

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

**RFA No.3154 of 2003 and other
connected appeals
Decided on : 22.01.2018**

Madan Lal and others

...Appellants

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Vikas Behl, Senior Advocate with
Mr. Nitish Garg, Advocate for the appellants.

Ms. Akshita Chauhan, AAG, Punjab.

G.S. Sandhawalia, J.

The present judgment shall dispose 15 appeals i.e **RFA Nos.3154 of 2003, 2580 to 2584, 2999, 3000, 4556, 5560 of 2001 & 853, 1286, 2716 to 2718 of 2002**, which arise out of the Award dated 30.11.2000 passed under Section 18 of the Land Acquisition Act, 1894 (for short 'the Act') by the Additional District Judge, Bathinda. The facts are being taken from **RFA No.3154 of 2003 'Madan Lal and others Vs. State of Punjab'**.

Vide the impugned Award, the market value of the land which was acquired vide notification dated 15.12.1988 under Section 4 (1) of Act measuring 227 kanals 2 marlas in village Maur Mandi for setting up of a Cattle Fair Ground, the assessment was made as under:-

- “i) Rs.25,000/- per acre for the Nehri land;*
- ii) Rs.16,000/- per acre for the Barani land;*
- iii) Rs.50,000/- per acre for the Ghair Mumkin land”*

However, an exception was also made regarding the landowners Ashwani Kumar and Ravi Kumar who are appellants in RFA Nos.2580 of 2001 and 853 of 2002 and who were vendees of two sale deeds dated 05.07.1982 (Ex.A5 and A6) and they were given the benefit of compensation of ₹10,000/- (₹100/- per square foot), which was on the basis of granting 12% increase on the sale deed in which the value had been assessed @ ₹6,000/- (₹60/- per square foot)

The primary arguments which have been raised by the land owners for enhancement

(i) is one that the land in question was admittedly falling within the municipal limits of Maur Mandi and, therefore, the enhancement should have been not on the account of the type of land, but on per square yard as per potentiality of the land in question.

(ii) The second argument had been raised that once two land owners from the acquired land were being given the benefit of the market value, as per the sale deeds (Ex.A5 and A6), the other land owners could not be denied the same rate.

(iii) The third argument which has also been raised is that a cumulative increase should have been granted instead of a flat rate of 12%.

(iv) Fourthly, it was argued that since 227 kanals 2 marlas of land was acquired, it being a large chunk of land and it was being used for a cattle fair ground, the cut of development would be nominal as such, since the usage as such did not entail any major loss of land.

(v) Lastly, it was argued that interest has been restricted only on the compensation and the statutory benefits which provided for the element of interest on such market value under Section 23 (1-A) and 23 (2) had not been granted and, therefore, the said aspect was required to be clarified, keeping in view the law laid down by the Constitutional Bench in '**Sunder Vs. Union of India' 2001 (3) PLR 860.**

The following issues were framed by the Reference Court:-

“1) What was the market value of the acquired land at the time of notification u/s 4 of Land Acquisition Act? OPA

2) Whether there existed any grape garden at the time of notification u/s 4 of the Land Acquisition Act in the land comprised in Khasra Nos.163//9/2 (4-8), 10/1 (7-11) belonging to Wakil Chan claimant in L.R. No.60? OPA (Wakil Chand claimant).

3) If issue No./2 is proved in favour of the claimant to what amount of compensation, the claimant will be entitled to with regard to the plants, and the structure raised on the acquired land therefor? OPA (Wakil Chand claimant)

4) Whether the applications u/s 18 of the L.A. Act, in L.Rs No.55, 56, 57, 58, 59 and 60 are barred by Limitation? OPR

5) Relief.”

Keeping in view the evidence which had been brought on record by as many as 6 witnesses by the land owners and the 4 witnesses on behalf of the State, the Reference Court rejected the argument that the compensation should be assessed in terms of square yards instead of in terms of acres or kanals, on the ground that only 147 kanals 2 marlas constituted the canal irrigated area through Burji Number 70970. The Reference Court came to the conclusion that the acquired land was at a distance of 1 ¼ km from Bus Stand, Maur Mandi and even at a more

distance from the Civil Hospital, whereas distance from the Railway Station was 2 Kms and the town was only having population of 15000. The land, thus, was held not to be constituting as urban property notwithstanding that the area was falling within the municipal limits, as per Ex.A4, which was the notification issued under Section 5 of the Punjab Municipal Act, 1911.

The presence of the godown of Indane Gas Agency, which was only 4 kilas away from the land was adversely held against the land owners on the ground that such godowns are always away from the residential areas and in the fields and, therefore, the land could not be held to be urban land. It was, accordingly, treated as agricultural land and compensation was not assessed in terms of square yards and the fact that the State was affected by terrorism at the time of acquisition was also kept in mind. Sale deed dated 09.01.1987 (Ex.R1) for land measuring 24 kanals 2 marlas, the attested copy of which was produced by the State was kept in mind, though admissibility had been objected to on the ground that there was no other cogent evidence on record and it was about 2 years earlier before the acquisition of the land on 15.12.1988. It was, accordingly, held that the acquired land constituted a portion of the rectangles which also formed a part of said rectangle number 163, which was quite proximate and almost adjoining to the acquired land. Reliance was, accordingly, placed upon the same, in which the land had been sold @ ₹12,000/- per acre.

Keeping in view the fact that there was increase @ 12% to

be given, it was held that the irrigated land could not be more than ₹25,000/- per acre and resultantly enhancement was given as mentioned above against the award of the Land Acquisition Collector dated 26.12.1990 in which assessment had been made ₹19,583/- per acre for Nehri Land, ₹12,111/- for Barani Land and ₹44,550/- for Gair Mumkin Land. The sale deed dated 05.07.1982 (Ex.A5 & A6) executed by Nathu Ram and Jamuna Devi in favour of Ashwani Kumar for plots measuring 3 1/3 marlas of land for ₹6,000/- were taken into consideration, keeping in view the fact that they had been proved by AW-4 Nathu Ram and AW-5 Ravi Kumar, vendee. However, keeping in view the fact that they were small portions of land, it was held that it could not be determining factor as to the correct market value of the land, but the benefit was only given to the owners of the said land at the rate recited through the sale deeds. The sale deeds Ex.R2 to R5 produced by the State were rejected as nothing had been produced on record to show that any of the said sale deeds were pertaining to the adjoining land and were similarly situated carrying the same value.

Accordingly, the market value was assessed as noticed above while granting additional benefit to the vendees of Ex.A5 and A6 as noticed above. Regarding issues No.2 and 3 regarding the factum of grape orchards belonging to Vakil Chand-claimant, it was held that no evidence was produced and keeping in mind that even the issues had not been pressed at the time of arguments, the same were decided against the land owners. Similar was the finding qua the entitlement regarding the

plants and the structure on the acquired land. Issue No.4 was decided in favour of the claimant that the petitions were filed within time and they were not time barred.

In order to appreciate the arguments, it is necessary to refer the record.

A perusal of the application filed under Section 18 of the Land Acquisition Act, 1894 would go on to show that the acquired land had been denied the status of urban land by the Land Acquisition Collector, though the claimants had produced on record registered sale deeds of plots out of the acquired land, which were sold in yards for residential purposes. The plot was stated to be sold @ ₹60/- per square yard on 05.07.1982 and increase at the rate of 12% was subsequently given on the sale deeds (Ex. A5 and A6), which had been duly registered with the Sub-Registrar. It had further been mentioned that the land was situated within municipal limits and its value should have been assessed in yards treating it as urban land in accordance with the price of the urban land prevailing at the time of notification under Section 4 of the Act. The Bus Stand of Maur Mandi was situated at a distance of 1 ¼ km, whereas godown of FCI was at a distance of 200 meters from the acquired land. It had further been pleaded that abadi of Maur Mandi starts across the road and a petrol pump was situated quite adjacent to the acquired land on Bathinda-Mansa Highway. The acquired land was on the metalled road leading from Rampura to Sub-Divisional Headquarters, Talwandi Saboo via Maur Mandi.

Resultantly, enhancement was sought on the ground that land was quite fit for commercial and industrial purposes as the trend of development of Maur Mandi was towards the side of the acquired land. Resultantly, price was claimed of the acquired land @ ₹ 200 per square yards apart from the statutory benefits.

The stand of the State was that the price of acquired land was awarded to the land owners by the Collector on the basis of revenue record. The rates of small plots could not be considered for enhancement of the acquired land. It was admitted that the acquired land was situated on the Rampura-Talwandi Saboo Road, but no part of the acquired land adjoins to the Bathinda-Mansa Highway. The acquired land was far away from the city and was used for agricultural purposes at the time of notification. It was further submitted that a petrol pump was situated on the Bathinda-Mansa Highway, but it was far away from the acquired land.

In view of the statement of AW-1 Kulwant Singh, who had brought the site plan Ex.A1, it would be clear that the acquired land shown in green dots was abutting to metalled road leading from Rampura to Raman Mandi. Similarly the distance of the Bus Stand was stated to be 1½ Km from the acquired land. The Civil Hospital was at a distance of further 100 karams away from the Bus Stand and Police Station was 1 Km from the Bus Stand, Maur Mandi which facts came on record. The said witness also deposed that abadi of Maur Mandi was at a distance of 12 killas from the acquired land. The witness also admitted that the area was not thickly populated and there were houses far away from the

acquired land. The total population of the Maur Mandi was 10000 to 15000 and there was no heavy industry in Maur Mandi.

From the statement of AW-2 Shikander Singh, Nehri Patwari, it further came out that the 145 kanals 16 marlas out of 227 kanals 2 marlas of land was irrigated and rest was Barani land. The Clerk from the Municipal Committee, Balbir Singh-AW-3, confirmed the fact that Mustil No.163 and 164 were situated within the revenue limits of the Municipal Committee as per the Akash Latha (Ex.A3) maintained and photocopy of the notification (Ex.A4). Nathu Ram, AW-4 confirmed the fact that the plot which was registered vide Ex.A5 was for construction of the house and similarly AW-5, Ravi Kumar also confirmed the value of the sale deed (Ex.A6) which he had purchased from Jamuna Devi for a sum of ₹6,000/- and he stated that present value of the land was approximately ₹500/- per square yard. The cross-examination of AW-6, Kailash Singh came on record to prove that the acquired land was within the limits of Municipal Committee which were extended during the year 1975-1976 approximately.

RW-2, Balwinder Singh, Registration Clerk had produced the sale deed Ex.R2 to R5 and admitted that he was not party to said sale deed and he has no personal knowledge about Ex.R2 to R5 or the situation of the land sold through the said sale deeds. The Cattle Fair Officer Shri Gurnet Singh was examined as RW-3 who deposed that the land was not yielding any crops. He further stated that the compensation was paid to the land owners as per the prevailing prices and no building

was situated near the acquired land. He denied the knowledge that some land had been purchased out of the acquired land for the purposes of constructing houses and also denied the suggestion that the acquired land was falling within the municipal limits. The Patwari Shri Darshan Singh was examined as RW-4, who admitted that during 1990's there was terrorism activity in Punjab and due to terrorism the prices of the land were low. He admitted that there a gas agency and same was in existence from the time of Award.

Thus, from the record, it would be apparent that the land in question, though in municipal limits is on the fringe of the town and there was no development as such in the land like plotting apart from the two solitary sale deeds of 3 1/3 marlas which translates to less than 100 square yards approximately. The location of the land can further be confirmed from the site plan Ex.A1. However, the fact that the acquired land was situated on Rampura-Talwandi Saboo Road, the potentiality as such was a factor, which has to be kept in mind and also it was closer to the Bathinda- Mansa road and there was a petrol pump in close vicinity.

The Apex Court in '**V. Hanumantha Reddy (Dead) by Lrs. Vs. The Land Acquisition Officer & Mandal R. Officer**' ' 2003 (12) SCC 642 held that land abutting National Highway always fetches more price than the land lying in the interior and, therefore, other sale instances cannot be compared with and the belting method, thus, would not be proved.

The Apex Court in '**Revenue Divisional Officer-cum-Land**

Acquisition Officer Vs. Shaik Azam Saheb and others' 2009 (4) SCC

395 has held as under:-

“11. Determination of market value of a land acquired in terms of the provisions of the said Act depends upon a large number of factors; the first being the nature and quality of the land, i.e., whether agricultural land or homestead land. Apart from nature and quality of land in the event the agricultural lands are acquired the other factors relevant therefor are also required to be considered, namely, as to whether they are irrigated or non-irrigated, extent of facilities available for irrigation, location of the land, closeness thereof from any road or highway, the evenness of land, its position in different seasons particularly in rainy season, existence of any building or structure as also the development in and around the area. A host of other factors will also have a bearing on determining the valuation of land.

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20. In the facts and circumstances of the present case, one-third deduction, in our opinion, should be made towards development costs for the lands situated both in Pasupala village as also B. Thandrapadu village. Keeping in view the fact that the lands are abutting National Highway and near the district town, where a large number of educational institutions have come up, 10 per cent escalation per year has to be added. Thus, Rs. 1,41,666.66 per acre may be fixed for the lands in Pasupala village.

The lands in another village B. Thandrapadu Village being situated away from the NH 18, another 10 per cent from the amount fixed for the lands in Pasupala village must be deducted. Thus, Rs. 1,27,499.99 per acre may be fixed for the lands in B. Thandrapadu village.

We have adopted the same method which had been adopted by the Reference Judge inasmuch as the Reference Judge had fixed market value for the lands situated in Pasupala village at Rs. 1,00,000/- per acre and Rs. 90, 000/- per acre in respect of B. Thandrapadu village.”

Similarly, in 'Haridwar Development Authority,

Haridwar Vs. Raghubir Singh and others' 2010 (11) SCC 581, the proximity to access to the main road and highway were factors which were to be taken into consideration, specially once a compact and contiguous land was being acquired. The relevant portion reads as under:-

“6. The question whether the acquired lands have to be valued uniformly at the same rate, or whether different areas in the acquired lands have to be valued at different rates, depends upon the extent of the land acquired, the location, proximity to an access road/Main Road/Highway or to a City/Town/Village, and other relevant circumstances. We may illustrate :

(A) When a small and compact extent of land is acquired and the entire area is similarly situated, it will be appropriate to value the acquired land at a single uniform rate.

(B) If a large tract of land is acquired with some lands facing a main road or a national highway and other lands being in the interior, the normal procedure is to value the lands adjacent to the main road at a higher rate and the interior lands which do not have road access, at a lesser rate.

(C) Where a very large tract of land on the outskirts of a town is acquired, one end of the acquired lands adjoining the town boundary, the other end being two to three kilometres away, obviously, the rate that is adopted for the land nearest to the town cannot be adopted for the land which is farther away from the town. In such a situation, what is known as a belting method is adopted and the belt or strip adjacent to the town boundary will be given the highest price, the remotest belt will be awarded the lowest rate, the belts/strips of lands falling in between, will be awarded gradually reducing rates from the highest to the lowest.

(D) Where a very large tract of land with a radius of one

to two kilometres is acquired, but the entire land acquired is far away from any town or city limits, without any special Main road access, then it is logical to award the entire land, one uniform rate. The fact that the distance between one point to another point in the acquired lands, may be as much as two to three kilometres may not make any difference.

7. The acquisition with which we are concerned relates to a comparatively small extent of village land measuring about 38 bighas of compact contiguous land. The High Court was of the view that the size and situation did not warrant any belting and all lands deserved the same rate of compensation. The Authority has not placed any material to show that any area was less advantageously situated. Therefore the view of the High Court that compensation should be awarded at an uniform rate does not call for interference.”

The land was not well developed was also a valid reason as such which has been kept in mind by the Reference Court. However, the reasoning which has been adopted to assess its value by classifying the land as Barani, Nehri and Gair Mumkin is not justifiable solely on account of the fact that part of it was irrigated and other part was not irrigated. Once the land was falling in the municipal limits and was being acquired as for a common purpose for setting up a cattle fair ground and was situated in a compact block, the compensation should have been assessed at common and flat rate, rather than dividing the land into three categories as had been resorted to by the Land Acquisition Collector.

The Apex Court in '**HSI IDC Vs. Pran Sukh**' (2010) 11 SCC 175 case has held that where acquisition is for a common purpose then all the land owners are entitled for compensation at the same rate. As

noticed the acquisition in the present case is for a common purpose of development of a cattle fair ground and, therefore, this Court is of the opinion that all the land owners are entitled for compensation at the same rate.

In such circumstances, the reasoning which was as such given by the Reference Court that though the land falls within the municipal limits which would be clear from the notification Ex.A4 dated 23.08.1974 but has to be treated as agricultural land cannot be held to be justified in any manner. The area had been included in the municipal limits for more than a decade earlier and, therefore, to hold that the land was to be categorized and classified for purposes of market value and should be assessed as such for agricultural purposes is not justified.

A three Judge Bench of the Apex Court in '**Raghubans Narain Singh Vs. The U.P. Government through Collector of Bijnor**' **1967 (1) SCR 489** discussed the provisions of Section 23 and held that though for what purpose the land can be used in future cannot be taken into consideration, but whether the acquired land was suitable for building purposes and whether there was extension activity towards the land and what was the distance between built-in-land and acquired land is the overall picture which has to be taken into consideration to assess the potentiality of the land.

Reliance upon the judgment in '**Bhagwat Sarup and another Vs. Haryana State and others**' **2004 (3) PLR 441** was, accordingly, well justified by the Senior Counsel, wherein compensation

of land falling in the municipal limits had been awarded by treating the land not as agricultural land. Resultantly, it was held that once there was payment of house tax, the Reference Court was wrong in holding that it was agricultural land and the potentiality of the land is to be taken into consideration while placing reliance upon the judgment of the Division Bench in '**Lakhmi Dass Vs. State of Punjab 1977 PLJ 464** and the judgment of the Apex Court in '**Suresh Kumar Vs. Town Improvement Trust (1989) 2 SCC 329**.

Similarly, in '**Gurvinder Singh and others Vs. Haryana State' 2005 (1) PLR 804**, the Reference Court had assessed the market value classifying the same into Nehri Land and Gair Mumkin Rasta. It was, accordingly, held that once the land was falling in municipal limits then the classification of the acquired land according to the old revenue record was unwarranted for. Accordingly, it was held that an error had been committed by classifying the land as agricultural in character and granting the rates given in the revenue record. The potentiality of the land to be developed as residential or commercial area was, thus, an aspect which has to be kept in mind.

The fact has already been noticed that the land was situated and falling along the Rampura-Talwandi Saboo Road and by the side of residential locality and, therefore, its capability for being used for non-agricultural purpose as such was inherent. Specially in view of the fact that land also falls within the municipal limits and, therefore, should have been treated as non-agricultural land in terms of compensation. Once it

has come on record by the Reference Court itself that the distance from Bus Stand was only 1 1/4 Km and distance of the Railway Station was only 2 Km, it can safely be concluded that the land acquired though underdeveloped, but was urbanizational land situated near a small town with access to all infrastructure facilities.

Admittedly, for the same set of land the plots had been sold and the vendees Ashwani Kumar and Ravi Kumar who are appellants in **RFA Nos.2580 of 2001 and 853 of 2002** were given the benefit @ 12% keeping in view the land was valued @ ₹60 per square yard which would come to ₹2,90,400/- per acre. The Reference Court had granted the benefit of 12% enhancement on the flat rate and given them the benefit of 12% increase on ₹6,000/- which is the consideration of the sale deed and accordingly assessed the value of the sale deed @ ₹10,000/- and, therefore, the market value would come to ₹4,60,488/- per acre which is in contrast to the rates awarded to other land owners who were owning large chunks of land and have been discriminated solely on the ground that they were owners of plots of land, whereas others were owners of large chunks of land and, accordingly, land had been classified into three heads for determining its market value.

The Apex Court in '**Bangaru Narasingha Rao Naidu etc. Vs. The Revenue Divisional officer, Vizianagaram**' 1980 (1) SCC 575 held that the best evidence of the market value of the acquired land is afforded by the transactions of sale regarding the same land while putting a caveat that there should be nothing to doubt the authenticity of the

transactions.

In '**Ranvir Singh and others Vs. Union of India 2005 (12) SCC 59**, the Apex Court held that sale deeds regarding two portions of the land was subject matter of acquisition would be the most relevant piece of evidence for assessing the market value and even the market conditions prevailing as on the date of notification are relevant. The relevant observations read as under:-

“34. Furthermore, it is well-settled that the sale deeds pertaining to portion of lands which are subject to acquisition would be the most relevant piece of evidence for assessing the market value of the acquired lands. [See Land Acquisition Officer (Revenue Division Officer) Nalgonda (A.P.) v. Morisetty Satyanarayana and Others, (2002)10 SCC 570]

35. For the purpose of determining the market value, even market conditions prevailing as on the date of notification are relevant. [See Jasti Rohini (supra)]”

Similarly, in '**Gian Chand Vs. State of Haryana and another' 2009 (3) PLR 420**, it has been held that sale transactions of the same land are best piece of evidence for assessing the market value.

In the present case, it is to be noticed that the sale deeds had been executed in the year 1982, 5 years prior from the acquisition in question, which had been notified on 15.12.1988 and, therefore, there is no valid reason to discount that the same were executed for the purposes of enhancing the market value, on account of impending acquisition process and, this Court does not feel that the same are not liable to be taken into consideration.

In the opinion of this Court, the Reference Court fell into a

patent error as such and should have given the benefit of applying the flat rate per acre for the said purpose and should have applied the necessary development cut for assessing the market value, keeping in mind the sale deeds Ex.A5 & A6. The principles laid down in judgment of the Apex Court in '**The General Manager, Oil & Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and another**' 2008 (14) SCC 745 would, thus, be applicable. In the said judgment, the Court had noticed that the increase in the market value in rural areas is between 5% to 7.5% and if there are special reasons for applying a higher rate of increase or any specific evidence relating to the actual increase in prices the same is to be given.

Senior Counsel could not deny the fact that the enhancement @ 12% was also on the higher side, since the land was not in such a area where there was potentiality or quick pace of development, which would as a right entitle the land owners for the higher percentage of enhancement. The situation of the land and the type of land has already been discussed above and, therefore, in the opinion of this Court the percentage of increase upon the exemplars Ex.A5 and A6 cannot in any manner be more than 7.5%.

Another factor which would have to be kept in mind for calculating the market value would also be the prevailing market conditions at the time of the acquisition of the land on 15.12.1988 when the State was facing and under the threat of heightened terrorism activities, which would further lead to the non-availability as such of a

willing buyer in the said locality. The said factor has also come on record by way of the evidence of RW-4, Shri Darshan Singh, Patwari, whereby he specifically stated that due to terrorism prices of the land were low and justified the award of the Collector.

It is settled principle that the prevalent market value on the date of notification is to be taken into consideration and the best instances would be the sale deeds which are part of the acquired land for determining the market value.

Senior Counsel was also justified in pointing out that while granting the benefit of interest @ 9% for the first year @ 15% subsequently till actual realization, the same was held to be granted only on the amount of compensation and a condition was put that in addition the land owners would be entitled for the statutory benefits as prescribed under Section 23 (1-A) and solely @ 30% under Section 23 (2) of the Act. This splitting up of the solatium and not treating it as a part of compensation is not justified, in view of the observations of the Constitutional Bench in **Sunder's case (supra)**, wherein it has been held that the solatium is part of compensation and, therefore, interest upon it is also the right of land owners and, therefore, interest was payable on all the amounts under Section 23 (1-A) and solatium under Section 23 (2) of the Act.

The Constitution Bench was dealing with the issue as to whether State was liable to pay interest on the amount as envisaged under Section 23(2) of the Act which is better known as solatium. The issue

was accordingly thrashed out while referring to Section 26, 31 and 34 that it was not permissible to split compensation in components for the purpose of payment of interest and it was accordingly held that person entitled to compensation awarded is also entitled to interest on the aggregate amount which also included solatium. Thus, the solatium aspect was also included as an integral and statutory part of the compensation. In such circumstances, counsel for the appellant is well justified in submitting that under the third clause of Section 23(1) on account of severance, the same amount is also to be assessed as market value and is part of the compensation which is liable to be paid to the appellants. The relevant observations of the Constitution Bench in **Sunder's case (supra)** read thus:-

“19. Section 26 does not say that the award would contain only the amounts granted under sub-section (1) of Section 23. The special mention of that sub-section in Section 26 is only for the purpose of directing that the grounds or reasons for awarding the amount under each of the clauses in the sub-section shall be specified in the award. It is unnecessary to mention any reason or ground in any award as to why the sums indicated in sub-section (1-A) and sub-section (2) of Section 23 of the Act were granted, because they are only the sequels or concomitant adjuncts of the determination of the total amount indicated in sub-section (1). No judicial exercise is required to quantify the sums mentioned in sub-section (1-A) or subsection (2) because the section itself specifies the percentage to be worked out for the purpose of adding to the total amount arrived at under sub-section (1). Otherwise Section 26 is not intended to show that the compensation awarded would be bereft of the additional amount and the solatium envisaged under sub-section (1-A) or sub-section (2).”

This can be clearly discerned from the commencing words of Section 26 itself. They are: "Every award under this Part shall be in writing signed by the Judge". What is referred to therein is Part III of the Act which comprises of a fasciculus of twelve provisions starting with Section 18 and ending with Section 28A of the Act. There can be no doubt that all the three heads specified in the three sub-sections in Section 23 are the sums to be "awarded by the court". Hence the words "every award under this Part" cannot be treated as the award after delinking the amounts awarded under sub-section (1-A) or sub-section (2) of Section 23.

20. *We may now see whether exclusion of the factor "any disinclination of the person interested to part with the land acquired" from being considered as part of the compensation indicated in Section 24 of the Act would be of any aid for excluding solatium from the purview of interest accrual process. No doubt what is intended under Section 23(2) is additional to the market value of the land and "in consideration of the compulsory nature of the acquisition". But it cannot be equated with any damage caused on account of "any disinclination of the person to part with the land acquired."*

21. *It is apposite in this context to point out that during the enquiry contemplated under Section 11 of the Act the Collector has to consider the objections which any person interested has stated pursuant to the notice given to him. It may be possible that a person so interested would advance objections for highlighting their disinclination to part with the land acquired on account of a variety of grounds, such as sentimental or religious or psychological or traditional etc. Section 24 emphasises that no amount on account of any disinclination of the person interested to part with the land shall be granted as compensation. That aspect is qualitatively different from the solatium which the legislature wanted to provide "in consideration of the compulsory nature of the acquisition".*

22. *Compulsory nature of acquisition is to be distinguished from voluntary sale or transfer. In the latter, the landowner*

has the widest advantage in finding out a would-be buyer and in negotiating with him regarding the sale price. Even in such negotiations or haggling normally no landowner would bargain for any amount in consideration of his disinclination to part with the land. The mere fact that he is negotiating for sale of the land would show that he is willing to part with the land. The owner is free to settle terms of transfer and choose the buyer as also to appoint the point of time when he would be receiving consideration and parting with his title and possession over the land. But in the compulsory acquisition the landowner is deprived of the right and opportunity to negotiate and bargain for the sale price. It depends on what the Collector or the Court fixes as per the provisions of the Act. The solatium envisaged in sub-section (2) "in consideration of the compulsory nature of the acquisition" is thus not the same as damages on account of the disinclination to part with the land acquired.

23. *In deciding the question as to what amount would bear interest under Section 34 of the Act a peep into Section 31(1) of the Act would be advantageous. That sub-section says: "On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next subsection." The remaining sub-sections in that provision only deal with the contingencies in which the Collector has to deposit the amount instead of paying it to the party concerned. It is the legal obligation of the Collector to pay "the compensation awarded by him" to the party entitled thereto. We make it clear that the compensation awarded would include not only the total sum arrived at as per subsection (1) of Section 23 but the remaining sub-sections thereof as well. It is thus clear from Section 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the sub-sections thereof.*

24. The proviso to Section 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum from the date of expiry of the said period of one year "on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry". It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under Section 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest under Section 34 was not in the contemplation of the legislature when that section was framed or enacted."

Keeping in view the above, this Court feels that the best price of the exemplar Ex.A5 and A6 is to be taken into consideration on account of the fact that they were executed on 05.07.1982 and enhancement @ 7.5% is given for a period of 6 years as per the table as under:-

1 st Year	60 + 4.5 (7.5% of 60)	=	64.5
2 nd Year	64.5 + 4.84 (7.5% of 64.5)	=	69.3
3 rd Year	69.3 + 5.2 (7.5% of 69.3)	=	74.5
4 th Year	74.5 + 5.59 (7.5% of 74.5)	=	80.1
5 th Year	80.1 + 6.007 (7.5% of 80.1)	=	86.1
6 th Year	86.1 + 6.46 (7.5% of 86.1)	=	92.56 (Rs. Per Sq. Yd.)

The rate would come to ₹92.56/- per square yard. However,

keeping in view the settled principle that exemplars are of small pieces of land, though have to be kept into consideration, but necessary cut has to be applied upon the same as has been held in '**Ashrafi and others Vs. State of Haryana and others'** (2013) 5 SCC 527.

Mr. Behl, Senior Counsel, however, argued to the contrary to the extent that the cut should be nominal, keeping in view the fact that the land was to be used for the purpose of setting up of a cattle fair ground and, therefore, development cut should be not more than 10%. It is, accordingly, contended that while fixing the rate @ ₹92.56 per square yard, the market value should be ₹82.13/- per square yard by placing reliance upon judgment of the Apex Court in '**Chakas Vs. State of Punjab and others'** 2011 (4) RCR (Civil) 211.

A perusal of the said judgment would go on to show that in the said case exemplar (Ex.P8) was taken into consideration which was on the basis of an agreement to sell and the sale deed had taken place after the date of notification, whereby the price had been fixed @ ₹4.08 lakhs per acre. The Reference Court deducted 50% of the value assessed towards development charges and fixed the price ₹2.75 lakhs per acre, whereas the High Court had fixed the price ₹3,42,527/-. Accordingly, the Apex Court had come to the conclusion that the land was to be used for industry which had been given 525 acres and the minimum was to be utilized for roads, sewerage and other facilities. Therefore, the land owner was deprived of solatium and, accordingly, benefit would go to the Corporation and, therefore, only 10% deduction had been fixed. It is also

to be kept in mind the said land was a premium industrial land situated on the Ambala-Chandigarh highway and in such circumstances only a nominal cut was made.

Similarly, the Apex Court in '**Subh Ram and others Vs. State of Haryana and another**' 2010 (1) SCC 444, has held that the acquisition was for construction of a jail and the argument that no deduction should be made from the market value of small developed plots was rejected. Accordingly, it was held that the purpose of acquisition is not to be taken into consideration, though in certain cases to extend the benefit of a uniform compensation, the said factor has been kept in mind. Resultantly, keeping in view the provisions of Section 24 it was held that future use or purpose of acquisition has no role in determining percentage of deduction towards development cost. The relevant observations read as under:-

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

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

In the present case, the judgment of the Apex Court **Chandrashekar (D) by LR & others Vs. Land Acquisition Officer & another 2012 (1) SCC 390**, would be applicable wherein the Court has decided that the cut should not be more than 67% and, therefore, the cut can vary as such. It is to be noticed that the type of land and nature has already been highlighted above.

The fact that there was no construction in the near vicinity and for developing the area necessarily development cut would be required. Accordingly, this Court is of the opinion that a 50% cut is liable to be fixed on a sum of ₹92.56 per square yard. The market value would be assessed @ ₹46.28 per square yard and it would come to ₹2,23,995/- per acre. The cut is on two accounts, one is 25% on development cut and second is on account of the fact that the acquisition

is at the stage when the State was under the shadow of terrorism. Accordingly, the appeals are partly allowed to that extent.

It is further clarified that the land owners shall be entitled to all the statutory benefits and the amount of solatium would form an integral part on which the land owner would be entitled for the benefit of interest as per the statutory provisions. It is further clarified that since the State has not preferred any appeals against the vendees Ashwani Kumar and Ravi Kumar and they would be entitled for the benefits as assessed by the Reference Court and there would be no reduction in their case. However, they would be entitled for the statutory benefits as stated above.

Accordingly, the appeals are partly allowed.

JANUARY 22, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No