% instead of 25% as given by the learned Reference Court.*

15. With this modification in the judgment of the learned Reference Court, the appeals filed by the landowners/claimants are allowed. They are held entitled to compensation @ Rs. 64,000/- per acres from the date of issuance of notification under Section 4 of the Act, besides all the statutory benefits in terms of the provisions of the Amended Act. They shall also be entitled to severance charges @ 50% instead of 25% of the land which has been severed to due to acquisition. The appellants are also held entitled to the costs of the appeals.

To be fair to the learned counsel for the Railway Department, his arguments on compensation granted on account of severance charges are to be noted to be rejected. While placing reliance on the following judgments, learned counsel for Railway Department submits that instead of granting abovesaid compensation on account of severance charges, a lump sum amount may be granted.

(i) Periyar and Pareekanni Rubbers Ltd Vs. State of Kerala, 1991 (4) SCC 195 (SC)

(ii) Adusumilli Gopalkrishna Vs. Spl. Deputy Collector (Land Acquisition), 1980 (sup) SCC 204 (SC)

(iii) Balammal and others Vs. State of Madras and others, 1968 Air (SC) 1425 (SC)

(iv) Hazura Singh and others Vs. State of Punjab and others, 2004 (2) RCR (civil) 226, (P&H)

So far as the abovesaid judgments relied upon by the learned counsel for the Railway Department are concerned, there is no dispute about the law laid down therein. However, on a careful perusal of the cited judgments, none of them has been found to be of any help to the beneficiary-department, being distinguishing on facts. 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.**

At this stage, learned counsel for the landowners have pointed out that some landowners were having very small pieces of land. He further submits that since the landowners have received meagre amount of compensation for their small pieces of land, they were unable to approach this Court for the bonafide reasons which were beyond their control. He concluded by submitting that in such a situation, the cases in hand are fit for invoking the powers under Order 41 Rule 33 of the Code of Civil Procedure, at the hands of this Court, so that substantial justice is done to those marginal landowners who could not approach this Court, for want of sufficient means at their disposal.

When confronted with this factual as well as legal aspect of the matter, learned counsel for the beneficiary-department had no answer and rightly so, it being a matter of record.

After giving anxious consideration to the contentions raised by learned counsel for the landowners, this Court has found it to be just and expedient to invoke its power under Order 41 Rule 33 CPC, so that poor landowners who could not come to this Court may also get their due, failing which, a glaring injustice would be caused to such landowners. Keeping in view the abovesaid peculiar facts and circumstances of the case and while invoking the powers under Order 41 Rule 33 CPC, it is ordered that benefit of instant judgment would be available even to those landowners who could not come to this Court. This direction is being issued only because of the peculiar facts and circumstances of the case referred to hereinabove.

The abovesaid view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **Pralhad and**

others Vs. State of Maharashtra and another, 2010 (10) SCC 458, K.S. Paripoornan Vs. State of Kerala, (1994) 5 SCC 593, Union of India Vs. Zora Singh, (1992) 1 SCC 673, Prem Chand Vs. Union of India, 2010 (2) RCR (civil) 622, Vanarsi Vs. Ramphal, AIR 2004 SC 1989 and **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 in 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.*
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> *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."

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 appeals filed by the Railway Department have been found wholly misconceived, bereft of merit and without any substance, thus, these must fail and the same are hereby dismissed.

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 ₹70,40,000/- per acre from the date of notification under Section 4 of the Act. The landowners are also held entitled to receive 50% of the abovesaid market value, as compensation, on account of severance charges. Besides this, the land owners shall 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 and cross objections stand disposed of in the abovesaid terms, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

13.5.2016
AK Sharma