

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

RFA No. 615 of 2005 (O & M)
Reserved on: 27.03.2018
Date of decision: 11.05.2018

Gurpal Singh and othersAppellant(s)

Versus

State of Haryana and others ...Respondent(s)

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

<i>Appeals filed by Land Owners</i>	<i>Appeals filed by State of Haryana</i>
RFA Nos. 615 to 630, 676 to 682, 1556, 1557, 2936, 1108, 1110, 1118 and 2025 to 2027 of 2005	RFA Nos. 1361 to 1371, 1373 to 1383, 1695 and 2077 to 2087 of 2005

Present: Mr. M.L. Sarin, Sr. Advocate,
 with Mr. Amrinder Preet, Advocate,
 Mr. M.L. Sharma, Advocate,
 Mr. M.K. Chauhan, Advocate,
 for the land owners.

 Mr. Sudeep Mahajan, Addl. A.G., Haryana,
 with Mr. Shivendra Swaroop, AAG, Haryana.

G.S.SANDHAWALIA, J.

1. The present judgment shall dispose of 66 regular first appeals, as mentioned above, since common questions of facts and law are involved in all the appeals. Reference is being made to ***RFA No. 615 of 2005, Gurpal Singh and others vs. State of Haryana and others.***
2. The present set of appeals preferred both by the land owners and the State under Section 54 of the Land Acquisition Act, 1894 (in short 'the Act') are directed against the award of the Reference Court, Panchkula

dated 30.11.2004 whereby, the market value of land falling in village Bana Madanpur, Hadbast No. 231 and Naggal Moginand, Hadbast No. 229 was assessed at Rs.6,44,000/- per acre. The basis for the assessment was an award dated 05.04.2002 passed in ***Lokinder Singh vs. State of Haryana*** wherein, for notification dated 04.05.1995 for village Bana Madanpur, Juriwala, sum of Rs.5,60,000/- per acre had been awarded. Similarly, for the notification dated 11.07.1995 also, the same amount had been awarded vide Ex.P-18 in the case of ***Barjinder Singh vs. State of Haryana***.

3. The acquisition in question was initiated on 13.08.1997 under Section 4 notification which was for 52 acres 16 marlas of land falling in both the villages for the purpose of construction of Police Lines and staff quarters of police personnel. The Land Acquisition Collector, vide Award No. 2 dated 28.07.2000, for 40 acres 7 biswas of land in Naggal Moginand and 12 acres 4 marlas Bana Madanpur awarded the following compensation keeping in view the quality of the land:-

“Sr. No. Name of the Village

<i>1.</i>	<i>Naggal Moginand</i>	<i>Chahi</i>	<i>3,00,000/- per acre</i>
		<i>Barani</i>	<i>2,60,000/- per acre</i>
		<i>Banjar</i>	<i>2,20,000/- per acre</i>
		<i>Gairmumkin</i>	<i>1,80,000/- per acre</i>
<i>2.</i>	<i>Bana Madanpur</i>	<i>Chahi</i>	<i>3,00,000/- per acre</i>
		<i>Barani</i>	<i>2,60,000/- per acre</i>
		<i>Banjar</i>	<i>2,20,000/- per acre</i>
		<i>Gairmumkin</i>	<i>1,80,000/- per acre</i>

4. Aggrieved by the amounts awarded, the land owners

approached the Reference Court under Section 18 of the Act. Potentiality of the land of both the villages for the purpose of residential and commercial was noticed to grant 12% increase on the earlier compensation granted. Reliance was placed upon another award dated 16.09.2002 in ***Purujit Singh vs. State of Haryana*** (Ex.P-13) wherein, Rs.5,60,000/- per acre had been awarded which pertains to notification dated 11.07.1995, which had also relied upon the earlier award of *Lokinder Singh's case (supra)*. Accordingly, 12% increase was given for two years to determine the market value at Rs.6,44,000/- per acre. The Reference Court also made an arithmetical error as such while calculating the 24% increase for 2 years not on 5,60,000/- but by mistake on Rs.3,50,000/- which was awarded for the acquisition of the year 1989 and, therefore, calculated 24% increase as Rs.84,000/-. If 24% is calculated on Rs.5,60,000/-, the amount would come to Rs.1,34,400/- per acre and the value would further go upto Rs.6,94,400/-. This aspect also the State could not dispute.

5. The Reference Court also came to the conclusion that the land was acquired for residential purpose of Police Lines and, therefore, uniform rates should be given as were also given for the earlier acquisitions for both villages and the land fell within the municipal limits of Panchkula and, therefore, discarded the type of land for assessing the compensation. The issue of enhancement for the fruit bearing and non-fruit bearing trees and super structure in tubewells in Rabinder Nath Gupta's case i.e. L.A. Case No. 256 of 2001 was denied on the ground that no document had been brought on record by the witness Brij Nath Shukla who was the alleged caretaker. The owner had not come in the witness box and, therefore, the statement was not accepted. Similarly, the brother-in-law's statement being

the General Power of Attorney and the statement of PW-16 N.N. Sharma was taken into consideration alongwith his report Ex.P-25 and it was held that the said report could not be relied upon as the details of the land acquired were not given in the report.

6. Similarly, on issue no. 3, whether the petitioners were entitled for compensation of *shamilat deh land* and the share in the *mushtarka malkan*, it was held that no list of proprietors had been produced on record and no revenue record had been produced regarding the nature of entries and, therefore, in the absence of the same, the proprietors were not entitled for compensation for the *shamilat deh* land. It was further recorded that the issue was not even pressed during the course of arguments and, therefore, the same was decided against the proprietors who have filed RFA No. 2936 of 2005, in which an application for additional evidence has also been filed bearing C.M. No. 12772-CI wherein, it has been averred that the list of proprietors was only completed on 27.10.2005.

7. The application was opposed by the State saying that the application at this stage was not maintainable and has been filed at a belated stage though the case had been decided on 30.11.2004. The appellants not being diligent as such are not entitled for the benefit. It was further pleaded that the list of proprietors of *shamilat deh* land was based on the *misal haqiat* of 1917-18 and, therefore, was only to mislead the Court that the list of proprietors was prepared on 27.10.2005 and to fill up the lacuna.

8. It is pertinent to notice that firstly the award dated 05.04.2002 (Ex.P-13) of the Reference Court, upon which reliance has been placed, had been set aside on 27.10.2006 by this Court and the matters had been remanded to the Reference Court. Resultantly, the matter was decided again

on 20.04.2009 whereby, the Reference Court fixed the market value at Rs.746/- per square yard (Rs.36,20,640/- per acre).

9. It is also pertinent to notice that the said award dated 20.04.2009 in ***RFA No. 3506 of 2009, Lokinder Singh vs. State of Haryana*** decided on 06.04.2018 for acquisition of land measuring 95 acres in villages Juriwala, Bana Madanpur has been maintained whereas in RFA No. 1795 of 2012, ***Bachan Singh @ Bachna and others vs. State of Haryana and another***, the appeals of the land owners of village Nada have been allowed against the award dated 31.01.2012 whereby, Rs.460/- per square yard (Rs.22,26,400/- per acre) had been granted which has been enhanced to Rs. 746/- per square yard to bring it at the same level.

10. C.M. No. 1382-CI of 2010 in RFA No. 615 of 2005 for placing on record judgment Annexure A-1 and similarly, C.M. No. 13218-CI of 2016 again in RFA No. 615 of 2005 for bringing on record the awards in LAC No. 115 of 1996, Gulzar vs. State of Haryana and others passed on 05.11.2009 (Annexure A-1), Award in LAC No. 25 of 1998, Shakuntla Devi vs. State of Haryana passed on 24.08.2009 (Annexure A-2), Award in LAC No. 1 of 1995, Hans Raj and others vs. State of Haryana and others passed on 21.08.2009 (Annexure A-3), LAC No. 68 of 2007 (Lokinder Singh vs. State of Haryana and another passed on 20.04.2009 (Annexure A-4), LAC No. 178 of 2007, Janki vs. State of Haryana and another passed on 30.10.2008 (Annexure A-5), Award in LAC No. 1 of 1995, Raksha Sharma vs. State of Haryana and others, passed on 10.12.2008 (Annexure A-6), LAC No. 130 of 2007 (Jagpal Singh and others vs. State of Haryana and others passed on 10.03.2009 (Annexure A-7), LAC No. 41, Baldev Singh vs. State of Haryana and others, passed on 10.02.2009 (Annexure A-8),

judgment in RFA No. 55 of 1993 (State vs. Abhey Ram) passed on 29.10.2009 (Annexure A-9), RFA No. 41 of 1997 (Parkash Rani vs. State of Haryana) passed on 29.10.2009 (Annexure A-10), judgment in RFA No. 426 of 1994, Kashmiri Lal and others vs. State of Haryana and another, passed on 22.02.2010 (Annexure A-11) and copy of the site plan as Annexure A-12 showing the land acquired by abovesaid judgments and award in different colours have been filed.

11. Applications bearing C.M. Nos. 4388-CI of 2017 and 12309-CI of 2017 for additional evidence have also been filed under Order 41 Rule 27 CPC in RFA No. 615 of 2005 to bring on record the judgment dated 08.04.2016 (Annexure A-3) in RFA No. 1956 of 2010, State of Haryana through LAC Urban Estate, Panchkula vs. Hans Raj and others wherein, market value had been assessed at Rs.380/- per square yard and which has been modified by the Apex Court in ***Civil Appeal No. 28906 of 2016, Umesh Gupta vs. State of Haryana*** on 09.10.2017 (Annexure A-5) wherein, the market value of the land falling in village Ramgarh, Bana Madanpur, Juriwala and Naggal Moginand has been determined at Rs.290/- per square yard for the acquisition dated 26.09.1989. Site plan (Annexure A-4) and lay out plan (Annexure A-6) have also been appended.

12. The applications for additional evidence are accordingly allowed and the said awards/documents are allowed to be taken on record as they are only helpful for this Court to decide the issue in question and for the purposes of pronouncing the judgment as per provisions of Order 41 Rule 27 as most of the awards and judgments have come subsequently in point of time after the impugned Award dated 30.11.2004. The said judgments would only go on to show the market value of the adjoining

villages which would be a relevant piece of evidence as has been held by the Apex Court in ***Ranvir Singh and others vs. UOI, 2005 (12) SCC 59*** and the position has also been repeated in *Umesh Gupta's case(supra)*.

13. The argument raised by Mr. M.L. Sarin, Sr. Advocate is that in view of the market value being fixed for the notification dated 26.06.1989 @ Rs.290/- per square yard if 15% cumulative increase is granted, the value would come to around Rs.43,99,560/- per acre (Rs.909/- per sq. yard). The claim for 15% enhancement is on the strength of the decision in ***RFA No. 633 of 2005, Jagdish Chander vs. State of Haryana*** which is pertaining to notification dated 15.07.1994 wherein 2.73 acres of land of village Ramgarh and 0.39 acres in village Bana Madanpur had been acquired and 15% increase had been given on the basis of *Umesh Gupta's case (supra)*. Mr. Khan and Mr. Chauhan have submitted similarly that if Rs.746/- is calculated as the base, enhancement on cumulative basis would be 12% for two years at Rs.925/- per square yard (Rs.44,77,000/- per acre) whereas, 15% would be Rs. 986/- per square yard (Rs.47,72,240/- per acre).

14. State has opposed it on the ground that review has been filed and the decision is pending. Mr. Mahajan has argued that the cumulative enhancement over 5 years period is not permissible and even otherwise, 15% is on the excessive side.

15. A perusal of the record would go on to show that it was the specific case of the land owners that in the year 1980, the notification was issued for setting up the ITBP Complex and thereafter the land of village Bana Madanpur and Ramgarh had been acquired for setting up 33KB Sub Station in the year 1987. In the year 1989, land of village Bana Madanpur, some portion of Naggal Moginand, Ramgarh had been acquired for which

Rs.290/- per square yard has been assessed by the Apex Court in *Umesh Gupta's case (supra)*. Accordingly, market value was claimed at Rs.2,000/- per square yard as HUDA was allotting plots @ 3,500/- per square yard in Sectors 25 and 26, Panchkula. The location of the land was highlighted that it was falling on the Kalka-Delhi Highway via Saha-Ramgarh-Barwala. It connected Haryana with Himachal Pradesh and the road went to Jagadhari, Saharanpur and earlier was a State Highway and now a National Highway. The land was merely 5 kilometers from Sector 5, Panchkula. It connected Sector 25 with sector 21 which touched Sector 12. Sector 21 and Sector 24 had been fully developed and Sector 25 also was fully developed. On one side of land was *abadi* of village Naggal Moginand and the other side was the ITBP Headquarters. On the other side of the land was sector 25, Panchkula and on the fourth side of the land, the road went from National Highway to the *abadi* of the village. Therefore, the land was connected with a metaled road and was in the hub of the city.

16. The State, in its defence, has taken the plea that the land was totally hilly, undulating and not cultivable, which was far away from the city Panchkula and from the main road. The land owners were not entitled for compensation for *shamilat deh* and there was no legal right on the land. The land was lying vacant since long and it was not possible to use it for commercial and residential approach and it was *barani* and consisting of hills. The land could not be used for residential purposes because it was not having a plain area and having no approach. The State Highway was far from the acquired land.

17. A perusal of the evidence brought on record would go on to show that Des Raj had appeared as PW-1, whose land measuring 29 bighas

13 biswas was acquired and was one of the 5 co-sharers. He deposed that the boundaries of village Naggal Moginand joined the boundaries of village Bana Madanpur, Ramgarh next to Jhuriwala. The boundaries of village Bana Madanpur joined the boundaries of village Naggal Moginand, Jhuriwala, Ramgarh, Devi Nagar, Maheshpur and Kundi. The land of village Bana Madanpur was earlier acquired for setting up Sectors 25, 25 and 26, Panchkula. Similarly, land of village Ramgarh was acquired for setting up Sectors 27 and 28. Similarly, the land of village Naggal Moginand was acquired for setting up of Sector 25 alongwith Jhuriwala. The land of village Bana Madanpur and Ramgarh had been acquired and ITBP had been set up on the acquired land. On one side of the acquired land was Terminal Ballistic Research Laboratory (TBRL) and this land was acquired in 1992 and the land for ITBP was acquired and the same was set up in 1988. He produced sale deeds Exs. P-8 to P-11 apart from the awards. The Halka Patwari deposed on the same lines regarding the contiguity of the villages and further deposed that the land was irrigated by tube-well in both the villages and was even. He further stated that the land was better than the land acquired for Sectors 25 to 27. The Aks Sijras were produced on record as Exs.P-14 and P-15. The site plan Ex.P-16 was produced by Draftsman Ram Niwas Walia on the basis of the lay out plan of Panchkula and similarly, the evidence of Karam Chand PW-6 and Kuldeep PW-7 was led on the same liens to show the potentiality of the land.

18. The State, in its response, had examined RW-1 Sandeep Kumar, Partari, who deposed that land consisting of *chahi, banjar and gair mumkin* and was situated across the road from the land acquired of HUDA and at a distance of 3 kilometers from Ramgarh. He deposed that there is no

sale transaction of land situated in village Naggal Moginand and had admitted that the acquired land abutted on the northern side of National Highway No. 73 leading from Panchkula to Ramgarh. He further deposed that on the southern side in front of the acquired land, HUDA had developed Sectors 25 and 26 and on the eastern side adjacent to the acquired land was a private residential colony with constructed houses in the name of Tribune Mittar Vihar. In cross examination, it was further elicited that some houses have been constructed on the plots of Sectors 25 and 26 whereas, some were lying vacant. Sewerage lines, electricity supply and other amenities were available in the said sectors and the land was levelled. He further admitted that on the other two sides of the acquired land, there was private land on one side and *rasta* on other side. The residential houses of ITBP officials were at a distance of 2 killas from the acquired land which was at a distance of 3 to 4 kilometers from Majri Chowk. The same was also at a distance of 2 kilometers from Nada Sahib Gurudwara and he denied the suggestion that it was 2 kilometers from Majri Chowk, Panchkula. He also admitted that by the award, equal amount had been given for the land of both the villages and potentiality was the same of both the villages.

19. The argument which has now been raised regarding the cumulative enhancement to be granted on the basis of the judgment in *Umesh Gupta's case (supra)* wherein, the market value is assessed at Rs. 290/- per square yard which pertains to the notification dated 26.06.1989 is not liable to be accepted. It is to be noticed that a period of 8 years intervenes the said notifications since the notification of the present case is dated 13.08.1997. The Apex Court has frowned upon the principle of

giving cumulative increase beyond the period of 4 to 5 years on the ground that it is not a safe way to determine the market value and has also held that cumulative method of applying 12% increase blindly is not to be followed, as held in **CA-13132-13141-2017 titled *Manoj Kumar & others Vs. State of Haryana & others***, decided on 13.09.2017. The Apex Court set aside the judgment of this Court pertaining to Jagadhri and has held that though awards are relevant piece of evidence but sale deeds had far more evidentiary value and the comparable sale deeds are more reliable and binding upon the Courts to determine the value of the property. The relevant portion of the said judgment reads as under:-

“14. In our opinion, the High Court could not have placed an outright reliance on the decision of Swaran Singh's case, without considering the nature of transaction relied upon in the said decision. The decision could not have been applied ipso facto to the facts of the instant case. In such cases, where such judgments/awards are relied on as evidence, though they are relevant, but cannot be said to be binding with respect to the determination of the price, that has to depend on the evidence adduced in the case. However, in the instant case, it appears that the land in Swaran Singh's case was situated just across the road as observed by the High Court as such it is relevant evidence but not binding. As such it could have been taken into consideration due to the nearness of the area, but at the same time what was the nature of the transaction relied upon in the said case was also required to be looked into in an objective manner. Such decisions in other cases cannot be adopted without examining the basis for determining compensation whether sale transaction referred to therein can be relied upon or not and what was the distance, size and also bonafide nature of transaction

before such judgments/awards are relied on for deciding the subsequent cases. It is not open to accepting determination in a mechanical manner without considering the merit. Such determination cannot be said to be binding. We have come across several decisions where the High Court is adopting the previous decisions as binding. The determination of compensation in each case depends upon the nature of land and what is the evidence adduced in each case, may be that better evidence has been adduced in later case regarding the actual value of property and subsequent sale deeds after the award and before preliminary notification under [section 4](#) are also to be considered, if filed. It is not proper to ignore the evidence adduced in the case at hand. The compensation cannot be determined by blindly following the previous award/judgment. It has to be considered only a piece of evidence not beyond that. Court has to apply the judicial mind and is supposed not to follow the previous awards without due consideration of the facts and circumstances and evidence adduced in the case in question. The current value reflected by comparable sale deeds is more reliable and binding for determination of compensation in such cases award/judgment relating to an acquisition made before 5 to 10 years cannot form the safe basis for determining compensation.

15. The awards and judgment in the cases of others not being inter parties are not binding as precedents. Recently, we have seen the trend of the courts to follow them blindly probably under the misconception of the concept of equality and fair treatment. The courts are being swayed away and this approach in the absence of and similar nature and situation of land is causing more injustice and tantamount to giving equal treatment in the case of unequal's. As per situation of a village, nature of land its

value differ from the distance to distance even two to three-kilometer distance may also make the material difference in value. Land abutting Highway may fetch higher value but not land situated in interior villages.

16. The previous awards/judgments are the only piece of evidence at par with comparative sale transactions. The similarity of the land covered by previous judgment/award is required to be proved like any other comparative exemplar. In case previous award/judgment is based on exemplar, which is not similar or acceptable, previous award/judgment of court cannot be said to be binding. Such determination has to be out rightly rejected. In case some mistake has been done in awarding compensation, it cannot be followed on the ground of parity an illegality cannot be perpetuated. Such award/judgment would be wholly irrelevant.

17. There is yet another serious infirmity seen in following the judgment or award passed in acquisition made before 10 to 12 years and price is being determined on that basis by giving either flat increase or cumulative increase as per the choice of individual Judge without going into the factual scenario. The said method of determining compensation is available only when there is absence of sale transaction before issuance of notification under [section 4](#) of the Act and for giving annual increase, evidence should reflect that price of land had appreciated regularly and did not remain static. The Recent trend for last several years indicates that price of land is more or less static if it has not gone down. At present, there is no appreciation of value. Thus, in our opinion, it is not a very safe method of determining compensation.

18. To base determination of compensation on a previous award/ judgment, the evidence considered in the previous judgment/ award and its acceptability on judicial

parameters has to be necessarily gone into, otherwise, /gross injustice may be caused to any of the parties. In case some gross mistake or illegality has been committed in previous award/judgment of not making deduction etc. and/or sufficient evidence had not been adduced and better evidence is adduced in case at hand, previous award/judgment being not inter-parties cannot be followed and if land is not similar in nature in all aspects it has to be out-rightly rejected as done in the case of comparative exemplars. Sale deeds are at par for evidentiary value with such awards of the court as court bases its conclusions on such transaction only, to ultimately determine the value of the property.”

20. In similar circumstances, in **CA-17790-17801-2017 titled *State of Haryana Vs. Chetin Kaur***, decided on 26.09.2017, a similar view was taken and the enhancement on the basis of 12% cumulative increase, was set aside, on the ground that the facts and evidence have to be seen and accordingly, the market value has to be determined. The notification in the said case was also of the year 2002 and the enhancement was on the basis of award of 1994, by following the said principle, which was not approved.

21. To come to the said conclusion, the Apex Court had relied upon the judgment in ***Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another, 2008 (14) SCC 745*** that the cumulative increase was not to be given beyond a period of 5 years as it would not be safe.

22. Resultantly, the argument as such is not liable to be accepted. However, as noticed, the land across the road has been acquired for setting up Sectors 22 and 23 vide notification dated 04.05.1995 of village Jhuriwala, Bana Madanpur and Nada. The awards which had been relied

upon dated 05.04.2002 had been set aside by this Court on an earlier occasion on 27.10.2006 and the matter has been re-decided on 28.04.2009 and the market value has been fixed at Rs.746/- per square yard. In *Lokinder Singh's case (supra)*, the said amount of market value has been upheld. The land of the said villages is closer to the Central Point of Panchkula namely Majri Chowk through the two bridges which are now connecting the land which is situated across the river on the eastern side. However, some of the said land is situated away from the Highway whereas, the land in question is having a frontage of National Highway No. 73, which would be clear from the site plan Ex.P-16 and also the deposition of the witnesses. Thus, the distance factor from Majri Chowk is evenly balanced on account of the location of the land being on the National Highway. In *Lokinder Singh's case (supra)*, this Court had already noticed how the State has chosen to develop the lands which have been falling on the Highways by exploiting their potential in a manner similar to the ones which a private developer would and chosen to develop the land away from the Highways at a subsequent point of time in those set of cases.

23. In ***Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona, 1998 (3) SCC 751***, the positive and negative factors which were to be kept on the mental screen for assessing the market value had been laid down by the Apex Court, which read thus:-

Plus factors	Minus factors
1. Smallness of size	1. Largeness of area.
2. Proximity to a road	2. Situation in the interior at a distance from the road.
3. Frontage on a road.	3. Narrow strip of land with very small frontage compared to depth.
4. Nearness to developed area.	4. Lower level requiring the depressed portion to be filled up.

Plus factors	Minus factors
5. Regular shape.	5. Remoteness from developed locality.
6. Level vis-a-vis land under acquisition.	6. Some special disadvantageous factor which would deter a purchaser.
7. Special value for an owner of an adjoining property to whom it may have some very special advantage.	

24. In *Haridwar Development Authority, Haridwar vs. Raghubir Singh and others, 2010 (11) SCC 581*, the location on the Highway and the factum of granting uniform rate was discussed while upholding the same and discarding the belting system. In *Bhule Ram vs. UOI and another, 2014 (11) SCC 307*, the advantages of the land which fell on the Highway which would have a better potential and value were kept in mind and these advantages, therefore, have to go in favour of the land owners though the land might be at a distance from the land which is acquired for Sectors 22 and 23. The adjoining areas had already been utilized and the Tribune Colony had come up in the neighbourhood whereas, the ITBP Complex was also just 2 acres away, as deposed by the witnesses. The notification in question being 8 years from 26.06.1989 would go on to show the value of the land across the Highway which had been developed for institutional and residential purposes. The factum of the increase in prices and the spurt which was taking place on account of the construction of second bridge in 1994 had already been noticed in *Lokinder Singh's case (supra)*. The construction of bridge has led to the access to the other National Highway No. 22 leading from Ambala to Kalka and resultantly, the decision in *Lokinder Singh's case (supra)* pertaining to the notification dated 04.05.1995 has to be kept into mind whereby, the market rate has been

upheld at the rate of Rs.746/- per square yard. The said decision, thus, becomes a relevant piece of evidence to assess the market value of the acquired land in question.

25. Resultantly, following the judgment in *Rameshbhai's case* (*supra*), this Court is of the opinion that the claim for enhancement for 12% is very much justified which works out to Rs.925/- per square yard (Rs.44,77,000/- per acre). The benefit of 15% as such is not being given specifically in this case in as much as in *Lokinder Singh's case*, it was the pleaded case as such of the land owners that land was being kept under the ambit and threat of acquisition by issuing notifications from the year 1971 and development had been done along the highways whereas, the land closer to the centre of the town had not been acquired. Evidence had been accordingly led in *Lokinder Singh's case* to that effect which has been accepted and, therefore, the additional benefit of 15% has also been kept in mind in the said case. In the present case, neither the land owners have pleaded these aspects and neither there is any evidence on record that the land was being locked up by issuing notifications and, therefore, they cannot be granted the same benefit and have been granted benefit of 12% solely keeping in view the fact that the urbanization of Panchkula was taking place at a very high rate. The detailing has already been given in *Lokinder Singh's case* which reads thus:-

“The location of the land is of utmost importance, which is to be kept into consideration, which would be clear from the site-plans which are already on record and from Mark-A, which has now been taken on record and which is identical on all accounts to site-plans Exts.P-23 & P-55. No doubt, the land was situated

across the river and there was only a sole lifeline in the form of a bridge on the National Highway No.73, to cross the turbulent river of Ghaggar which becomes dominant during monsoon and continues to entail damage downstream, disgorging its discharge from the hills and enters into the State of Punjab and after heaping misery for some time, enters Haryana. It was in such circumstances, the land in question, as such, could not be immediately developed as it was lying on the other side of the river and the State of Haryana continued developing Panchkula, firstly on the western side of the river, closer to Chandigarh firstly and then thereafter, on the portion abutting National Highway No.22, which would be clear from the statement of the witnesses and from the site-plan. The first development which took place was in 1971 and 1983, which has been marked-A and was on the western-side of the National Highway No.22 which led from Ambala-Zirakpur-Kalka and Shimla and away from the river and to the road leading to Chandigarh.

In view of the land which lay on the other side of Sector 21 & 22 and Ghaggar on the National Highway No.73 from Panchkula to Yamunanagar and onwards leading to Delhi on the alternate road, which is shown as 'D' in purple colour in the site-plan Mark-A, on which came up the ITBP Colony which was developed in the year 1985 and across it, to augment infrastructure, land had been acquired at point 'C', shown in green colour for 220 KV sub-station of the erstwhile Electricity Board in 1984.

Similarly, at that point of time, land abutting the bridge before crossing the Ghaggar, falling in Village Kharak Mangoli was acquired in 1985, which is known as old Panchkula and right across the District Court's

complex, Panchkula and on the National Highway No.22, for which compensation was fixed @ Rs.250/- per sq.yards in CA-10286- 2010, Kanti Parkash Bhalla (Dead) through LRs & others Vs. State of Haryana, decided on 10.07.2012.

Thereafter, the land adjoining the river on the National Highway No.22 was acquired on 31.03.1987, which fell in Village Devi Nagar, for which, the market value was assessed @ Rs.250/- per sq.yards in CA-1074-2012, Om Prakash Vs. State of Haryana, shown at point 'F' in blue colour. The said portion of land also gives access to the road which leads to the new bridge crossing the river Ghaggar, which had been constructed in 1994 and which came in the statement of PW-18, Rakesh Kumar, Patwari. The Youth Hostel and Golf Course, Cricket Stadium and the Sports Complex etc were developed in the said land which is adjoining Village Maheshpur, again situated on National Highway No.22 of which, land also was sought to be acquired in 1990, for the purpose of developing Sector 21.

A small stretch of land falling in Village Nada was then acquired on 05.04.1988 a portion of which also abuts National Highway shown at point 'G', for the purpose of construction of Commando Training Centre, whereby the land value was fixed @ Rs.332.50 per sq.yards and the SLP-3179-2013, State of Haryana Vs. Santokh Singh, was dismissed on 01.07.2015 upholding the said amount.

The land in Village Fatehpur, Kundi shown at point 'I' was acquired on 29.01.1990, along with the balance land of Village Maheshpur, for development of Sector 20 and the land is situated towards the boundary of Punjab and again falling on the National

Highway No.22 and the rate was finally pegged down @ Rs.394/- per sq.yards, in Ashok Kumar's case (supra).

It is well known phenomenon that land falling on the National Highway always fetches a higher price due to its potentiality and the State also chose to encash upon the same. Reliance can be placed upon the judgment of the Apex Court in Union of India Vs. Mangat (dead) by LRs and others 2001 (1) PLJ 461, V. Hanumantha Reddy (Dead) by Lrs. Vs. The Land Acquisition Officer & Mandal R. Officer 2003 (12) SCC 642. Similarly, in Haridwar Development Authority, Haridwar Vs. Raghubir Singh and others 2010 (11) SCC 581, while keeping in view the issue regarding the adoption of the belting method, it was held that proximity due to access to the main road and highway were factors which were to be taken into consideration.”

26. Accordingly, the appeals filed by the State are dismissed whereas appeals filed by the land owners are allowed regarding fixation of market value @ Rs.44,77,000/- per acre.

27. Regarding the findings on issue no. 3 which pertains to the right of the proprietor of village to claim compensation on account of the acquisition of the *shamilat land* on account of the fact that it was never used or occupied by the Panchayat and was under the cultivation of the proprietors, counsel for the appellants, Mr. M.K. Chauhan in RFA No. 2936 of 2005, has relied upon his application for additional evidence to argue that the land in question was owned and possessed by them and the Reference Court wrongly did not grant them their respective shares. It is pertinent to notice that as many as 30 persons had filed LAC No. 245 of 2001 against

the respondents including the Gram Panchayat of village Naggal Moginand. It has been recorded by the Reference Court that apart from PW-10-Ranjit Singh, Rajiv Khanna-PW-11 and Bhagat Singh-PW-15 had deposed regarding this fact but no list of proprietors had been produced on record in order to prove the said facts. Similarly, no revenue record had been produced showing the nature of entries that the petitioners were proprietors in *shamilat deh* and *jumla mushtarka malkan* land and, thus, in the absence of the evidence, it was held that they were not entitled to compensation in the *shamilat land*. Finding was also recorded that the issue was not even pressed during the course of arguments. The said finding as such cannot be said to be illegal in any manner as it is the own case of the applicants-appellants in their application that the list of proprietors was prepared thereafter. The State has responded on the ground that the list of proprietors is on the basis of the *misal haqiat* of 1917-18. It is also not disputed that the Gram Panchayat of village Naggal Moginand has merged in the Municipal Corporation, Panchkula and on 26.02.2018, time had been taken for filing an application for impleadment in spite of the fact that the appeals are of the year 2005. No such application having been filed when the case was taken up for hearing and, therefore, notice could not be issued to the Municipal Corporation to get their response regarding the case of the appellant in RFA No. 2936 of 2005. The lack of diligence on part of the said appellants is, thus, apparent on the face of the record and in the absence of Municipal Corporation being present before this Court, the issue as such cannot be decided in their absence also.

28. A perusal of the claim petition filed by the proprietors would go on to show that it was pleaded that 38 bighas 13 biswas of land was the

shamilat deh land in which they had staked a claim being co-sharers and were entitled to compensation on account of the acquisition as per their shares. The said factor had been denied in the written statement filed by the State to the extent that the petitioners were to prove the contentions. Apart from deposing the quantum of land acquired which was *shamilat deh* land in the affidavit filed by Bhagat Ram PW-15, no effort was made to bring the necessary evidence on record. It is to be noticed that as many as 17 witnesses were examined after the issues were framed on 16.10.2001 starting from 17.02.2004 till 06.10.2004, when last opportunity was granted. Thereafter, the evidence was closed vide order on 27.10.2004 and one State witness was examined on 25.11.2004. The judgment was pronounced on 30.11.2004 thereafter. Therefore, it would be clear that the Reference Court had not refused to admit the evidence and, therefore, in the absence of due diligence, the application for additional evidence is not liable to be allowed.

29. The principles of leading additional evidence were also subject matter of consideration by the Apex Court recently in ***Satish Kumar Gupta and others vs. State of Haryana and others, 2017 AIR Supreme Court 1072*** wherein, it was held that application for additional evidence cannot be used for the purpose of filling up the lacuna at a later stage. The relevant portion reads thus:-

“20. It is clear that neither the Trial Court has refused to receive the evidence nor it could be said that the evidence sought to be adduced was not available despite the exercise of due diligence nor it could be held to necessary to pronounce the judgment. Additional evidence cannot be permitted to fill-in the lacunae or to patch-up the weak points in the case. There was no

ground for remand in these circumstances.”

30. The parameters provided have to be filled up wherein case has to be specifically made out that adequate opportunity was not granted and the Court had not permitted the applicants to lead the evidence or that it would be helpful and in interest of justice. The said factors having not been as such made out, this Court is of the opinion that the application as such is not justified.

31. Resultantly, this Court is of the opinion that the application for additional evidence i.e. C.M. No. 4388-CI of 2017 in RFA No. 615 of 2005 for producing on record the certified copy of the list of proprietors is liable to be dismissed and it is ordered accordingly.

32. Resultantly, it is held as under:-

(i) The appeals of the land owners are allowed whereby they are entitled for compensation of Rs. 925/- per square yard (Rs.44,77,000/- per acre).

(ii) Appeals of the State are dismissed.

(iii) RFA No. 2936 of 2005 filed by the share holders is also dismissed.

11.05.2018
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No

