

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.3506 of 2009

Reserved on : 08.03.2018

Decided on : 06.04.2018

Lokinder Singh & others

....Appellants

Versus

State of Haryana & others

...Respondents

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

Present: Mr.Alok Mittal, Advocate
Mr.M.K.Chouhan, Advocate
Mr.Shoaib Khan, Advocate
Ms.Kulwinder Kaur, Advocate, for
Mr.Arvind Kashyap, Advocate, for the appellant(s).

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

G.S. SANDHAWALIA, J.

The present judgment shall dispose of 81 appeals which is being referred to as the 1st set pertaining to Villages Jhuriwala & Bana Madanpur, RFA-3506-2009, RFA-406-2010, RFA-831-2010, RFA-832-2010, RFA-833-2010, RFA-834-2010, RFA-1934-2010, RFA-1935-2010, RFA-1936-2010, RFA-1937-2010, RFA-1938-2010, RFA-1940-2010, RFA-1941-2010, RFA-1942-2010, RFA-1943-2010, RFA-1944-2010, RFA-1945-2010, RFA-1946-2010, RFA-1947-2010, RFA-1948-2010, RFA-1949-2010, RFA-1950-2010, RFA-1951-2010, RFA-3507-2009, RFA-3508-2009, RFA-3509-2009, RFA-3510-2009, RFA-3511-

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2009, RFA-3512-2009, RFA-3513-2009, RFA-3514-2009, RFA-3532-2009, RFA-3533-2009, RFA-5571-2010, RFA-1939-2010 & RFA-830-2010. The appeals have been filed under Section 54 of the Land Acquisition Act, 1894 (for short, the 'Act'), arising out of the award dated 20.04.2009 of the Reference Court at Panchkula, wherein the market value of the land acquired for the purpose of residential, commercial, institutional and industrial purposes in Sectors 22 & 23, Panchkula, was assessed @ Rs.746/- per sq.yards (Rs.36,10,640/- per acre). Both the State of Haryana and the landowners of Villages Jhuriwala and Bana Madanpur Hadbast No.230 and 231 are in appeal against the said order.

The second set of appeals bearing RFA-2544-2012, RFA-2529-2012, RFA-6023-2012, RFA-6022-2012, RFA-2530-2012, RFA-2531-2012, RFA-2532-2012, RFA-2533-2012, RFA-1795-2012, RFA-1793-2012, RFA-2534-2012, RFA-1791-2012, RFA-2535-2012, RFA-1792-2012, RFA-2536-2012, RFA-2537-2012, RFA-2538-2012, RFA-2539-2012, RFA-2540-2012, RFA-2541-2012, RFA-2542-2012, RFA-2543-2012, RFA-3489-2015, RFA-1796-2012, RFA-1797-2012, RFA-1794-2012 WITH CM-837-CI-2016, RFA-1790-2012, RFA-2528-2012, RFA-4441-2012, RFA-4442-2012, RFA-497-2013, RFA-214-2014, RFA-7234-2012, RFA-1939-2012, RFA-4438-2012, RFA-4439-2012, RFA-4443-2012, RFA-4444-2012, RFA-4440-2012, RFA-3490-2015, RFA-9939-2014, RFA-1779-2013, RFA-2862-2013 & RFA-8812-2014 have been filed by the land-owners against the judgment dated 31.01.2012 & 23.10.2012, for Village Nada Hadbast No.199 wherein the

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market value had been fixed @ Rs.460/- per sq.yard (Rs.22,26,400/- per acre), though the propose of acquisition is the same. The award being subsequent to the earlier award dated 20.04.2009, did not take into consideration the same, on account of the fact that the Reference Court in the 1st set of appeals had allegedly taken into consideration the base price of a developed plot. The main case was titled as Tarlochan Singh, which was decided with 42 other references. The present RFA-1795-2012 titled *Bachan Singh @ Bachna & others Vs. State of Haryana & others*, thus, arises out of the said judgment. Since the notifications are common and the villages are adjoining each other and the revenue estates are contiguous and the purpose of acquisition being the same, therefore, vide the present judgment, appeals arising out of the separate awards, are being decided together. It is further pertinent to notice here that the State is satisfied with the award dated 31.01.2012 and has chosen not to file any appeal against the same.

The notification under Section 4 was issued on 04.05.1995, for the land situated in Village Jhuriwala, Hadbast No.230, Bana Madanpur, Hadbast No.231 and Nada Hadbast No.199 (as per the awards No.6 and 7 dated 09.03.1998 and 11.03.1998), the following market value of the land was assessed by the Land Acquisition Collector :

“ <u>Jhuriwala</u> Chahi/Abi	= Rs.2 lacs per acre
Barani/Gair Mumkin etc	= Rs.1.05 lac per acre
<u>Bana Madanpur</u>	
All kind of land	= Rs.2.81 lacs per acre.
Nada	= Rs.2,70,000/-”

At an earlier point of time, vide separate awards dated

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05.04.2002 and 24.12.2005, the market value was assessed @ Rs.5,60,000/- per acre by the Reference Courts, for the same land falling in all the three villages. Since the appeals had been filed by both sides against the same vide judgment dated 31.05.2005, in RFA-2574-2002 titled *Tara Devi Vs. State of Haryana*, the appeals of the landowners for the land-owners of Jhuriwala & Bana Madanpur the 1st set of cases were allowed and they were held entitled to compensation of Rs.430/- per sq.yards (Rs.20,81,200/-). Reliance at that point of time was placed upon Award dated 11.01.1999 (Ext. P-51) which pertained to the notification dated 26.06.1989 and for Village Bana Madanpur, on the ground that the same had attained finality and to Ext. P-53 which was pertaining to Village Maheshpur for notification dated 21.12.1994 and after granting 12% increase between the time-gap of two notifications.

On review applications, the said order was recalled and the said RFAs were finally decided on 27.10.2006 and the matters were remanded to the Reference Court on the ground that the appeals arising out of said award- Ext. P-51 had also been disposed of by remanding the same in RFA-8812-2014 titled *Gurdev Singh Vs. State of Haryana*. Resultantly, the matter has been re-decided vide the impugned order dated 20.04.2009. Similarly, keeping in view the remand of Village Jhuriwala and Madanpur, the appeals pertaining to Village Nada were also remanded on 06.11.2008 in RFA-1668-2006 titled *Hukam Chand Vs. State of Haryana*, for fresh decision.

Counsel for the land-owners, accordingly, has argued that 50% cut was excessive on Exts.P-71E and the cut should be around 25%,

keeping in view the judgment of the Apex Court in **CA(C) No.28906 of 2016** titled **Umesh Gupta Vs. State of Haryana** decided on 09.10.2017 (Annexure A-3) which pertained to the notification dated 26.06.1989, whereby the market value had been fixed @ Rs.18,39,200/- per acre (Rs.380/- per sq.yards), by this Court but had been brought down by the Apex court to Rs.290/- per sq.yards (Rs.14,03,600/- per acre). Thereafter, he submitted that 20% increase should be given on the letter of allotment Ex.P71 and Ex.P71E as there was lot of potential for growth since the acquired land was situated between the developed sectors and that the State Government had been issuing notifications to ensure that the land was not sold out which had led to suppressing the market value.

Similarly, it is argued that Village Nada being contiguous and falling on the national highway No.73, was also entitled for the assessment of the market value of the land at the same value and the impugned award dated 31.01.2012, was not justified and there was an immense disparity, as such, between the 2 awards when the purpose was common, as one Court had granted Rs.746/- per sq.yard whereas the other had only granted Rs.460/- per sq.yard, for the same notification, the purpose of which was common.

On the other hand, the State Counsel has argued that the award dated 20.04.2009, is not sustainable in as much as the rate of HUDA had been taken into consideration, which was of a developed plot. Reliance was placed upon ***Chandrashekar (D) by LRs & others Vs. Land Acquisition Officer & another 2012 (1) SCC 390***, to argue that the cut could be upto 75% and therefore, market value from Rs.746/- per

sq.yards should be scaled down to Rs.460/- per sq.yards, as granted in Nada. The development cut and the expenses cut should have been taken into consideration as it was agricultural land and therefore, reference to the rates in the allotment letter, were unwarranted for, to assess the market value.

Findings of the Reference Court qua Village Jhuriwala and Bana Madanpur:-

The Reference Court in the 1st set of cases came to the conclusion that the acquired land was situated 1 km from Majri Chowk which was the District Headquarters and Sectors 24 to 28 of the Urban Estate, Panchkula had already been developed vide acquisition dated 26.06.1989 for the said two villages. Village Kundi i.e. Sector 20 was around 5 kms from Majri Chowk, as per Exts.P-23 & P-24, the site-plans. It was noticed that the land fell between developed Sectors 24 to 28 of Panchkula on one side and Sector 21 & 3 on the other side. It was abutting National Highway 73 which was connecting Sectors 1 to 21 with Sectors 24 to 30 and the acquired land came before Sectors 24 to 28 which were already developed. Sector 28 was already developed and at a distance of 5 kms from the acquired land and Chandigarh was also nearer from the sectors already developed.

The land adjoining which had been acquired had been developed as Sector 25 abuts the acquired land and the remaining land had now been acquired vide the present acquisition from the same khasra number and rectangle of Villages Jhuriwala and Bana Madanpur and the land was contiguous and similar in nature. Once development had taken

place upto 5 kms ahead of the acquired land and plots had been offered for allotment in the adjoining portions, the urban potentiality was recognized that it was fit for infrastructure for urban purposes and therefore, there would be a sharp increase of prices of land. Finding was recorded that Panchkula was developed and there was no difference in development between the East and West Bank of the river Ghaggar and rather price of East part of the land of river Ghaggar was little more than the West. It had further been noticed that the Government had been issuing notifications for acquisition of the land of Villages Bana Madanpur and Jhuriwala along with other lands in the vicinity since 1971 and which had been deliberately allowed to lapse. No sale of land had taken place and the sales and values were, thus, suppressed.

Resultantly, reliance was placed upon an allotment letter dated 18.01.1994, regarding plot No.195 in Sector 25, Panchkula of 522 sq.yards (Exts.P-71/71E), wherein a sum of Rs.1485/- per sq.yards had been charged. The location of the plot was noticed that it was just 14 metres away from the acquired land, as per the site-plans on record and resultantly, the market value was determined on the said basis, by applying a 50% cut on account of development deductions.

The awards of nearby villages of Kharag Mangoli, Kundi, Fatehpur, Maheshpur, Judian which had been acquired between the years 1983 to 1994, were also taken into consideration, after giving 12% cumulative increase. The judgment of the Apex Court was also kept in mind in **General Manager ONGC Vs. Rameshbhai Jiwanbhai Patel & another (2008) 14 SCC 745**, and accordingly, it was held that the

assessment of the market value of the acquired land on the basis of the awards of the afore-mentioned villages were not proper. Various sale deeds also of other villages of Maheshpur, Rally, Ramgarh were also taken into consideration and the average being worked out, the market value of the land was assessed @ Rs.940/- per sq.yards.

It is pertinent to notice that the sale deeds were between 10.01.1990 to 01.10.1993 and resultantly, only Exts.P-42 and P-50 of village Maheshpur and Ramgarh were taken into consideration which were of the year 1993 and the average of the 2 sale deeds worked out to Rs.1540/- per sq.yards. The Reference Court proceeded to put a cut of 50% on the basis of the allotment of a developed plot while placing reliance upon the judgment in ***Harchal Singh Vs. State of Punjab (2006) 9 SCC 723*** and ***Harbans Singh Vs. State of Punjab 2000 (1) RCR 614 (DB)***. Resultantly, keeping in view the fact that the allotment of the plot was of the year 1994 and if a 12% increase was given, the amount was worked-out to Rs.836/- per sq.yards, but the benefit of the same was, however, not given.

Similarly, the aspects of repeated notifications being issued creating fear in the mind of prospective buyers and keeping in view the fact that no sale of land was taking place was kept in mind, in view of the fact that allotment was being offered and rise of 23% per month was taking place and a simple rise of 2640% per year was noticed. It was also noticed that for village Kharak Mangoli compensation had been granted @ Rs.250/- per square yard for the acquisition of 02.07.1985 and no increase had been granted from the earlier acquisition dated 02.12.1983

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for village Judian, wherein also compensation was @ Rs.250/- per square yard. The market value would have increased to Rs.296/- per square yard if the 12% increase had been granted for the intervening period of 18 months. Reliance upon awards pertaining to village Kundi and Fatehpur was also calculated that if 12% cumulative increase is given on Rs.394 from 29.1.1990, the same would come to Rs.694 per square yard. The same had been done on the basis of Ex.P74 of village Kharak Mangoli without giving the benefit of 2 years qua village Judian. Thus, cumulatively various facts were kept in mind while assessing the market value @ Rs.746/- per square yard.

Findings of the Reference Court qua Village Nada : The Reference Court, while deciding the market value of Village Nada, vide order dated 31.01.2012, differed from the reasoning of the award dated 20.04.2009 (Ext. P-68 in that case), on the ground that it was based upon the allotment letter of a developed area and after applying a cut, the rate was decided. Accordingly, it relied upon the judgment of the Apex Court in **Lal Chand Vs. Union of India & another (2009) 15 SCC 769** and **Tara Devi Vs. State of Haryana 2013 PLR 606**, to come to the said conclusion and therefore, did not take into consideration the said award though it noticed that it was relevant piece of evidence but it was not binding to decide the market value of the land on its basis.

Similarly, the award (Ext.P-69), in RFA-41-1997 titled *Prakash Rani Vs. State of Haryana*, which pertained to Village Kharak Mangoli, was also rejected, on the ground that it was passed 10 years prior to the present notification and therefore, it would not be safe to give

12% cumulative increase for fixing the market value. Reliance was placed upon the judgment in **ONGC Vs. Ramesh Jivanbhai Patel** (supra). Similarly, the award (Ext. P-70) for village Kundi in which the notification pertained to the year 1990, which was 5 years prior to the notification in question, was taken into account and it was held that 12% cumulative enhancement had been given as it was based upon Ext.P69- pertaining to Village Kharak Mangoli and therefore, it would amount to cumulative enhancement for 10 years. It was also noticed that it pertained to Village Kundi which was situated nearer to Panchkula and on NH-22, upon which the Sector 21 was developed, which was across river Ghaggar.

Resultantly, the sale deeds, duly exhibited by the parties were taken into consideration and Ext.P-15 was taken into account which was dated 07.09.1995 and measuring 6 biswas of land (300 sq.yards) which had been sold @ Rs.533/- per sq.yards. The proximity from the date of notification was kept in mind. The location of Ext.P-15 was also noticed which was depicted on the aks-sijra (Ext.P-67) that the distance was 4 acres between the acquired land and the sale of land and the same was adjoining Sector 31. It was also noticed that the acquired land had access from Panchkula to Yamunanagar and Delhi Highway and Exts.P-15 & P-16 were not abutting on the National Highway and the land which was abutting on the National Highway would have better potentiality for residential and commercial purposes. The distance from the District Courts and Civil Secretariat was also noticed that it was of 1 km and the land had been transferred to HSIIDC in Sector 22 for IT Park.

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Accordingly, a cut of 10% + 4% cut was put, to bring down the value to Rs.460/- per sq.yards, on the basis that the sale deed was 4 months post notification.

It was noticed that a bridge had been constructed in the year 1994 which connected Sectors 21, 23 & 25, prior to the notification and land had been acquired for development of Sectors 24 to 28, falling in Villages Ramgarh, Bana Madanpur, Jhuriwala, Moginand, vide notification dated 25.06.1989 and the value had been determined at Rs.250/- per sq.yards (at that point of time) and therefore, by applying 11% cumulative increase, the value of land approximately came to Rs.460/- per sq.yards. The other awards of villages of Panchkula were rejected on the ground that they were across the river Ghaggar and mainly closer to Panchkula-Kalka highway and at a distance from the present land, apart from the fact that some of the notifications were 10 years earlier.

Similarly, sale deed (Ext.P-47) which was of Village Nada and executed on 11.01.1994, which was of 75 sq.yards and sold for Rs.347/- per sq.yards, was taken into consideration and by giving a 12% increase, the rate was calculated @ Rs.407/- and an average was taken out from Ext.P-15 also, to come to the conclusion that the market value would be Rs.460/- per sq.yards.

Similarly, Ext.P-10, which was of Village Ramgarh of 3 kanals 11 marlas dated 03.01.1991, for value of Rs.285/- per sq.yards, was also kept into consideration and by applying 12% increase, the market value was calculated @ Rs.460/- from all different angles. It was

noticed that the findings of the Reference Court regarding the entitlement of the proprietors, as such, had not been disturbed and only the Gram Panchayat had been held entitled for the compensation. Resultantly, the reference was answered, accordingly.

Evidence of Parties in 1st Set :

A perusal of the record would go on to show that in the reference petition under Section 18, it had been averred that market value had been fixed differently of Nada, Jhuriwala, Bana Madanpur, which all had similar potentiality and the value should have been assessed at the same rate. The land had got potential for residential, commercial and industrial purposes as the land on both sides had developed as residential and commercial sectors of the Urban Estate of Panchkula. The land of Village Ramgarh and Bana Madanpur had been acquired for Rs.1,10,000/- on 15.01.1985 and the Reference Court had awarded Rs.1,50,000/- which had been further enhanced by the High Court and if 12% would be granted, there would be manifold increase. Reference had also been made to the allotment made by HUDA, for Sectors 24 to 28 @ Rs.1400 to 1500, per sq.yards and therefore, the potentiality of the land was stressed to claim market value @ Rs.2266 besides statutory benefits.

A perusal of the statement of the witnesses examined would go on to show that the record qua the allotment of developed sectors in various sectors was brought on record including Sectors 21 and 25. The aks-sijra of village was brought on record as Ext.P-38. Shri Ram Niwas, PW-3, Civil Draftsman also prepared a copy of the map of Panchkula town for determining the value of the acquired land and the surroundings.

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The site plan gives a birds-view of where the land acquired was situated and the same shows that the acquired land was at a distance of 1 km from Zero-Point calculated from the District Headquarters. On the southern side of the area was Cantonment area and the eastern side was hilly area, which was reserved for the forest and TBRL & ITBP complexes, were also situated. The development had extended upto 3 kms beyond the acquired land and 7 kms from the Zero-Point of NH-73, where there was a Dental College and Heart Institute on the Delhi road. On National Highway No.22, linking from Ambala to Kalka, was Village Kundi and the residential area touched the Punjab boundary, which was also depicted.

Similarly, the notification, firstly issued on 20.09.1971 for acquisition of land of Bana Madanpur was brought on record as Ext. P-26 through PW4 Rajbir Patwari and the acquisition on 13.12.1982 Ext. P27 for Village Jhuriwala, Bana Madanpur, Ramgarh, Nagal Moginand, vide notification dated 26.06.1989 (Ext.P28), the land had been acquired of Village Bana Madanpur and Jhuriwala for Sectors 25, 26, 27 and 28, which had also been developed along with land of village Ramgarh. Portions of the land from village Jhuriwala from the same khasra No. 4 min. was acquired on 26.06.1989 and Harbans Lal, Patwari, PW-5 deposed about the location of the village on the aks-sijra and that of Village Devi Nagar, adjoining Village Bana Madanpur, Jhuriwala and Nada on the south side. The Golf Course had been developed in the Village Devi Nagar and Olympic Bhawan had also been developed in the said land and the same adjoined Village Jhuriwala. Sector 2 Panchkula

had been developed in the Village Devi Nagar and Majri.

The District Headquarters, whereby the DC Office, Police Headquarters and the Judicial Complex were situated in Sector-1. Intersection Chowk of National Highway 73 & 22 was known as Majri Chowk and the land of Village Maheshpur was acquired for development of Panchkula in the year 1971. Sector 20 had been developed on the acquired land of Village Kundi and Fatehpur/Railly and the land of Village Maheshpur was also acquired on 22.12.1994. The acquired land was approximately 1 km from District Headquarters, Majri Chowk, Panchkula. The boundary of Village Bana Madanpur and Maheshpur were adjoining each other, it was deposed that except the present acquired land, there was no land left for development in Panchkula since the land was reserved for forest and thereafter, started the hilly area.

Similarly, he deposed that on the North-East of the acquired land, the land was reserved for forest area and beyond that area was hilly and towards Sector 28, there were residences of ITBP and thereafter, residential and private residential colony, like Tribune chowk and Madanpura House Building Society, were there.

Similarly, PW-6, Gurdarshan Singh, Patwari also deposed regarding the location of the land and the National Highway No.73, which met Highway No.21, at Majri Chowk. The District Headquarters which were at a distance of 7 ½ kms from the outer boundary of Sector 28 and the boundary was also 6 kms from the acquired land which had been acquired on 26.06.1989. Sector 28 had already been inhabited and developed and the land on the other side of National Highway could not

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be acquired as it was hilly area and reserved Morni Forest area. Panchkula was surrounded by the boundaries of Chandigarh and Punjab on two sides and Chandi Mandir cantonment had come up on the third side and the only land available was the land under acquisition. The land of Village Jhuriwala was adjoining the Village Devi Nagar. Sector 25 Urban Estate had been developed on the acquired land of Village Bana Madanpur. The plots of Sector 25 had been developed in December, 1992 and allotment letter had also been made in December, 1993 and construction had been done, thereafter. Portion of land for Village Jhuriwala and Bana Madanpur was acquired for Sector 25 Panchkula and reference was made to khasra No.4 min (part), acquired in 1999 and also subject matter of present acquisition. The land was just adjacent and quality and potential was fit for building purposes and colonization had already taken place since 1985, when ITBP had taken the land. The private cooperative society was built before 1990 in Village Bana Madanpur on the other side of National Highway No.73 and ITBP had also constructed residential houses and quarters, prior to 1987-88. Village Ramgarh and Bana Madanpur had developed towns having all modern facilities including Government and private hospitals, schools, veterinary hospitals, post-office, banks etc, and Hotel Green Park and North Park were also situated opposite each other. Land had also been acquired much prior to the present acquisition and the Electricity Board Power House/Sub-Station had come up near the acquired land since 1986. In cross-examination, he further deposed that 50% of the acquired land was used for roads and other public buildings and that HUDA sold

the plots after development of the land and that Hotel Green Park was at a distance of 4 kms and North Park hotel was at a distance of 6 kms from Village Ramgarh.

It was similarly deposed by PW-7 Jagdeep Singh about the location of the land that the boundary of Panchkula was 6 kms away from the land under acquisition and that he had sold his land near Sector 28, Panchkula, on the other side of the National Highway road vide sale deeds Exts.P-30 to P-32, @ Rs.280-285/- per sq.yards.

Similarly, PW-8, Charan Singh, Kanungo, also deposed that apart from the land acquired, there was no land available except Bana Madanpur and Jai Singhpora (Mauja Ramgarh) and the same fell within the controlled area.

Ext.P-23-Site Plan was proved by Ramesh Chand, PW-9 A.D., Office of District Town Planner, Panchkula and mark-A has been taken on record, as such, by this Court, which has been filed by the appellant/land-owners. There is no dispute regarding the correctness of the map, which is similar to Ext. P-23, but the only additional benefit from this map is that the land which has been acquired for different sectors and under different notifications, is being clearly depicted by showing different colours on the site-plan, Mark-A.

A perusal of the statement of PW-9 would also go on to show that the land, as such, was situated abutting the National Highway No.73 and Sector 28 had already been acquired and developed whereas on the other side of the road, there was forest and Hotel North Park and thus, there was no land available for the extension of Panchkula, which

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was the Satellite Town of Chandigarh. He also admitted that 60% of the area was utilized for development into plots and 40% was utilized for development purposes, i.e., laying out roads, sewerage, parks, dispensaries and other community purposes.

Land-owner, Purujit Singh appeared as PW-10, who deposed that within 6 months of taking possession and passing of the award, HUDA had floated and offered for sale developed plots in Sector 25, pertaining to the earlier acquisition, which was of 1989. 5.01 acres of land of Jhuriwala, comprising in khasra No.4 min, had also been acquired in the earlier acquisition and the other part of the same khasra number and which is subject matter of the present acquisition. HUDA sold the plots of Sector 25, Urban Estate Panchkula in December, 1992 @ Rs.974/- per sq.yards and thereafter, enhancement was made to Rs.1289 per sq.yards. The plots in Sectors 27 & 28 were floated and offered for sale consideration @ Rs.1578.72 per sq.yards, as per Ext.P-33 (Brochure).

It was deposed by him that the land acquired was situated adjacent to the land already developed in Sectors 25 & 28, which had been developed and was approximately 6 kms from his acquired land and the boundary of Urban Estate of Panchkula was situated 6 kms beyond his acquired land. Village Maheshpur was on the other side of the acquired land and 500 ft. from the same wherein Sector 21, Urban Estate Panchkula had been developed since November, 1973 onwards and the rate was Rs.4000/- per sq.yards, in November, 1997, which was exhibited as Ext.P-34. It was deposed that his land was surrounded by developed

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sectors of Panchkula and Sector 25 on the one side, Sector 21 and Sector 3 on the other side. HUDA had developed Golf Course, Sports Complex, Youth Hostel and Haryana Institute of Alternative Medicines & Research Institute and therefore, there was great potentiality for urbanization. No other land was available except the land under acquisition for extension of Panchkula city. The said land was surrounded by developed sectors and was situated on the National Highway No.73, which passed through the land of village Jhuriwala and Bana Madanpur. The land upto the right-side of the road, NH-73 for more than 7 kms upto Sector 28 Urban Panchkula, till the acquired land of Village Ramgarh was acquired by HUDA from the District Headquarters Chowk onwards. From Panchkula to Sector 28, fell the abadi of Village Nada, then Moginand, then Kishangarh and Ramgarh. No land was available for acquisition on the left-side of the road on account of the abadi of Nada, Green Park Hotel, which was opposite to the acquired land and then, Police Lines and ITBP colony and the existence of Madanpura and Tribune House Building Society and along with it there was no sector. It was further stated that the acquired land was developing and had a better location than Village Ramgarh, Bana Madanpur, Kundi, Railley and developed sectors of Sector 20. Necessary averments were also made that acquisition of 1971 was allowed to lapse deliberately and again notified to control the prices and therefore, the State wanted to enrich itself at the cost of land-owners. It was denied that the acquired land had not been developed and had no potential value for urbanization. The hilly area and forest area were across the road and on the Morni Side and suggestion was denied that the

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acquired land was prone to floods as there was no flood which had come in the area. It was further volunteered out that a flood prone area would not have been acquired by HUDA for residential and commercial purposes, as it would amount to abetting murder of innocent allottees.

The official witness-Joginder Singh, RW-1, Naib Tehsildar also, in his cross-examination deposed that there was no further scope of urbanization on the north side of the acquired land and that land upto Sector 29 had already been acquired till the boundary of Punjab. Similarly, the earlier acquisition had been done in Sectors 28 & 27 of the same village, including Ramgarh and Moginand. The location of the Terminal Ballistic Research Laboratory (TBRL) also extended from the back side of the Village Moginand till Village Kotbilla, on the other side of the acquired land. The factum of river Ghaggar flowing between the Sectors 20, 21 and the acquired land was also pointed out and that there was no known sale transaction in the Village Jhuriwala for the last 20-25 years. He also admitted that the HUDA would not acquire the land of river or any other land which were unfit for residential and commercial purposes.

After the remand, Rajesh Chouhan, Junior Engineer, HUDA was examined as PW-11, who could not comment upon the fact whether HUDA leaves out 60% of the acquired land for public utilities and whether 40% of the standard acre was left for plots for residential and commercial sites. He pointed out that the work had been executed and that the maps had been provided by the DTP office. He admitted that the main road along with the ditches were filled up to raise its levels whereas the

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internal roads were laid and made by cutting. He further deposed that the external road, i.e., the main road alongwith the Ghaggar was filled up to raise its level. He, however, did not have the estimates of external as well as the internal roads and could not tell about the cost incurred per km for construction of the said road nor could he tell about the cost incurred in laying the drainage in Sector 23 and other sectors.

Shri Arvind Mehtani, Sr.Town Planner, HSIDC, Panchkula, PW-12, brought the summoned record, whereby 97 acres of land had been transferred of Sector 22 Panchkula, for IT corridor, vide allotment dated 07.11.2005 (Ext.P-62) @ 106.63 lacs per acre. He deposed that the development works had been taken up by the Corporation and the internal development and the layout plan had been undertaken by the Corporation and thereafter, the land had been allotted.

Purujit Singh, land-owner, was again examined as PW-13 wherein, maps of Panchkula (Exts.P-64 & P-65) Aks Sijra (Ext.P-67), showing the map alignment, showing the layout and Ext.P-70, which was site-plan. He denied the suggestion that land was adjoining with the river bed and that the river and choe passed through the acquired land. He admitted that across the road coming from the Ghaggar bridge to the National Highway No.73 there was a rivulet and then Sectors 25 and 26. He denied the suggestion that market price of land was higher towards Panchkula than across river Ghaggar, towards Sectors 22 to 28.

Evidence in the 2nd set of cases:

Similarly, in the amended reference petition, filed for Village Nada by Santokh Singh, it had been averred that the land acquired was

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adjoining to Nada Sahab Gurudwara and Sectors 22, 23 & 25 and was within 200 ft. from Chandigarh-Barwala road and had rich market value from a commercial point of view and claim was made of Rs.30 lacs per acre against the award of Rs.2,70,000/- of the Land Acquisition Collector.

Similarly, PW-2, Devi Dutt, Kanoongo, Tehsil Office, also admitted the location of the village Nada to depose that it was situated merely at a distance of 1 km from the District Headquarters. Sectors 25 & 28 had also been developed on the adjacent land on the eastern side of the village by acquiring the land of village Jhuriwala, Bana Madanpur and Ramgarh. Sector 28 was situated at a distance of 5 kms from the eastern end of Sector 22, Panchkula and that Sector 3 & 21 also adjoining the acquired land on the western side. The National Highway was touching on the Northern side and the abadi of Village Nada was situated there and thereafter, the hilly area started. The acquired land was good land and had a potentiality of residential and commercial exploitation as there was no land available for urbanization. He denied the suggestion that the land was not hilly and it was wrong that it was hilly, ditches and uneven.

By examining Suresh Kumar, Clerk in the office of the Estate Officer, HSIIDC as PW-10, the allotment letter of 20 acres per sq.yards to the Agricultural Marketting Board, for the development of Grain Market of Sector 20 Panchkula on 16.05.1997, @ Rs.1356/- per sq.yards (Rs.94,67,640/-) was brought on record as Ext.P-37. The said witness further deposed that market rate was reduced and brought down

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to Rs.840/- per sq.yards (Rs.40,75,280/- per acre), as per the meeting (Ext.P-34).

Similarly, auction of commercial site in Sector 20 was brought on record and of a plot in Sector 21 of 10 marla size. Similarly, plot No.65 Sector 27 Panchkula was allotted by HUDA @ Rs.4062.40 per sq.yards, vide allotment letter dated 28.02.2002 (Ext.P-41) was brought on record.

Santokh Singh, land-owner appeared as PW-11, to depose that his land was situated adjoining Barwala road having commercial value. North Park hotel was adjoining the land and the value of the land was not below Rs.30 lacs per acre. Earlier also, the land was acquired three times and it was declared urban area by the Haryana Government. He further, in his cross-examination, pointed out that HUDA was negotiating for the part of the other land with Nada Gurudwara @ Rs.2687/- per sq.yards but he could not tell that the transaction had matured or not. It is pertinent to notice that the said document is on record as Ex.P52. He further pointed out that the Court had given the award @ Rs.256/- for the land falling in Village Devi Nagar, which was adjoining the acquired land.

On remand, Jasbir Singh-land-owner again appeared as PW-5 and tendered certified copy of award dated 20.04.2009, *Lokinder Singh Vs. State of Haryana* Ext.P-68, apart from the certified judgment of this Court in RFA-441-1997 dated 29.10.2009 as Ext.P-69 and certified copy of judgment dated 10.12.2008 as Ext. P-70.

Similarly, Shri Praveen Gupta, Planning Officer, Office of

the District Town Planner, Panchkula also brought on record the attested blue-print of the demarcation plan of Sector 23-Part 1, Panchkula and Ext.P-75, blue-print of Sector 23-Part II, Panchkula.

Rakesh Kumar, Patwari had also put in appearance as PW-18 and exhibited Ext.P-76, the Axs Shajra which showed the locations of the 18 villages of Halka Majri. He also acknowledged that the Exts.P-13 & P-15 were located in the revenue estate of Village Nada, which were sale deeds of 1993 and 1995 respectively. He deposed that the land of the sale deeds was 4 acres away from the acquired land and had subsequently been acquired for Sector 31. The acquired land had frontage on the road leading from Panchkula to Yamunanagar and thus, had more potential for residential and commercial purposes. It was admitted that the land of Nada village had been left out from acquisition and that the sectors had been floated prior to the acquisition of the present land in Village Ramgarh, Bana Madanpur, Moginand. He also deposed that a bridge had been constructed for connecting Sectors 21 to 28 in the land of Village Maheshpur and that of Village Bana Madanpur and Devi Nagar and thus, two bridges would connect all the sectors, one was on the National Highway which went to Panchkula to Yamunanagar and Delhi, which had been constructed in 1966. The second bridge was constructed in the year 1994, for connecting Sector 21. The Panchkula Urban Estate could only be developed from the Barwala side or Pinjore side as the other side was the land of Punjab and potentiality, as such, was admitted. It was further deposed that the remaining land of Village Nada had been acquired in the year 2001, for setting up Sector 31 and that the

comparability was common with the other villages also.

Discussion

Keeping in view the above cumulative evidence, different reasonings given by the Reference Courts, this Court is to collectively judge as to whether the landowners are right in submitting that;

(i) firstly, they have not been granted adequate compensation for the land situated in Village Jhuriwala and Madanpur @ Rs.746/- per sq.yards, keeping in view the potentiality of the land in question;

(ii) Secondly, whether the 50% cut, as such, which was applied, was justified or not and in what circumstances;

(iii) Thirdly, it is to be seen that once the land was acquired for the same purpose, i.e., for developing Sectors 22 & 23 of Panchkula, across the river Ghaggar, which was for residential, commercial and institutional purposes and by a common notification dated 04.05.1995 whether the Reference Court's award dated 31.01.2012 was justified in the facts and circumstances, to peg down the market value of the adjoining village Nada @ Rs.460/- per sq.yards, Rs.286/- per sq.yards lower than what was granted for the Villages Jhuriwala and Bana Madanpur;

(iv) Lastly, it is to be seen whether the State is justified, as such, to submit that the market value was liable to be brought down for Villages Jhuriwala and Madanpur, at par with Village Nada and the appeals of the State were liable to be allowed.

It is also to be noticed that the landowners have filed applications bringing on record subsequent events which have taken

place during the interregnum period. **CM-12956-CI-2017**, has been filed in **RFA-3533-2009, Tara Devi Vs. State of Haryana**, under Order 41 Rule 27, for placing on record Annexures A-1 to A-4 and it has been averred that the documents are relevant for the purpose of adjudication of the case and the appellants were not been able to obtain them earlier. Annexures A-1 & A-2 are letters dated 31.08.2011 and 25.08.2012, having the same contents wherein payment of enhanced compensation was sought, regarding plot No.195, Sector 25, Urban Estate, on account of the enhancement of compensation by the Court and the acquisition cost.

Similarly, the judgment of the Apex Court in **Umesh Gupta** (supra) is sought to be brought on record, which is pertaining to the notification dated 26.06.1989, for village Ramgarh, Bana Madanpur, Jhuriwala, wherein the judgment of this Court in RFA-1956-2010, *State of Haryana Vs. Hans Raj & others*, was modified and the compensation fixed @ Rs.380/- per sq.yards was brought down to Rs.290/- per sq.yards (Rs.14,03,600/-) for land on which Sectors 24 to 28 were developed. Similarly, the Division Bench judgment of this court is sought to be brought on record in **Commissioner, Income Tax, Panchkula Vs. Rani Tara Devi**, wherein it was held that the land subject matter of acquisition fell within the scope of Clause (iii) of Section 2(4) of the Income Tax Act, 1961 and was a capital asset.

The applications are opposed by filing replies that the evidence had been closed and the appellants cannot be allowed to adduce evidence at the appellate stage and the acquisition was of the year 1989

whereas the present acquisition was of a subsequent period.

Similarly, a application under Order 41 Rule 27 bearing **CM No.9113-CI-2016** was also filed in **RFA-1795-2012 titled *Bachan Singh @ Bachna & others Vs. State of Haryana & others***, for placing on record the dismissal of the SLP on 01.07.2015 (Annexure A-1) against the decision of RFA-2358, Santokh Singh Vs. State of Haryana, decided on 14.03.2013 (Annexure A-2), which also pertained to Village Nada, regarding notification dated 05.04.1998, wherein the land price had been fixed @ Rs.332.50. **Ashok Kumar Vs. State of Haryana (2015) 15 SCC 200** was also sought to be brought on record as Annexure A-3 pertaining to village Maheshpur, Kundi, Railley and Fatehpur for the acquisition of 1990, 1994 and 1995 along with the judgment in **Hans Raj** (Annexure A-4).

The applications are, accordingly, allowed and the said documents are allowed to be taken on record, as it would only be helpful for this Court to decide the issue in question and for purposes of pronouncing judgment, as per the provisions of Order 41 Rule 27 CPC as the judgments have come subsequently in point of time.

Admittedly, Section 4 notification dated 26.06.1989 was pertaining to land which have been acquired 6 years earlier of the same revenue estate and was adjoining the land which had been acquired, which was part and parcel of the same khasra number which has also been noticed by the Reference Courts also. It is settled principle that a award is relevant piece of evidence, as has been held by the Apex Court in **Randhir Singh 2002 (12) SCC 259** and position has been repeated in

Umesh Gupta (supra).

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

No.73 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. Resultantly, uniform market value was given, since a compact contiguous land had been 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.”

Thereafter, in ***Bhule Ram Vs. Union of India and another 2014 (11) SCC 307***, it was held by the Apex Court that the land which was having frontage on the highway would definitely have a better and higher value.

The scope for development, thus, was only restricted to the land left of these 3 villages which was across the river and a sole connection, as such, was the old bridge of 1966, which had then led to the development in 1989, for sectors 24 to 28, on the National Highway No.73, 6 kms away from the central point known as Majri Chowk. In order to give a connection and to exploit the potential of the acquired land which was sandwiched between the 2 highways, but was across the river, the second bridge was built upon the river Ghaggar in the year 1994, which is clear from the statement of PW18 Rakesh Kumar Patwari. Resultantly, access came across to the earlier 5 sectors namely, Sectors 24 to 28, for which, land had been acquired in the year 1989 and compensation of which has now been finally fixed @ Rs.290/- per sq.yards in **Umesh Gupta's case (supra)**.

The acquired land, thus, had greater potentiality being sandwiched in the development coming-up from both sides. The only negative factor was that the land was across river, which would be clear from the statement of the witnesses who proved the fact. The hilly

portion started just thereafter, which would be part of Village Nada and the reserved forest was thereafter. It was, in such circumstances, that this land been developed at the end by the State on account of development cost, which would have to be entailed and in view of the increasing demand at an exponent rate by which the town of Panchkula was growing. This fact would be clear also from the sale deeds, the exemplars of which can be reproduced below of Village Nada, which are from the year 1990 to 1995, which go on to show that the increase in prices was taking place at an exponent level once development started in the neighbourhood.

The exemplar chart reads as under:-

Sr. No.	Ex.	Village	Date of execution of sale deed	Area	Consideration	Rate per square yards	Rate per acre
1	Ex.PX	Nada	25/4/90	10 Bigha (1000 square meter)	Rs.62,000/-	Rs.62/-	Rs.3,00,080/-
2	Ex.P-50	Nada	28/5/90	0.10 Biswa	Rs.55,000/-	Rs.110/-	Rs.5,32,400/-
3	Ex.P-51	Nada	10/06/91	10 Biswa	Rs.70,000/-	Rs.140/-	Rs.6,77,600/-
4	Ex.P-13	Nada	28/7/93	06 Biswa (300 square meter)	Rs.90,000/-	Rs.300/-	Rs.1,45,200/-
5	Ex.P-49	Nada	28/7/93	06 Biswa (300 square meter)	Rs.90,000/-	Rs.300/-	Rs.1,45,200/-
6	Ex.P-48	Nada	11/04/94	0.02 Biswa (100 square meter)	RS.25,000/-	Rs.250/-	Rs.1,21,000/-
7	Ex.P-15	Nada	07/09/95	06 Biswa (300 square meter)	Rs.1,60,000/-	Rs.533/-	Rs.25,81,333/-
8	Ex.P-14	Nada	10/01/97	06 Biswa (300 square meter)	Rs.1,80,600/-	Rs.600/-	Rs.26,13,600/-

Accordingly, if 15% escalation is granted on Rs.290/- per

square yard, the amount would come to Rs.670 per square yard as per chart given below and keeping in view the locational advantage, the land would fetch better value and, therefore, the compensation, which has been awarded as Rs.746/- per square yard is not exorbitant and liable to be interfered with, if all methods of calculating are also kept in mind:-

1989	290	
1990	290+43.50=	Rs.333.5
1991	333.50+50.02=	Rs.383.52
1992	383.52+57.52=	Rs.441.04
1993	441.04+66.15=	Rs.507.19
1994	507.19+76.07=	Rs.583.26
1995	583.26+87.48=	Rs.670.74

Similarly, HUDA was encashing upon the land which had been developed for Sectors 24 to 28 and for Sector 20 and Sector 21, apart from this, it also developed Sector 3. The usage of the land is not to be taken into consideration as per Section 24 of the Land Acquisition Act Clause (3). However, the potentiality is an aspect which cannot be lost sight of by the Court while awarding compensation, which is a settled principle, as laid down by the Apex Court in **Raghubans Narain Singh Vs. The U.P. Government through Collector of Bijnor'** 1967 (1) SCR 489. The Apex Court held that the pace of progress and whether buildings were put up on the land acquired and what was distance between the built-in-land and land acquired were some facts which had to be answered. Keeping in view the overall picture drawn up the potentiality aspect has to be kept in mind, regarding the evidence on record and whether the neighbourhood was developing in a direction of the acquired land. Similarly, in **Suresh Kumar Vs. Improvement**

Trust, Bhopal' 1989 (2) SCC 329, the aspect of the land being used for building purposes were elaborated, the proximity to the developed urban land was the factor to be kept in mind and was not to be ignored. The market value was to be determined on that basis, so that there would no enrichment of the buyer and neither the landowner would be deprived.

Relevant paras read as under:

“9. It is true that the market value of the land acquired has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. Dr. Singhvi argues that failing to consider potential value is an error of principle. It is an accepted principle as was laid down in *Narayana Gajapatiraju v. Rev. Divisional Officer*, AIR 1939 PC 98 that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to obtain from willing purchaser. The disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy it must alike be disregarded. Neither must be considered as acting under compulsion. The value of the land is not to be estimated at its value to the purchaser but this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion, may always be taken into consideration for what it is worth. Any sentimental value for the vendor need not be taken into account. The vendor is to be treated as a vendor willing to sell at the market price. Section 23 of the Land Acquisition Act, 1894, enumerates the matters to be considered in determining compensation. The first to be taken into consideration is the market value of the land on the date of the publication of the Notification under Section 4(1). Market value is that of a willing vendor and a willing purchaser. A willing vendor would naturally take into consideration such factors as would contribute to the value of his land including its unearned increment. A willing purchaser would also consider more or less the same factors. There may be many ponderable and imponderable factors in such estimation or guess work. Section 24 of the Act

enumerates the matters which the Court shall not take into consideration in determining compensation. Section 25 provides that the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11. As was observed in N. Gajapatiraju (supra) sometimes, it happens that the land to be valued possesses some unusual, and it may be unique features, as regards its position or its potentiality. In such a case the court has to ascertain as best as possible from the materials before it what a willing vendor might reasonably expect to obtain from a willing purchaser, for the land in that particular position and with that particular potentiality. In the instant case also the acquired land possesses some important features being located within the Corporation area and its potentiality for being developed as a residential area. In such a situation in determining its market value, where there was no sufficient direct evidence of market price, the Court was required to ascertain as, best as possible from the materials before it, what a willing vendor would reasonably have expected to obtain from a willing purchaser from the land in this particular position and with this particular potentiality. It is an accepted principle that the land is not to be valued, merely by reference to the use to which it has been put at the time at which its value has to be determined that is the date of the notification under Section 4, but also by reference to the use to which it is reasonably capable of being put in the future. A land which is certainly or likely to be used in the immediate or reasonably near future for building purposes but which at the valuation date is waste land or has been used for agricultural purposes, the owner, however willing a vendor he is, is not likely to be content to sell the land for its value as waste or agricultural land as the case may be. The possibility of its being used for building purposes would have to be taken into account. However, it must not be valued as though it had already been built upon. It is the possibilities of the land and not its realised possibilities that must be taken into consideration. In other words, the value of the land should be determined not necessarily according to its present disposition but laid out in its lucrative and advantageous way in which the owner can dispose it of. It is well established that the special, though natural adaptability of the land for the purpose for which it is taken, is an important element to be

taken into consideration in determining the market value of the land. In such a situation the land might have already been valued at more than its value as agricultural land, if it had any other capabilities. However, only reasonable and fair capabilities but not far-fetched and hypothetical capabilities are to be taken into consideration. In sum, in estimating the market value of the land all of the capabilities of the land, and all its legitimate purposes to which it may be applied or for which it may be adapted are to be considered and not merely the condition it is in and the use to which it is at the time applied by the owner. The proper principle is to ascertain the market value of the land taking into consideration the special value which ought to be attached to the special advantage possessed by the land : namely, its proximity to developed urbanised areas.

10. The value of the potentiality has to be determined on such materials as are available and without indulgence in fits of the imagination. In Mahabir Prasad Santuka v. Collector, Cuttack, 1987(1) SCC 587 the evidence on record was that the land was being used for agricultural purposes but it was fit for nonagricultural purposes and it had potentiality for future use as factory or building site and that on industrialisation of the neighbouring areas the prices increased tremendously, and that aspect, it was held, could not be ignored in determining compensation.”

In Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona 1988 (3) SCC 751, the Apex Court held that plus and minus factors which were to be kept on the mental screen while assessing the market value were laid down and the relevant table of the factors, which have been noticed, is as under:

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.

Plus factors	Minus factors
4. Nearness to developed area.	4. Lower level requiring the depressed portion to be filled up.
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.	

In **P. Ram Reddy and others Vs. Land Acquisition Office'** (1995) 2 SCC 305, the Apex Court held that the loss for development of roads, drainage and sewerage was to be kept in mind and were relevant factors to assess the market value of the land, even if the land was barren or waste.

In such circumstances, counsels for the appellant-landowners are well justified to hold out that there was a immense potentiality of land in question and it cannot be lost sight of and for which the Reference Court, vide its decision dated 31.01.2012, has failed to take into consideration the said fact. It has chosen to ignore the earlier award dated 20.04.2009, for the same acquisition, solely on the basis that the award had taken into consideration the developed plot No.195 in Sector 25 (Ext.P-71). However, a closer perusal of the judgment dated 20.04.2009, as such, would go on to show that it was not the sole basis, as such, for the decision of the Reference Court. This Court is well aware of the fact that allotment letters which are of developed portions cannot be a criteria for assessing the market value of the acquired land, in view of the law laid down by the Apex Court in **Bhim Sain Vs. State of**

Haryana (2003) 10 SCC 529, and in **Lal Chand (supra)**; **Ranvir Singh and others Vs. Union of India 2005 (12) SCC 59**; and in **Raj Kumar v. Haryana State 2007 (7) SCC 609** the same view has been taken.

The location of land in question, as such, was kept in mind by the 1st Reference Court and that it was also contiguous and touching the land which had already been developed in Sector 25. The acquisition of land of Village Kharak Mangoli (Ex.P-74), just across the river and on the highway was not taken into consideration on the ground that the said award (Ext.P-74) was based on the earlier award of Village Judian (Ex.P-54), which was of 1983 and therefore, the benefit of 12% cumulative increase would not give it uniformity as the said award had followed the earlier award (Ext.P-54). The average of the sale deeds of Village Maheshpur, Bana Madanpur and Ramgarh were taken into consideration to come out at an average of Rs.940/-. Keeping in view the fact that the area was miniscule and was of different villages, average assessment was made.

Similarly, Ext.P-42 and P-50 were taken out of the exemplars chart which were pertaining to Village Maheshpur and Ramgarh, to take out an average of Rs.1540/- per sq.yards, by applying a 50% cut, the value was fixed @ Rs.770/- per sq.yards. Similarly, the developed plot No.195 was taken into consideration that it had been allotted @ Rs.1492/- per sq.yards and a 50% deduction had been made and therefore, the rate had come at Rs.746/- per square yards. Even that exemplar was of earlier date, i.e., 18.01.1994, but the 12% increase was not given. The State Counsel had stressed that the land of Village

Kharak Mangoli be taken as relevant parameter for which acquisition had been made in 1985 and thus, consider the same for giving a 12% increase which would work out to Rs.776/- per sq.yards. It is in such cumulative situation, the award was passed by taking into consideration all methods to arrive at a figure of Rs.746/- per sq.yards.

The closest acquisition, as such, from the same village, as noticed, was on 26.06.1989 and in **Umesh Gupta's** (supra) the market value had been fixed @ Rs.280/- per sq.yards, by the Apex Court on 09.10.2017. On a comparative chart, if it is to be seen, the location of the land is far superior to the land situated in **Umesh Gupta** (supra), which is further away. It was only on account of the fact that at that point of time, the bridge had not been built, the State had developed the land which was abutting the National Highway No.73 in Sectors 24 to 28. Once the bridge had been built in 1994, before the Section 4 notification, on 04.05.1995, the potentiality of the land had increased phenomenally and therefore, the land being better placed, would be entitled for a better market value than the adjoining land which was the acquired land for development of Sectors 24 & 28.

Even if the principles of the Apex Court in **ONGC Vs. Ramesh Bhai's case** (supra) are kept in consideration, the cumulative increase is to be assessed at far more higher rate in the present case, due to the pace of development and of better options. The fact that the land is situated on one side abutting the National Highway No.73 and on the other side, is well connected to the developed sectors of Panchkula, through the bridge i.e. Sectors 3, 21 to 24. If the said principles are also

applied a 15% cumulative increase from the year 1989 is called for. The plots at Panchkula were being developed and sold by HUDA through brochures which have already been placed on record and the market price was galloping for the residential development due to the reason for being a satellite town of Chandigarh, where civic facilities were already existing, but there was no scope of further expansion.

Reference would be necessary to see the graphic rise in prices which was taking place, which would be clear from the allotment letter of around the said period of Panchkula Town. Reference can be made to the allotment letter dated 21.07.1987 (Ex.P4) for 1 kanal plot No.343 in Sector 21 Panchkula for Rs.1,42,380/- across the river from the land which was acquired. Enhancement was done vide Ex.P5 on 11.01.1994 @ Rs.61.42 per square meter and another enhancement was demanded vide letter dated 08.04.1999 (Ex.P6). Ex.P16 is a brochure of HUDA for Sector 25 adjoining the acquired land pertaining to the booking which was closing on 09.12.1992, wherein the rate demanded for a 1 kanal plot was Rs.974 per square yard. Similarly, brochure where booking commenced on 20.10.1993 (Ex.P17) for the adjoining Sector 26 demand was Rs.902 per sq.yard for a 1 kanal plot measuring 502.32 square yards. The said brochure clearly indicated another bridge on Ghaggar for providing access for the new township was one of the salient features. The salient features are highlighted as under:-

“* Panchkula extension is a new self contained township based on the neighbourhood planning concept.

* Another bridge on Ghaggar river to provide efficient linkages to the new township.

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* Close proximity to other stations of tourists like Morni Hills-the only Hill station of Haryana, Pinjore Garden, Shimla etc.

* Located on the State Highway linking the township with other important towns like Chandigarh, Shimla Nahan, Dehradun, Ambala, Delhi etc.”

A perusal of Ex.P39/1 from the record of second case pertaining to Nada would go on to show that allotment on 18.01.1994 in Sector 25 Panchkula Extension of 209 square meters plot was @ Rs.885 per square meter for plot No.569 and thereafter enhancement was sought on 28.09.2000 vide Ex.P39/A and Ex.P39/B and on 29.04.2002 and 30.09.2002, Ex.P39/C. Thereafter, the brochure Ex.P35 for residential plots for Sector 27 and 28, whereby the booking commenced in the year 2001 would go on to show that for a 1 kanal plot in Sector 27 and 28 rate being sought was @ Rs.3735 per square yard.

The benefit has to go to the landowners who could not get sale exemplars of the area in consonance with the development which has been taking place on account of the fact that the State had chosen to keep the land preserved for its potentiality and use by issuing notifications after notifications. A perusal of the notification dated 20.09.1971 (Ext.P-26) would go on to show that the land measuring 52.09 acres of Village Bana Madanpur was sought to be acquired for setting up a stone crushing zone. Thereafter, on 13.12.1982 (Ext.P-27), for additional industrial area, Urban Estate Panchkula, land was notified for various villages including Bana Madanpur (517 acres 5 kanals 15 marlas) Jhuriwala (5 acres) Ramgarh (677 acres 1 kanal 13 marlas) and Naggal

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Moginand (3 acres 8 biswa). Similarly, on 26.10.1989 (Ext.P-28), for the residential, institutional and commercial area of the Urban Estate Panchkula, for Villages Bana Madanpur and Jhuriwala, land measuring 486 acres 4 kanals 16 marlas and 5 acres of Jhuriwala was notified for acquisition. The State being well aware of the location of the land and the development taking place, cannot be permitted to lock up the land acquired under the threat of acquisition. As noticed, acquired land of village Nada has been offered to the Gurudwara Nada Sahab @ Rs.2587/- per sq.yards vide letter dated 21.05.2002 (Ext. P-52) to Shiromani Gurudwara Prabandhak Committee @ Rs.2587/- per sq.yards by the Chief Administrator, HUDA. The relevant portion reads as under:-

“From

The Chief Administrator,
Haryana Urban Development Authority,
Sector-6, Panchkula.

To

The Secretary,
Shri Shiromani Gurudwara, Parbandhak Committee,
Teja Singh Samundri Hall,
Amritsar.

Memo No.A-II-2002/11441/ dated 21.05.2002

Sub: Allotment of land to Gurudwara Shri Nadha Sahib
Panchkula, Haryana.

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In continuation of this office letter No.A-2-2001/14440 dated 31/5/2001 and 33109 dated 21/12/01 & 2554 dated 5.2.02 on the subject cited above.

You were requested vide above letters referred above to send your actual requirement alongwith justification to this office, but the requisite information is still awaited. You are, therefor, once again requested to send the consent regarding current

rate @ 2587/- per square yard (Valid upto 31/3/2003) for allotment of land, alongwith justification so that case for allotment of land can be processed further.

Administrative Officer,
for Chief Administrator, HUDA.”

Similarly, the allotment was made in the year 1994 to the Agricultural Marketing Board of 20 acres for development of Grain Market in Sector 20, Panchkula which was across the river, which was @ Rs.1,356/- per square yard, but was brought down to Rs.840/- per square yard (Rs.40,70,280/-) as the external development charges were not liable to be paid. The land in question was falling in village Fatehpur and was acquired in the year 1990 and the landowners have been paid Rs.394/- per square yard.

The allotment of 97 acres of land in Sector 22 has been done on 07.11.2003 (Ex.P69) @ Rs.106.63 lakhs per acre which is for the IT Corridor to the HSIIDC, which has been carved out of the land, which has been acquired of Village Nada. Thus, the said factors are all relevant for consideration regarding the development of the land and the potentiality as such and even if the holding period is to be kept in mind from the time the land was acquired, the amount of compensation which has been awarded by the Reference Court does not seem as such to be interfered with in the peculiar facts and circumstances, since development had taken place all around by pincer movement and the land had been kept reserved by the State for its use as envisaged in the Master Plan of Panchkula Town. On providing adequate connectivity it has been able to exploit the location of the land to its utmost and it does not lie in the face

of the State to show that the land did not have the potential and could not be utilized for housing purposes. The observations of the Apex Court that the cost of acquisition can always be recovered from the allottees is to be kept in mind and the fact that the landowner should not be short changed by the grant of less compensation. The relevant observations in **ONGC** (supra) for rate of development, read as under:-

“11. Primarily, the increase in land prices depends on four factors - situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during the nineties. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific

evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same.”

Accordingly, the award dated 31.01.2012, in view of the above discussion, as such, whereby the market value has been worked out @ Rs.460/-, is not justified. Accordingly, keeping in view the fact that for the notification dated 26.06.1989 for Sectors 24 to 28, the acquisition which had been taken place, compensation had been assessed @ Rs.290 per square yard and the acquired land in question is much closer to the Zero-Centre of the Panchkula, namely, Majri Chowk and on account of the construction of the bridge which is not a case when the land was acquired in the year 1989, the location as such and the potentiality increased manifold. Therefore, keeping in view the growth of Panchkula Town, which has been discussed above, HUDA itself was exploiting the market. The assessment which has been made does not seem to be on a higher side. It is settled principle even otherwise that no precise formula as such exists by which the market value can be fixed with precision and certain element of guess work is involved and keeping in view all these cumulative factors, the 1st Reference Court does not seem to have faulted in any manner.

The fact that the National Highway No.73 was passing through the land of village Nada and the Gurudwara has also a approach from the main road, would be clear from the site-plan also, Mark-A. Portion of the land of the village was also acquired for the subsequent development of Sector 31, the potentiality, as such, on the face of it, had been lost, by the subsequent Reference Court, vide order dated

31.01.2012.

As noticed, the Apex Court has time and again held that where land is a contiguous plot and for a common purpose and contiguous in location, it would be unfair, as such, for the landowners not to get uniform compensation. Once all these factors are kept in mind and the acquired land abutting National Highway No.73 on one side and having access to the National Highway No.22 on the other side through a newly constructed bridge, it can be safely said that the land fell within the “urbana” and is close to all infrastructure facilities and the acquired land was similar in nature and the fact that a cut was also put to 50%. The distance from the Highway, as such, would not require a belting system to be followed and it would be clear that all the landowners should get equal amount of compensation as some land was falling on the Highway but was further away from the Zero-point whereas land which was closer to the Zero-point, was away from Highway and had different advantages in its own way.

Resultantly, the judgment of the Apex Court in **HSI IDC Vs. Pran Sukh' (2010) 11 SCC 175** wherein uniform compensation was given @ Rs.20 lacs, would be applicable. In **Ali Mohammad Beigh and others Vs. State of J&K' 2017 (4) SCC 717** for the re-settlement of the Dal Lake dwellers and the purpose of acquisition being the same, uniform amount of compensation was given to three different villages, by the Apex Court. Relevant portion of the judgment read as under:

“13. When the lands are more or less situated nearby and when the acquired lands are identical and similar and the acquisition is for the same purpose, it would not be proper

to discriminate between the land owners unless there are strong reasons. In *Union of India v. Bal Ram and Another* (2010) 5 SCC 747, this Court held that if the purpose of acquisition is same and when the lands are identical and similar though lying in different villages, there is no justification to make any discrimination between the land owners to pay more to some of the land owners and less compensation to others. The same was the view taken in *Union of India v. Harinder Pal Singh and Others.* (2005) 12 SCC 564, where this Court held as under:- "15. We have carefully considered the submissions made on behalf of the respective parties and we see no justification to interfere with the decision of the Division Bench of the Punjab and Haryana High Court which, in our view, took a pragmatic approach in fixing the market value of the lands forming the subject-matter of the acquisition proceedings at a uniform rate. From the sketch plan of the area in question, it appears to us that while the lands in question are situated in five different villages, they can be consolidated into one single unit with little to choose between one stretch of land and another. The entire area is in a stage of development and the different villages are capable of being developed in the same manner as the lands comprised in Kala Ghanu Pur where the market value of the acquired lands was fixed at a uniform rate of Rs 40,000 per acre. The Division Bench of the Punjab and Haryana High Court discarded the belting method of valuation having regard to the local circumstances and features and no cogent ground has been made out to interfere with the same. 16. In our view, in the absence of any contemporaneous document, the market value of the acquired lands of Village Kala Ghanu Pur which were acquired at the same time as the lands in the other five villages was correctly taken to be a comparative unit for determination of the market value of the lands comprising the lands forming the subject-matter of the acquisition proceedings under consideration....."

14. When the lands are acquired at the same time and for the same purpose that is for resettlement of Dal dwellers, the lands situated

in three different villages namely, Chandapora, Bhagichandpora and Pazwalpora, and since the land is similar land, it would be unfair to discriminate between the land owners and other references and the appellants who are the land owners in Reference No.15 and pay less that is Rs.2,50,000/- per Kanal to the appellants and pay more to other land owners that is Rs.4,00,000/- per Kanal. Impugned judgments of the High Court in CIA No. 211/2009 and Cross Appeal No. 64/2011 are to be set aside by enhancing the compensation to Rs.4,00,000 per Kanal. As a sequel to this, the order passed in review is also to be set aside.

15. In the result, the impugned judgments are set aside and these appeals are allowed. It is held that the appellants are at par with other land owners whose lands were acquired in Bhagichandpora and Pazwalpora in other references, and hence they are also entitled to enhanced compensation of Rs.4,00,000/- per Kanal with 15% solatium (Jabirana) and all other statutory benefits. No costs.”

The argument, however, of the counsel for the landowners that the cut was to be less than 50% is not justified. The land, as such, undisputedly, was not of good quality and not easily developable, being across the river. Considerable costs have gone into for exploiting the potential by the State by way of construction of a bridge and leveling the land and also keeping portions of it as recreational facilities which were closer to the river which would be clear from the map and the site-plan. In such circumstances, the argument also raised by the counsel for the appellants that 50% cut was excessive is rejected.

Resultantly, it can be safely held that the landowners have been granted adequate compensation for the land of village Jhuriwala and Bana Madanpur and the State is not justified that the same should be brought down at par of village Nada, keeping in view the better potentiality of the land in question which had increased manifold over

and above the earlier land acquired in the year 1989 due the construction of the second bridge over the river. The cut of 50% is, accordingly, justified in the facts and circumstances as development cost had to be incurred by HUDA. Therefore, the reduction is not feasible. Similarly, once the land was contiguous and similar of village Nada and acquired for the same purpose and had the benefit of abutting the National Highway No.73, but the landowners could not be granted the the lesser compensation as has been awarded by the second Reference Court.

It is also pertinent to notice that for village Jhuriwala, Bana Madanpur, Devi Nagar, 64.5 acres of land, vide notification dated 11.07.1995, was sought to be acquired for construction of roads between Sector 3 and 21, 24 and 25, which are subject matter of challenge by the land owners in **RFA No.3788 of 2013** titled '**Purujit Singh Vs. State of Haryana & another**'. The Reference Court in the said case has also granted the uniform compensation @ Rs.746 per square yard by placing reliance upon the impugned award dated 20.04.2009. The notification is, thus, only 2 months apart, but the State has chosen not to file any appeals qua the said notification before this Court. It is hard to digest for this Court the fact that the landowners of the same village Bana Madanpur and Jhuriwala would be entitled for different compensation for acquisition of their lands when the purpose is only for the development of the infrastructure as such of the said sectors and the State being satisfied against the said amount cannot as such claim reduction on this ground also.

The argument raised by the State counsel that further cut

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should be imposed is also without any substance as there can be no double imposition of cut as the Apex Court has already granted the requisite reduction on account of development charges, in **Umesh Gupta** (supra).

Accordingly, the appeals filed by the landowners for Villages Jhuriwala, Madanpur are dismissed along with the appeals filed by the State. However, the appeals filed by the landowners of Village Nada are accepted and they are held entitled for compensation at the same rate of Rs.746/- per sq.yards, along with all statutory benefits and the award dated 31.01.2012, is accordingly, modified to that extent.

06.04.2018
Sailesh/Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*