

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

**RFA No.2373 of 2010 (O&M) and
other connected appeals alongwith
cross-objections.**

Reserved on: 22.12.2017/26.02.2018

Decided on : 09.03.2018

Madan Pal (III)

... Appellant

Versus

State of Haryana and another

... Respondent

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

Present : Mr. Shailendra Jain, Senior Advocate with
Mr. Satyendra Chauhan, Advocate,
Mr. Pawan Kumar, Senior Advocate with
Mr. Rozer Kumar Aggarwal, Advocate,
Ms. Manisha Gandhi, Senior Advocate with
Mr. Ashwani Gaur, Advocate,
Mr. G.C.Shahpuri, Advocate,
Mr. Ranjit Saini, Advocate,
Mr. Sandeep Sharma, Advocate,
Mr. P.R.Yadav, Advocate,
Mr. Nitin Jain, Advocate,
Mr. Gaurav Aggarwal, Advocate
for the land owners.

Mr. M.L. Sarin, Senior Advocate with
Mr. Nitin Sarin, Advocate for
M/s Kohli Holdings Private Limited.

Mr. Sudeep Mahajan, Addl. Advocate General, Haryana
for State as well as for Haryana State Industrial and
Infrastructure Development Corporation Ltd.
Mr. A.K.Chopra, Senior Advocate with
Mr. G.S.Bhandol, Advocate and
Mr. Pritam Singh Saini, Advocate for Haryana State
Industrial and Infrastructure Development Corporation Ltd.

Ms. Safia Gupta, Assistant Advocate General, Haryana.

Mr. Sunil Chadha, Senior Advocate with
Mr. M.S. Atwal, Advocate for
Maruti Suzuki India Limited.

G.S. Sandhawalia, J.

This judgment shall dispose of 809 appeals alongwith 25 cross-objections in respect of three notifications dated 26.02.2002, 06.03.2002 and 07.03.2002 issued under Section 4 of the Land Acquisition Act, 1894 (for short '1894 Act'), the details of which are given below.

(Appeals in respect of notification dated 07.03.2002)

RFA Nos.2373, 2374, 2375, 2376, 2378, 2380, 3044 to 3048, 3127, 3132, 3134, 3135, 3137, 3138, 3145, 3146, 3148, 3150, 3153, 3157, 3159, 3160, 3164, 3171, 3172, 3175, 3179, 3181, 3186, 3503, 3504, 3840, 3841, 3842, 4153, 4158, 4171, 4172, 4177, 4181, 4185, 4187, 4188, 4214, 4215, 4220, 4235, 4236, 4328, 4330, 4331, 4334 to 4338, 4341 to 4343, 4346, 4350, 4352 to 4359, 4361 to 4364, 4366 to 4368, 4527, 4528, 4597 to 4600, 4624, 4625, 4674, 4739, 4740, 4837, 4838, 5359, 5360, 5482, 2377, 2379, 2478, 2853, 3128, 3129, 3130, 3131, 3133, 3136, 3139, 3140, 3141, 3142, 3143, 3149, 3151, 3152, 3154, 3155, 3156, 3158, 3161, 3162, 3163, 3170, 3173, 3174, 3176, 3177, 3178, 3180, 3182, 3183, 3184, 3185, 3191, 3223, 3505, 4148, 4149, 4157, 4174, 4175, 4176, 4179, 4180, 4182, 4183, 4184, 4195, 4213, 4217, 4218, 4219, 4241, 4281, 4318, 4319, 4320, 4324, 4325, 4326, 4327, 4329, 4332, 4333, 4339, 4340, 4344, 4345, 4347, 4348, 4349, 4351, 4360, 4365, 4514, 4601, 4856, 4857 and 5275 of 2010; RFA Nos. 622 to 626, 1195 to 1197, 1199, 1714, 2234, 2407, 2412, 2413, 2415, 2416, 2419, 2420, 2421, 2423, 2426, 2427, 2432, 2437 to 2442, 2445, 2447, 3373 to 3376, 4118, 4119, 4199, 4200, 4326, 4327, 4492, 4513,

4712 to 4716, 4718 to 4720, 4830, 4832, 5431, 6139, 6497 to 6499, 6502 to 6505, 6887, 6888, 6957, 7868, 683, 1198, 2408, 2409, 2410, 2411, 2414, 2417, 2418, 2422, 2424, 2425, 2428, 2429, 2430, 2431, 2433, 2434, 2435, 2436, 2443, 2444, 2446, 2448, 2449, 2450, 4139, 4205, 4206, 4310, 4328, 4353, 4717, 4817, 4818, 4831, 6132, 6357, 6494, 6495, 6496, 6500, 6501, 6506, 6507, 6508, 6527, 6949, 7689, 7828, 7829, 7878, 7882, 7897 and 7993 of 2011; RFA Nos. 256, 552, 1597, 3072, 1968, 6287, 6288 and 6289 of 2012; RFA Nos.6210, 6880, 2139, 2367, 2370 and 4415 of 2013; RFA Nos. 5225, 5465, 8993, 374, 687, 5266, 5432, 7224 and 7357 of 2014; RFA Nos.3798, 5697, 279 and 2695 of 2015; RFA Nos.1103, 1771 and 2090 of 2016

(Appeals in respect of notification dated 26.02.2002)

RFA Nos.1437 to 1444, 2247 to 2249, 2451, 2864, 2865, 2867 to 2869, 2871, 3061, 3063, 3064, 3066, 3068, 3069, 3071, 3072, 3073, 3075 to 3078, 3102 to 3104, 3105, 3107 to 3109, 3184 to 3186, 3189, 3191, 3192, 3193, 3197 to 3200, 3202, 3203, 3206, 3208, 3209, 3211 to 3213, 3215, 3219, 3221, 3224, 3228 to 3230, 3359, 3361, 3364, 3365, 3443, 3444, 3708, 3769, 3771, 3774, 4113, 4136, 4334, 4343, 4468, 4491, 4842, 5343 to 5346, 5390, 6146, 6154, 6244, 6253, 6255 to 6257, 6260, 6261, 6263, 6264, 6265, 6269, 6270, 6272 to 6274, 6281, 6286, 6290, 6292, 6296, 6299, 6304, 6307, 6312, 6314, 6315 to 6317, 6320, 6323, 6324, 6328, 6331, 6333, 6336, 6341, 6342, 6345, 6351, 6353, 6482, 6525, 6943, 7125, 2866, 2870, 3062, 3065, 3067, 3070,

3074, 3181, 3182, 3183, 3187, 3188, 3190, 3194, 3195, 3196, 3201, 3204, 3205, 3207, 3210, 3214, 3216, 3217, 3218, 3220, 3222, 3223, 3225, 3226, 3227, 3231, 3358, 3360, 3429, 3772, 3773, 4114, 4115, 4319, 4322, 4333, 4342, 6124, 6242, 6243, 6245, 6246, 6247, 6248, 6249, 6250, 6251, 6252, 6254, 6258, 6262, 6266, 6267, 6268, 6271, 6275, 6276, 6277, 6278, 6279, 6280, 6282, 6283, 6284, 6285, 6287, 6288, 6289, 6291, 6293, 6294, 6295, 6297, 6298, 6300, 6301, 6302, 6303, 6305, 6306, 6308, 6309, 6310, 6311, 6313, 6318, 6319, 6321, 6322, 6325, 6326, 6327, 6329, 6330, 6332, 6334, 6335, 6337, 6338, 6339, 6340, 6343, 6344, 6346, 6347, 6348, 6349, 6350, 6352, 6354, 6355, 6356, 6526, 7133, 7139, 7665, 7825, 7826 and 7827 of 2011; RFA Nos.268, 1573, 4688, 4736, 5582, 5762, 4687 and 4689 of 2012; RFA Nos.1022, 2089, 2488, 2616, 2826, 4338, 4356, 4446, 5898, 5901, 5902, 4434, 4472, 4474, 4476, 5899 and 5900 of 2013; RFA Nos.89 and 163 of 2014; RFA No.5434, 2260 and 3086 of 2015; RFA No.2287 of 2016; RFA Nos.4532, 4534, 4535, 4536 and 4540 of 2017.

(Appeals in respect of notification dated 06.03.2002)

RFA Nos.3383 to 3385, 3388, 3400, 3401, 3507, 3508, 3509, 3511 to 3513, 3515, 3518, 3522, 3523, 3525, 3793, 3931, 3933, 3935, 3936, 3938, 3939, 3943, 3945, 3959, 3961, 3962, 3965, 3966, 3969, 3974, 4043, 4046, 4048, 4050, 4052, 4054, 4055, 4057, 4058, 4059, 4061, 4062, 4169, 4189, 4190, 4192, 4312 to 4317, 4323, 4585, 4586, 4587, 4646, 4860, 4871, 4873 to 4876, 4884, 2978, 3386, 3387, 3389, 3390, 3391, 3392, 3393, 3394, 3395, 3396, 3397, 3398, 3399, 3506,

3510, 3514, 3516, 3517, 3519, 3520, 3521, 3524, 3540, 3541, 3790, 3792, 3794, 3795, 3796, 3797, 3798, 3930, 3932, 3934, 3937, 3940, 3941, 3942, 3944, 3946, 3960, 3963, 3964, 3967, 3968, 3970, 3971, 3972, 3973, 3975, 4044, 4045, 4047, 4049, 4051, 4053, 4056, 4060, 4162, 4163, 4164, 4165, 4166, 4167, 4168, 4191, 4278, 4322, 4858, 4859, 4861, 4872, 4949, 5016, 5017, 5018, 5019, 5020, 5021, 5022, 5382, 5383, 3791 of 2010; RFA Nos.150, 673, 1915 and 4357 of 2011; RFA Nos. 3088, 522, 1562, 7185 and 7242 of 2012 and RFA No.3451 of 2016

(X-Objections)

X-objections No.185-CI of 2010 in RFA No.3148 of 2010, X-objections No.14-CI of 2011 in RFA No.3160 of 2010, X-objections No.184-CI of 2010 in RFA No.3181 of 2010, X-objections No.217-CI of 2010 in RFA No.3518 of 2010, X-objections No.198-CI of 2013 in RFA No.3939 of 2010, X-objections No.186-CI of 2010 in RFA No.4350 of 2010, X-objections No.182-CI of 2010 in RFA No.4355 of 2010 and X-objections No.28-CI of 2015 in RFA No.3774 of 2011, X-objections No.173-CI of 2010 in RFA No.3140 of 2010, X-objections No.189-CI of 2010 in RFA No.3395 of 2010, X-objections No.216-CI of 2010 in RFA No.3972 of 2010, X-objections No.187-CI of 2010 in RFA No.5018 of 2010, X-objections No.188-CI of 2010 in RFA No.3524 of 2010, X-objections No.193-CI of 2010 in RFA No.3514 of 2010, X-objections No.39-CI of 2014 in RFA No.3797 of 2010, X-objections No.11-CI of 2012 in RFA No.6251 of 2011, X-objections No.4-CI of 2012 in RFA

No.3061 of 2011, X-objections No.69-CI of 2013 in RFA No.6288 of 2011, X-objections No.6-CI of 2014 in RFA No.6325 of 2011, X-objections No.21-CI of 2015 in RFA No.6243 of 2011, X-objections No.26-CI of 2015 in RFA No.6245 of 2011, X-objections No.36-CI of 2015 in RFA No.3772 of 2011, X-objections No.40-CI of 2015 in RFA No.3187 of 2011, X-objections No.25-CI of 2018 in RFA No.3196 of 2011, X-objections No.20-CI of 2018 in RFA No.2412 of 2011.

(Appeals of MSIL in respect of notification dated 26.02.2002)

RFA Nos. 7317, 7326, 7333 and 7337 of 2013; RFA Nos.80, 86, 92, 134, 135, 136, 137, 138, 139,143, 144, 149, 151, 157, 161, 162, 168, 169, 171, 172, 178, 192, 193 and 2530 of 2014

2. The said appeals and cross-objections filed by the land owners, whereby enhancement of compensation is sought for the land acquired, whereas in the corresponding cross-appeals filed by the Haryana State Industrial and Infrastructure Development Corporation Limited (for short 'HSIIDC'), the relief is claimed for the reduction of the amount awarded @ Rs.28,15,849/- and Rs.37,47,232/- per acre by two Reference Courts. Similarly, Maruti Suzuki India Private Limited (MSIL) has filed appeals being post notification allottee of industrial plot measuring 501 acres.

3. The acquisition process has a checkered history, since the Coordinate Bench had firstly decided the appeals on 11.02.2011 and awarded Rs.37.40 lakhs per acre to the land owners and Rs.1.02 crores

per acre had been granted to M/s Kohli Holdings Private Limited on the ground of the location of the land of the said company. The same was remanded by the Apex Court in '**HSI IDC Limited Vs. Udal and others**' **2013 (14) SCC 506** decided on 02.07.2013. Thereafter, the matter had been again decided vide detailed judgment in **RFA No.2373 of 2010 'Madan Pal Vs. State of Haryana and another'** on 06.10.2015 and the Coordinate Bench had remanded the matter to the Reference Court while directing that Maruti Suzuki India Limited (for short 'MSIL') could lead evidence alongwith other parties also to enable the Reference Court to assess fair value of the acquired land in accordance with law after considering the evidence produced on record.

4. The said judgment was carried in appeal to the Apex Court by various land owners and the lead case was '**Satish Kumar Gupta and others Vs. State of Haryana and others**' **AIR 2017 SC 1072** decided on 21.02.2017, wherein the order dated 06.10.2015 was set aside by holding that post acquisition allottee, namely, MSIL cannot be treated as a necessary or proper party under Order 1 Rule 10 of CPC for proceedings for determination of compensation and had no locus standi to be heard in the matter and was neither necessary nor a proper party. It was further clarified that on an earlier occasion the liberty given to the MSIL to file an application for impleadment or to act as an intervenor such prayer had to be considered in accordance with law and there was no such liberty granted by the Apex Court on an earlier occasion in **Udal's case (supra)**

to be impleaded. Similarly, the benefit of permitting the additional evidence and remanding the case for fresh decision was held to be not justified, in view of the settled principle under Order XLI Rule 27 of CPC on the ground that additional evidence cannot be permitted to fill in the lacunae or to patch-up the weak points of the case. Resultantly, the matter has come back again to this Court for fresh decision.

5. The pivotal issue which has to be decided is as to what was the market value on the date of the acquisition in view of Section 4 of 1894 Act and whether additional evidence application should be allowed and lastly Maruti Suzuki India Limited has any locus standi to intervene.

6. Three notifications have been clubbed together on account of the fact that two of them are just a day apart i.e. 06.03.2002 and 07.03.2002 and the notification dated 26.02.2002 is also of a week earlier and therefore, there being no considerable time gap inter-se the three, the same have been taken up together for the purposes of convenience and expediency since the purpose of acquisition is also similar in nature.

7. The first decision by the Reference Court was on 16.12.2009 by Shri Kuldip Jain, Additional District Judge, Gurgaon, whereby he decided 59 reference petition under Section 18 of the Act for enhancement of compensation pertaining to notification dated 07.03.2002. The said Court took facts from **LAC Case No. 513 of 25.10.2004** titled as '**Satish Kumar Vs. Haryana State through the Collector, District Gurgaon and others**' case which is subject matter of

enhancement in RFA No.2373 of 2010 ‘Madan Pal Vs. State of Haryana and another’ and granted Rs.28,15,849/- per acre irrespective of the nature of the land subject to the final decision of the Apex Court in pending appeal qua the enhancement of compensation pertaining to notification dated 30.04.1994 and 15.11.1994. The statutory benefits under the Act were also to be paid to the land owners.

8. The notification dated 07.03.2002 under Section 4 of the Act was for land 598 acres 5 kanals 12 marlas for the undersaid 4 village for the public purpose for setting up the Industrial Model Township (for short 'IMT'), Manesar Phase-III, Tehsil & District Gurgaon. Accordingly, notification was issued 25.11.2002 under Section 6 of the Act, whereby the Haryana Government declared that the land is needed by the Government at public expense for the above mentioned public purpose. The award was passed on 24.12.2003, whereby compensation for the four villages per acre was as under:-

<i>Name of village</i>	<i>Chahi</i>	<i>Gair Mumkin</i>
<i>Kasan</i>	5,25,000/-	7,50,000
<i>Bas Kusla</i>	2,25,000/-	3,60,000/-
<i>Bas Haria</i>	2,25,000/-	3,60,000/-
<i>Dhana</i>	2,25,000/-	3,60,000

9. The claimants being dissatisfied sought compensation to the tune of Rs.3,000/- per square yard totalling to Rs.1,45,20,000/- per acre. The claim was based on the fact that the Land Acquisition Collector (for short 'the Collector') did not take into consideration that the land acquired had great potentiality for being developed as commercial, industrial and

residential and recreation facilities. The factum of being adjacent to the fully developed area IMT which had already been set up whereby numerous factories both national and international repute had been set up and had not been taken into consideration. Reference was accordingly made to the developed market in village Kasan, Manesar and National Security Guards, Manesar, apart from the residential houses in the acquired land and Abadi at village Kasan. The factum that the land was adjacent to the road leading from National Highway No.8 to village Bas Kusla via Kasan and the same is also connected otherwise with the main road leading from Gurgaon to Rewari via Pataudi and the fact that Gurgaon City was much developed was factors which had not been taken consideration. The award dated 03.04.1997 pertaining to the notification dated 15.11.1994 had also been ignored while assessing the market value at the low rate.

10. The defence of the HSIIDC was that the land was agricultural in nature and could neither be utilized nor converted for any other purpose and used except agricultural purpose, unless change in land use (CLU) was obtained under the provisions of the The Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963. It was denied that the land acquired is near to Industrial houses, resort or hotels. The acquired land was in deep interior and far away to IMT. It was further averred that the land was far away from the road leading to village Bas Kusla or Gurgaon to Rewari Road and National Highway No.8. The allotment of industrial plots was being

done on 'No Profit No Loss' after developing the industrial area providing necessary infrastructure. Resultantly, it was pleaded that the market value of the acquired land be determined @ Rs.2,75,000/- per acre and excess amount taken by the petitioner be ordered to be refunded.

11. Keeping in view the fact that only Pran Sukh had been examined as witness, therefore, the self serving testimony was rejected by the Reference Court. The allotment letter dated 02.02.2000 (Ex.P-4) in favour of Orient Craft Limited for Rs.4.50 crores and the auction of Tower 'J' in favour of Ultra Home Construction Private Limited dated 30.06.2006 and auction of commercial sites bearing towers J, K, L, for bid price of Rs.95.10 crores, Rs.101.50 crores and Rs.93 crores was rejected on the ground that the auction price is not indicative of the market price. Various of the factors of maintenance, construction and maintenance of roads, element of interest payable on different heads and other ancillary factors were to be kept in mind and the same being speculative feature, they were not taken into consideration. While noticing the award dated 03.04.1997, it was noticed that this Court had granted enhancement to the tune of Rs.15 lakhs per acre and the matter was pending in the Apex Court. Resultantly, giving 12 % rise per year for the difference between two notifications dated 15.11.1994 and 07.03.2002 for the time gap of 7 years 3 months and 22 days market value was accordingly assessed @ Rs.28,15,849/- per acre for village Kasan, on the base price of Rs.15 lakhs subject to the final decision of the Apex Court. It is pertinent to notice that the same was finally decided on

17.08.2010 in '**HSI IDC Vs. Pran Sukh**' (2010) 11 SCC 175 and the amount has been enhanced to Rs.20 lakhs.

12. Regarding notification dated 06.03.2002 which pertained to Phase-II of IMT pertaining to 1380 kanals 16 marlas of land of following 4 villages notification under Section 6 of the Act was issued on 15.11.2002. The award was passed on 27.2.2003 and compensation was granted as under:-

<i>Name of village</i>	<i>Chahi</i>	<i>Bhood</i>	<i>Banjar</i>	<i>Gair Mumkin</i>
<i>Kasan</i>	<i>5,25,000/-</i>	<i>5,00,000/-</i>	<i>5,00,000/-</i>	<i>7,50,000/-</i>
<i>Bas Kusla</i>	<i>2,25,000/-</i>	<i>1,75,000/-</i>	<i>1,75,000/-</i>	<i>3,60,000/-</i>
<i>Naharpur Kasan</i>	<i>5,25,000/-</i>	<i>4,00,000/-</i>	<i>4,00,000/-</i>	<i>7,20,000/-</i>
<i>Manesar</i>	<i>7,00,000/-</i>	<i>7,00,000/-</i>	<i>7,00,000/-</i>	<i>10,00,000/-</i>

13. The claimants having remained dissatisfied had filed the reference petition under Section 18 of the Act earlier in point of time which are as per the same averments made in **Satish Kumar Gupta**' case (**supra**) pertaining to the notification dated 07.03.2002 and also claimed the market value of the acquired land @ Rs.3,000/- per acre totaling to Rs.1,45,20,000/-. Similar, plea was taken by the HSI IDC in response to the said reference petitions.

14. The reference was decided on 27.01.2010 by the same officer, wherein he disposed of 91 reference petitions, lead case of which was **LAC Case No.164 of 12.05.2004** titled as '**Udal Vs. Haryana State through the Collector, District Gurgaon and others**', keeping in view the earlier award dated 16.12.2009. The HSI IDC has preferred **RFA No.3383 while RFA No.4189 of 2010** has been filed by the land owners

for enhancement against the said judgment.

15. It is pertinent to notice that **RFA No.4646 of 2010** has been filed by M/s Kohli Holdings Private Limited and cross appeal was also preferred by the HSIIDC for land measuring 70 kanals 5 marlas (approximately 9 acres) falling in village Manesar, abutting the National Highway No.8.

16. Accordingly, keeping in mind the statements of three witnesses in different reference petitions, the sale deeds which had been produced on record as Ex.P1/Ex.P9, dated 12.06.1997, Ex.P2/Ex.P10 dated 23.06.1997, sale deed dated 18.09.1997 as Ex.P3 and Ex.P4 dated 18.08.2003, Ex.P6 dated 16.09.1994, Ex.P8 dated 20.09.1996 and Ex.PY dated 28.04.2004 of village Bas Kusla, Dhana, Naharpur Kasan and Kasan were found to be irrelevant to arrive at the market value of the land on the ground that the land was measuring only 2 kanals, 1 kanal 10 marlas, 1 kanal 4 marlas, respectively and the dates were not in close proximity of one year and were of residential areas, when the notification under Section 4 of the Act was issued. Similarly, keeping in view the bulk of land being acquired, the small sale deeds of 2 kanal, 1 kanal 10 marlas, 1 kanal 4 marlas, 1 kanal 1½ marlas were not to be looked into, specially since they had not been executed in close proximity within one year preceding 06.03.2002. It was further noticed that no land of village Dhana had been acquired and, therefore, the sale deed pertaining to village Dhana (Ex.P3) was of no consequence. Resultantly, only three sale deeds Ex.P8, Ex.P6 and Ex.PY were taken into consideration relating

to village Naharpur Kasan and also rejected on the same grounds of not being in close proximity.

17. The Master Plan Ex.P42 was taken into consideration which showed that village Bas Kusla adjoins the land already acquired of village Kasan and the land of 4 villages had been acquired for the development of Phase-II of IMT. Resultantly, the earlier judgment passed in **LAC Case No.513 of 25.10.2004 titled as ‘Satish Kumar Gupta Vs. Haryana State and others’** decided on 16.12.2009 was taken into consideration, whereby compensation had been awarded to the tune of Rs.28,15,849/- and it was noticed that only in two cases of Kohli Holdings Vs. State of Haryana and Ram Niwas Vs. State of Haryana, small pieces of land were of village Manesar. Resultantly, keeping in view the settled principle that uniform rate was to awarded for acquired land of different villages vide same notification for same purpose, the classification of land which had been made on account of the nature by the LAC was held to be not justified and same amount of compensation was granted.

18. Regarding the acquisition of Phase-IV of IMT, wherein land measuring 657 acres 4 kanals 3 marlas was sought to be acquired vide notification dated 26.02.2002 for the 4 villages Bas Kusla, Bas Huria, Dhana and Kasan. The notification under Section 6 was issued on 18.11.2002. Vide Award No.6 of 20.05.2004, compensation was awarded @ Rs.2, 25,000/- for Chahi land of village Bas Kusla, Bas Huria

and Dhana and Rs.3,60,000/- for Gair Mumkin land. For village Kasan Rs.5,25,000/- was the amount for Chahi land and Rs.7,50,000/- for Gair Mumkin land by the LAC. The claimants had sought compensation @ Rs.50 lakhs per acre in the reference petitions filed.

19. Keeping in view the fact in **LAC Case No.44 of 17.02.2005 ‘Om Parkash and others Vs. State of Haryana and others’** (Ex.P4), wherein compensation had been assessed @ Rs.28,15,849/- per acre for the notification dated 07.03.2002, the same amount of compensation was assessed by Shri Y.S. Rathor, Additional District Judge, Gurgaon alongwith the statutory benefits on 09.08.2010.

20. On account of enhancement on 17.08.2010 by the Apex Court in **Pran Sukh’s case (supra)** to Rs.20 lakhs per acre for Phase-I of IMT regarding the notification of 1994, Shri Y.S. Rathor, Additional District Judge, Gurgaon while deciding 75 reference petitions on 30.11.2010 titled as **LAC No.263 of 16.07.2008 ‘Hari Singh Vs. State of Haryana’** pertaining to notification dated 26.02.2002 for the abovesaid four villages Bas Kusla, Bas Huria, Dhana and Kasan rejected the sale deeds Ex.P3, Ex.P9, Ex.P14 to Ex.P22, Ex.P52 to Ex.P56 on the ground that they are pertaining to the period from 28.04.2004 to 04.02.2009 and the notification was issued on 26.02.2002. The same being much after acquisition had, accordingly, been discarded. The fact that this Court had awarded Rs.15 lakhs per acre and which had been enhanced in Pran Sukh’s case (supra) Ex.P68, to Rs.20 lakhs was accordingly taken into

consideration and accordingly, the base price was taken as Rs.20 lakhs and by putting 12 % increase per year for 7 years 3 months 22 days, the gap between two notifications the increase was given. The market value of the acquired land was assessed @ Rs.37,47,232/- per acre irrespective of the nature of the land alongwith the statutory benefits. Resultantly, **RFA No.2247 of 2011 ‘Dinesh Yadav Vs. Haryana State’** has been filed, wherein market value has been claimed @ Rs.3,000/- per square yard.

21. Similarly, another set of 117 references were also decided by Shri Kuldeep Jain, Additional District Judge, Gurgaon on 07.03.2011 based on the award dated 30.11.2010, wherein also market value was assessed @ Rs.37,47, 232/- per acre.

22. As noticed earlier when the first set of cases was decided on 11.02.2011 by the Coordinate Bench regarding notification dated 06.03.2002 and 07.03.2002, 12% flat increase was granted, keeping in view the increase granted by the Apex Court pertaining to the acquisition of 1994 and the time gap of two notifications of 7 years 3 months 22 days. The landowners had accordingly been assessed compensation @ Rs.37,40,000/- per acre alongwith statutory benefits. However, in the case of M/s Kohli Holdings Private Limited in RFA No.4646 of 2010, land measuring 69 kanals 15 marlas land on National Highway No.8 situated alongwith frontage of two acres was given increase @ 15% per annum on the basis of allotment of M/s Orient Craft Limited @

Rs.1,254/- per square yards (Ex.P38). Additional benefit of 30% on account of special locational advantage was also made available to the land in question. Accordingly, value was assessed @ Rs.2,119/- per square yards in the said appeal amounting to Rs.1,02,55,960/- per acre, apart from statutory benefits.

23. It is a matter of record that in **Udal's case (supra)** decided on 02.07.2013, the Apex Court remanded the matters primarily on the ground that Ex.P38 had been relied upon for determining the market value in the case of M/s Kohli Holdings Private Limited and increase had been given apart at a flat rate of 15% and 30% on account of special locational advantage. The same had not been given to other land owners and they had been discriminated in the grant of annual increase and had only been given flat increase of 12%. The other error which was highlighted was that the increase had been granted @ flat rate of 12% to 15% and not on cumulative basis while placing reliance upon '**Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another'** 2008 (14) SCC 745. Ex.PW9/A dated 23.11.1999 whereby allotment had been made to M/s Honda Motorcycles and Scooters India (Private) Limited @ Rs.1,254/- per square yard was also taken into consideration to come to the conclusion that the market value of the acquired land would come to Rs.60,69,360/- per acre and by making deduction of 50% of development cost and grant of annual increase of 12/15% (cumulative), market value of the land would be much higher than Rs.37,40,000/-. Resultantly, the matters were remanded. The MSIL

was also given liberty to file application for impleadment of grant of leave to act as intervenor in the appeals filed by the parties which was to be decided on its own merits. The relevant portion of the said judgment reads as under:-

“29. A careful scrutiny of the impugned judgment shows that while determining the amount of compensation payable to the land owners other than M/s. Kohli Holdings Private Limited, the learned Single Judge did make a reference to Exhibit P38 (paragraph 30) but did not rely upon the same for the purpose of determination of the amount of compensation. Instead of adopting a holistic approach and examining the documents produced before the Reference Court, the learned Single Judge simply referred to the judgment of this Court in Pran Sukh's case, granted a flat increase of 12% for the time gap of about 7 years and 3 months between the two acquisitions, i.e., 1994 and 2002 and determined market value at the rate of Rs.37,40,000 per acre. In the case of M/s. Kohli Holdings Private Limited, the learned Single Judge squarely relied upon Exhibit P38 for the purpose of fixing market value of the acquired land, granted an increase at a flat rate of 15% per annum on the price of land specified in Exhibit P38 with an addition of 30% on account of special locational advantage and held that the particular landowner is entitled to compensation at the rate of Rs.2119 per square yard (Rs.1,02,55,960 per acre). However, no discernible reason has been given for granting the benefit of annual increase at different rates to M/s. Kohli Holdings Private Limited on the one hand and the remaining land owners on the other. Therefore, we find merit in the argument of the learned counsel for the remaining land owners that their clients have been subjected to discrimination in the matter of grant of annual increase.

30. The other error committed by the learned Single Judge is that he granted annual increase at a flat rate of 12/15%.

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33. We also find merit in the argument of the learned counsel for the land owners that while fixing market value of the acquired land the learned Single Judge committed serious error by not considering an important piece of evidence, i.e., Exhibit PW9/A dated 23.11.1999 vide which HSIIDC had allotted land to M/s. Honda Motorcycles and Scooters India (Private) Limited at the rate of Rs.1254.18 per square yard. Although, this document was produced before the Reference Court but the same was not taken into consideration while determining the amount of compensation. The same error has been repeated in the impugned judgment. If this document is taken into consideration, then market value of the acquired land would come to Rs.60,69,360 per acre. By making deduction of 50% towards development cost and granting annual increase of 12/15% (cumulative), market value of the land will be much higher than Rs.37,40,000 per acre.

34. In view of the above conclusions, we do not consider it necessary to deal with the other points argued by learned counsel for the parties/intervenors and feel that ends of justice will be served by setting aside the impugned judgment and remitting the matters to the High Court for fresh disposal of the appeals and cross objections filed by the parties subject to the rider that the State Government/HSIIDC shall pay the balance of Rs.37,40,000 to the land owners along with other statutory benefits.

35. In the result, the appeals are allowed, the impugned judgment is set aside and the matter is remitted to the High Court for fresh disposal of the appeals filed by the parties under Section 54 of the Act as also the cross objections. The parties shall be free to urge all points in support of their respective cause and the **High Court shall decide the matter uninfluenced by the observations contained in this judgment.**

36. Maruti Udyog Limited shall be free to file an appropriate application before the High Court for its impleadment or grant of leave to act as intervenor in the appeals filed by the parties. If

such an application is filed, the same shall be decided on its own merits.

37. The State Government/HSIIDC shall pay the balance of compensation determined by the High Court, i.e., Rs.37,40,000 -Rs.28,15,356 = Rs.9,24,644 per acre to the land owners and/or their legal representatives along with all statutory benefits within a period of four months from today. The payment shall be made to the land owners and/or their legal representatives by following the procedure laid down in the interim orders passed by this Court.”

24. As noticed above, the Coordinate Bench thereafter decided the set of cases pertaining to notifications dated 26.02.2002 (Phase-IV), 06.03.2002 (Phase-II), 07.03.2002 (Phase-III), 28.06.2004 (for infrastructure), 17.09.2004 (Phase-V), 27.09.2005 (for infrastructure), and 24.11.2006 (for 60 Meter wide Road). Accordingly, the application of the MSIL to be impleaded as party and also the application for additional evidence filed by MSIL were allowed. Similarly, the applications for additional evidence filed by HSIIDC were allowed and also other parties were given liberty to produce relevant evidence, since the matter was being remanded.

25. As noticed the order was set aside in **Satish Kumar Gupta’s case (supra)** on 21.02.2017, wherein it was held that the post acquisition allottee had no locus standi to be heard in the matter and is neither a necessary nor a proper party. Similarly, the application for additional evidence was also rejected on the ground that there was no refusal to receive the evidence and 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 be necessary to pronounce the judgment. The additional evidence thus could not be permitted to patch-up the weak points. The relevant portion reads as under:-

“15. In Himalayan Tiles (supra) the acquisition was under Part-VII of the Act. In Santosh Kumar (supra) the question was whether award of the Collector could be challenged, to which this Court answered in the negative except on the ground of fraud, corruption or collusion. In Neyvely Lignite (supra) again the acquisition was under Part-VII of the Act and in that context this Court held that the expression “person interested” could include a company or local authority for whose benefit the land was acquired. The post-acquisition allottee cannot by any stretch of imagination be treated at par with beneficiary for whom the land was acquired. In U.P. Awas Evam Vikas Parishad (supra), the matter dealt with was in the context of statutory authority for whom the land was acquired. Delhi Development Authority v. Bhola Nath Sharma (dead) by Lrs. and ors. was a case in the context of beneficiary for whom the land was acquired.

16. The only other justification in the impugned judgment which has been relied upon by the respondents is lack of sincerity on the part of the State authority for whose benefit the acquisition has been made viz. HSIDC, which by itself cannot be a valid ground to permit post-acquisition allottee to be treated as a necessary or proper authority under Order I Rule 10 of CPC to proceedings for determination of compensation. The view taken in the impugned judgment cannot be sustained on any principle or precedent.

17. We may now refer to an order of this Court dated 15th July, 2004 which has been relied upon in the impugned judgment in para 31. There is no consideration of the principle of law and thus, the said order without there being contest on the principle of law could not be treated as a precedent for deciding the legal issue at hand.

18. Accordingly, we hold that the post-acquisition allottee has no

locus to be heard in the matter and is neither a necessary nor a proper party.

19. The other part of the impugned order permitting additional evidence and remanding the case for fresh decision is uncalled for. *No case was made out for permitting additional evidence on settled principles under Order XLI Rule 27 of CPC. The provision is reproduced below:-*

“27. Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if –

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, The Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

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.

21. We may also refer to the argument that this Court, while remanding the matter in the earlier round, had given liberty to the MSIL to file an application for impleadment or to act as an

intervenor which implied that such application was to be accepted. We do not find any merit in this contention also. It cannot be held that any right was crystalised by the said observation and such prayer had to be considered according to law. We have already held that the post-acquisition allottee had no right in the matter.

22. For the above reasons, we allow these appeals and set aside the impugned order and remand the matter to the High Court once again for fresh decision in accordance with law. The parties are directed to appear before the High Court on 27th March, 2017.”

26. Resultantly, the issue is again before this Court and matters pertaining to three notifications being interconnected are being taken up at the first instance together.

CM-10147-CI-2017 in RFA-4646-2010 Application filed for Additional Evidence & Intervention

27. The present application under Order XLI Rule 27 CPC came to be filed by M/s Kohli Holdings Private Limited for placing on record additional evidence as Annexure A-1 to A-3. It was, accordingly, pleaded that 113 kanals 11 marlas of land in village Manesar was notified under Section 4 on 06.03.2002 and 4 kanals and 8 marlas in Naharpur Kasan. 47 kanals 14 marlas had been released which adjoined the acquired land. Permission for change of land use Licence No.27 of 2008 (Ex.P44 dated 02.11.2007) for setting up of an IT Park Colony had been granted. External Development Charges (EDC) and Internal Development Charges (IDC) had accordingly been demanded vide letter dated 02.11.2007 by the Director, Town & Country Planning, Haryana (Annexure A-1). Similarly auction of plot measuring 4032 square yards

for an amount of Rs.3,21,50,000/- to M/s Raheja Developers Private Limited was sought to be brought on record on the ground that it was very close to the acquired land and is an excellent piece of evidence available to determine the market value of the acquired land on 06.03.2002. A copy of the said allotment letter dated 07.09.2001 was sought to be brought on record as Annexure A-2. The conveyance deed dated 30.08.2004 in favour of the said developer (Annexure A-3) was also sought to be brought on record on the ground that the same are copies of the official documents of the State of Haryana or HSIIDC and their authenticity is beyond any doubt. The aforementioned documents could not be produced on record earlier despite the exercise of due diligence. Accordingly, permission to file photocopies was sought for and exemption from filing certified and typed copies was prayed for.

28. The application was contested by the HSIIDC. It was submitted that the same were not admissible under the Indian Evidence Act, 1872. It was also submitted that it is irrelevant for the decision of the appeal. The letter dated 02.11.2007 and the allotment of the commercial site dated 07.09.2001 were not relevant for determining the market value and for assessing compensation liable to be paid to the land owners. The conveyance deed could not be said to be relevant for the decision of the appeal and the documents were neither required to pronounce judgment nor necessary in the interest of justice. The demand of EDC and IDC would not be relevant to ascertain the market value of the land acquired in the year 2002. Documents produced were required

to be proved by leading evidence and calling for original record from the department concerned. While calculating EDC and IDC only the cost which has been incurred by the authority while developing the area was to be taken into consideration and the same had no link with the value of the land on which the development cost had been charged. The element of competition in auction sales would make them not safe to be relied upon as such allotments were in favour of the commercial tower in the commercial complex in the Industrial Estate, IMT Manesar which could not be looked into while ascertaining the market value of the under developed agricultural land which had been acquired. The copy of the allotment letter was not liable to be accepted in evidence. The documents were well within the knowledge of the applicant and thus there was no due diligence and documents could not be allowed to be produced. Resultantly, the prayer was made for dismissal of the application.

CM-10373-10374-CI-2017 in RFA-2373-2010

29. Similarly, the present applications were filed in Madan Pal's case (supra) for leading additional evidence under Order XLI Rule 27 CPC by the HSIIDC-respondent No.2. It was pleaded that the applicant could not lead evidence showing sale transaction of similar land of same date and no evidence of comparable sale had been produced by the HSIIDC or even by the land owners. The compensation had been granted on the basis of applying the formula of 12% increase per annum and,

therefore, the certified copies of sale deeds of village Manesar executed in the year 2002 were sought to be brought on record to show that the price of the land was varying from Rs.5 lakhs to Rs.16 lakhs per acre. Resultantly, it was pleaded that registered sale deeds by the office of Registrar, Gurgaon (now Gurugram) are admissible in terms of Section 51-A of the Land Acquisition Act, 1894. It was further pleaded that as per zimni orders, the evidence could not be brought on record and same had been closed by the Court order on 12.09.2009. The matter had been pending from 01.06.2009 onwards for evidence of the respondents/applicants.

30. In the reply filed by the land owners, the plea taken was that the application was filed with ulterior motive to fill up lacuna in the evidence already led by it at the time of trial before the Reference Petition. No case was made out for permitting additional evidence on record under Order XLI Rule 27CPC, as the trial Court had not refused to receive the additional evidence. Nor it could be said that the additional evidence sought to be adduced was not available despite the exercise of due diligence and in the facts and circumstances of the present case, it would not be necessary for pronouncement of the judgment. The same could not be permitted to fill in the lacuna or to patch-up the weak points in the case. No due diligence had been shown for not producing the evidence of the sale deeds mentioned in the application which were now sought to be adduced by way of additional evidence, which was within the knowledge of the applicant. Without making out a case in terms of

the provisions of Order XLI Rule 27 CPC, additional evidence could not be allowed and it was liable to be dismissed. The application had been filed more than a decade after the reference petition had been filed. The present appeal had been remanded by the Apex Court vide its order dated 17.08.2010 and thereafter there had been another round of litigation upto the Apex Court and, therefore, the application could not be filed at any stage, as the matter had been listed for final disposal.

31. Section 51-A of the Land Acquisition Act, 1894 did permit the certified copy and documents registered under the Registration Act, 1908 to be accepted for evidence, but opportunity was to be given to lead oral evidence as well as documentary evidence to the appellants also. The transactions were undervalued or simply accommodative or distress transactions and, therefore, the matter may require remission again to the Reference Court which was not desired by the Apex Court vide judgment dated 21.02.2017. On an earlier occasion in **RFA No.3383 of 2010**, the applicant had sought to bring on record additional evidence of several sale deeds of different villages executed between 04.08.1997 to 04.12.2001 vide Annexure A-1 to Annexure A-24 in the range of Rs.1.5 lakhs to Rs.6.25 lakhs. Similarly, another application had been filed by MSIL also to produce additional evidence on record. The application had been considered in the judgment passed in RFA No.2373 of 2010 on 06.10.2015, but the said judgment had been set aside by the Apex Court vide judgment dated 21.02.2017. The matter had been remanded to this

Court for fresh decision after observing that additional evidence cannot be permitted to fill in the lacunae or to patch-up the weak points in the case. The application for seeking additional evidence was a fresh attempt and was abuse of the process of the Court and the relief had been declined by the Apex Court and the present application was verbatim of the same as filed by the MSIL earlier. Nothing had been brought on record as to whether any due diligence had been exercised and under what circumstances the sale transactions of similar land could not be brought on record by way of additional evidence. Similarly, nothing was brought on record what prevented the applicant-respondent No.2 from leading the evidence pertaining to the sale deeds prior to the judgment dated 11.02.2011 and 06.10.2015 by this Court.

32. Admission had been made regarding not submitting of the sale deeds of the relevant period and the default in leading evidence before the Reference Court and, therefore, the application was not maintainable as it is only for the purpose of delaying the hearing of the matter.

CM-11943-CI-2017 in RFA-3383-2010

33. Similarly, the present application for additional evidence under Order XLI Rule 27 CPC has been filed by the HSIIDC against the landowner Udal who has filed RFA-4189-2010. The present application has been filed for permission to place on record Annexure A-1 colly., 8 sale deeds pertaining to the year 2002 and the site plan as Annexure A-2

on record. Similar, plea was taken that only 5 opportunities have been given to lead evidence and it is a vital fact regarding the non-production of documents. There was evidence of comparable sale transactions and the sale deeds of the year 2002 would thus be relevant, since the notification was dated 06.03.2002. Resultantly, 8 sale deeds were sought to be brought on record and the rough site plan depicting the areas of the aforesaid sale deeds. The plea taken was accordingly that price of land ranged from Rs.5 lakhs to Rs.16 lakhs and it would be in the interest of justice to allow the afore mentioned additional evidence. Reliance was, accordingly, placed upon Section 51-A of the 1894 Act and the plea was taken that applicant being an instrumentality of State would liable to be given indulgence due to its peculiar functioning, impersonal machinery and bureaucratic manner of working.

34. In the reply filed to the application by the land owners similar plea was taken that no case has been made out for permitting additional evidence under Order XLI Rule 27 CPC and lacunae could not be filled up and the reply was in similar terms as filed in CM-10373-10374-CI-2017 in RFA-2373-2010 as noticed above.

CM-12927-CI-2017 in RFA-4646-2010

35. The present application was filed under Order XLI Rule 27 CPC for permission to produce additional evidence again by respondent No.3-HSIIDC. It is pleaded that after due research and verification and exercising due diligence sale deeds attached as Annexure A-1 pertaining to M/s Kohli Holdings Private Limited had been found. There was no

sale of comparable sale transactions which had taken place at the relevant date and, therefore, to determine the compensation the price paid in a bonafide transaction by a willing seller to a willing buyer was to be kept in mind. The sale deeds showed that the appellant had purchased land just after 9 days of the notification for acquisition of Phase-I IMT, Manesar i.e. 24.11.1994 and, therefore, it would be in the interest of justice to allow the applicant to adduce the aforementioned additional evidence. Fall back was again made on Section 51-A of the 1894 Act.

36. In the reply filed by the appellants it was pleaded that 8 of the sale deeds sought to be placed on record did not pertain to the land acquired in the present proceedings and the application has been filed to mislead the Court. On an earlier occasion, the same application had been filed for placing on record sale deeds in the connected first appeal, which was allowed by this Court but was reversed by the Supreme Court. Respondent was trying to fill in lacunas in the evidence already led before the Additional District Judge. The basic requirements of Order XLI Rule 27 CPC were not made out and respondent No.3 despite numerous opportunities never chose to lead evidence in the Section 18 proceedings of the 1894 Act. The Court had never refused to allow the additional evidence and neither it had been pleaded that the same was not available with the applicant despite exercise of due diligence. Therefore, the evidence which has now sought to be produced would not be necessary for this Court for pronouncement of judgment and no such ground was made to allow the application. The sale deeds sought to be

brought on record were 7 ½ years before the notification under Section 4 in the present case and Collector had granted much higher compensation than the rate depicted by the sale deeds and, therefore, they could not be relied upon. The application had been filed 16 years after the filing of the present appeal and there was unnecessary delay in filing the application. The land had undergone massive change in the 7 ½ years from the date of purchase to the date of notification and price had increased over 10000 times and, therefore, no reliance could be placed on the said sale deeds after 16 years. It was pertinent to notice that the sale deeds in question were of 25.11.1994 and 30.11.1994. No documents were produced before the trial Court and before this Court which had dealt with the matter twice or before the Apex Court which had also dealt the matter twice. Accordingly, it was prayed that the application was only frivolous and malafide and be dismissed with exemplary costs.

CM-12357-CI-2017 in RFA-2373-2010, CM-12364-CI-2017 in RFA-3383-2010&CM-12365-CI-2017 in RFA-3962-2010

37. The present applications have been filed by MSIL under Order 1 Rule 8-A CPC for permitting it to participate in the proceedings. It was pleaded that on 11.02.2011 the land owners were held entitled for Rs.37.40 lakhs per acre and the same had been put to challenge before the Apex Court. In the SLPs, the MSIL had filed an interim application for being impleaded on the ground that any enhancement made in the application would directly affect its interests as it would be liable to pay the enhanced amount. Vide order dated 02.07.2013, the Apex Court had

set aside the judgment dated 11.02.2011 and remanded the matter to this Court for fresh decision. The applicant was given liberty to file an application for its impleadment or grant leave to act as intervenor in the appeals. It was further directed that if such an application is filed, the same shall be decided on its own merits. Accordingly, they had filed application under Order XLI Rule 27 CPC for leading additional evidence. CM-13671-CI-2013 in RFA-3383-2010 had been filed alongwith CM-14618-19-CI-2013 in RFA-3383-2010. This Court vide judgment dated 06.10.2015 had set aside the award dated 27.01.2010 and remanded the matter to the District Judge, Gurgaon for deciding the reference afresh. The applications for being impleaded as necessary party and applications filed under Order XLI Rule 27 CPC for leading additional evidence had been allowed. The land owners had approached the Apex Court, whereby vide a common judgment dated 21.02.2017, the matter had been remanded to this Court while setting aside the judgment dated 06.10.2015 (Annexure A-1) by holding that the applicant being a post acquisition allottee had no locus standi to be heard in the matter and was neither necessary nor proper party. Resultantly, reference was made to the order dated 02.07.2013 whereby the applicant was free to file an appropriate application and same was to be decided on its own merits. Accordingly, it was pleaded that applicant would be burdened with enhanced amount which would be of Rs.1,000/- crores and financial implication would result into closure of the applicant's plant which was

over the land in question. Indulgence was sought to participate in the proceedings and render valuable assistance for effective adjudication of the controversy in question.

38. Replies were accordingly filed not only by the land owners of the present case, but by other land owners also whose appeals inter se also are listed, as the application for impleadment being intervenor has been filed in only 3 cases. Resultantly, the said replies have also been taken on record. Narrating the earlier history as mentioned above the defence in the replies was that the Apex Court in its judgment dated 21.02.2017 had observed that MSIL is a post acquisition allottee and neither necessary nor proper party. Resultantly, the applications were sheer abuse of the process of law and were liable to be dismissed with heavy costs. The earlier application filed bearing CM-13671-CWP-2013 in RFA-3383-2010 was also attached as Annexure R-1, wherein prayer had been made to be impleaded as necessary party in the RFA or leave should be granted to act as intervenor in the appeal.

39. In the reply filed by Satish Kumar Gupta and other land owners similar defence was taken that in view of the judgment by the Apex Court dated 21.02.2017 in **‘Satish Kumar Gupta and others Vs. State of Haryana and others’ AIR 2017 SC 1072**, the application has been filed with sinister design to enter indirectly which it could not get directly. The Department of Industries and the HSIIDC were already before this Court for participation in the proceedings and to render

valuable assistance. Reliance was, accordingly, made to Section 3 (b) of the Act to refer to person interested, whereby the post acquisition allottee could not project any claim or assert any right or interest in the compensation payable on account of the acquisition of the land. Resultantly, it was pleaded that the Apex Court had dismissed the application of MSIL for impleadment as necessary party as well as of other applicants for leading additional evidence and remanded the matter to this Court for decision afresh on the application of MSIL, which had no locus standi to be heard in the matter and participate in the proceedings.

(Arguments by landowners)

40. Shri Shailendra Jain, Senior Advocate spearheading the attack for the land owners and claiming additional compensation has referred to Ex.P38 in **RFA-4646-2010 ‘Kohli Holdings Private Limited Vs. State of Haryana and others’**, the letter of allotment made in favour of Orient Craft Limited dated 02.02.2000 to show that allotment was made for 30000 square meters by the HSIIDC itself for plots No.13, 14 and 15 in Sector-5, Manesar. The tentative price was Rs.4.50 crores which worked out to be Rs.1,500/- per square meter and Rs.1,254/- per square yard. Reference was made to Clause-5 of the allotment letter to show that there was an enhancement clause. It was submitted that an additional demand was made against the said plot @ Rs.3,552/- per square meter towards additional price. That Orient Craft Limited had

filed CWP No.458 of 2013 '**Orient Craft Limited Vs. State of Haryana and others**' alongwith others challenging the calculation of the additional price. The HSIIDC had issued notice dated 24.09.2012 demanding the same in view of the enhancement given for Phase-I from the allottees in Pran Shukh's case (supra). The same had been, thereafter, revised and reduced to Rs.3,313/- per square meter. The industrial association had challenged the said enhancement on the ground that Corporation was working on the principle of 'No Profit No Loss' and the Division Bench of this Court in the case of '**IMT Industrial Association and others Vs. State of Haryana and others**' 2015 (2) SCC 140 had decided the case on 11.11.2014 and declined the said challenge to the enhancement. It is, accordingly, submitted that the allottees in Phase-I paid Rs.1,500/- + Rs.3,313 per square meter (total Rs.4,813/-per square meter) which converted into Rs.4,024/- per square yard. The same price would come to Rs.1,94,76,160/- per acre. Even if a 66% cut was also applied for development charges and leaving out portion of acquired land for the purpose of Golf Course and Roads etc., a sum of Rs.66,21,895/- would be payable as compensation to be granted per acre. Similarly, it is submitted that if 15% increase is then granted for one year from the date of allotment from 02.02.2000 till 26.02.2002, 06.03.2002 and 07.03.2002, the market value would come to Rs.76,15,179/-. Similarly, reliance was also placed upon Ex.P42, the site plan in the said case to show the locations of the three plots in question (Ex.P38). Similarly, reference was

made to Ex.P9 (in Om Parkash' case) where an allotment was made in favour of A.S. International plot No.31 of 450 square meters in Sector 7 Industrial Estate, IMT of Manesar on 16.03.2000. It was, accordingly, submitted that the area worked out as 538.19 square yard and the allotment price was Rs.8,38,260/-, which worked out to Rs.1557.60/- per square yard and cost price per acre would work out to Rs.75,38,561/-. Similarly, reference was also made to Ex.P11 (in Om Parkash's case) an allotment made to M/s Krishna Maruti of plot No.48 Sector 3 Industrial Estate IMT, Manesar vide allotment dated 13.09.1999 and the Conveyance Deed made on 09.01.2009 with the HSIIDC. It was, accordingly, pointed out that the land measured 7875 square meters and the allotment price was Rs.1,46,69,500/- and the corresponding area thus worked out to 9418.42 square yards cost of which also worked out to Rs.1557.60 per square yard and, thus, the price per acre was also Rs.75,38,561/-.

41. It was, accordingly submitted that Orient Craft Limited (Ex.P38) was allotted the land at a lower price of Rs.1,254/- per square yard, since it had a larger area of 30000 square meters and, therefore, the said allotment should be taken into consideration after taking into account the fact that the rate was enhanced by the HSIIDC itself and, therefore, the value of the land per acre would come to Rs.1,94,78,160/-. The potentiality of the land was thus stressed upon by submitting that cut for development could be imposed for loss of land left for laying roads, drains and parks etc. and since it was an industrial complex cuts would

vary between 40% to 75%. It was, accordingly, argued that belting system had been done away with on an earlier occasion and lump sum amount had been granted and the same principle would be applicable. Accordingly, 15% enhancement was sought for the time between 02.02.2000 to the date of the notification, as noticed above, to claim Rs.76,15,179/- per acre.

42. The percentage of cut suggested by Mr. Shailendra Jain, Senior Advocate was, however, opposed by other counsels appearing for the land owners including Mr. Pawan Kumar, Senior Advocate and Ms. Manisha Gandhi, Senior Advocate to submit that only 50% deduction should be given as was noticed by the Apex Court in **Udal's case (supra)** tentatively to assess the market value which would be much more than Rs.37.40 lakhs. It was further submitted that the cut should not be more than 35% and the acquisition was for the extension of the Industrial Area Phase-I, which had been done initially in the year 1994. Development had already been taken place and public utility infrastructure had already been put in place and the area was developed as such.

43. Mr. M.L. Sarin, Senior Counsel appearing for M/s Kohli Holdings Private Limited in **RFA No.4646 of 2010** submitted that land had commercial potential while referring to the map (Ex.42) to show the lay out of the sectors as per the master plan to submit that acquisition of 69 kanals 15 marlas of land pertaining to his client was of better location and being on the national highway. It was, accordingly, pointed out that though acquisition of Phase-II was of 1380 kanals and 16 marlas, but it

was in two patches and the land pertaining to the appellant M/s Kohli Holdings Private Limited was on the highway, whereas the other part was much deeper and away from the national highway. Therefore, he submitted that the benefit of locational advantage had necessarily to be given as it was settled principle that land falling on the highways is always more valuable than that situated in the interior. It was also further submitted that it was a developed plot of land having proper approach and, therefore, there should be no cut as such. Reference was also made to the site plan earlier taken on record as Mark-A, correctness of which had not been disputed when the appeal was decided on 11.02.2011. The said plan showed location of the land as per the revenue record and the phases for which the acquisition had been done. It was, accordingly, submitted that there was no reduction proposed, rather only for the purposes of enhancement of compensation the Apex Court itself had come to the conclusion minimum compensation was to be Rs.37.40 lakhs. Interference had only been on account of cumulative rate not being granted and Ex.P38 not being used as exemplar for other land owners. Apart from that different rates of enhancement 12% and 15% had been used for the two different land owners and, thus, on account of the same, the remand had been made. Accordingly, reference was made to the evidence from the record of **RFA No.4646 of 2010** regarding all round development which had taken place on both sides of the highway of the land acquired for the earlier Phase-I. It was submitted that for the balance

land of 47 kanals 14 marlas (5.9625 acres of land) of the Company, Licence No.27 of 2008 had been granted on 18.02.2008 (Ex.P44) for CLU for the purposes of setting up of IT Park and, therefore, the land could not be treated as agricultural land, but had to be treated as commercial land. Development had taken place from 1994 onwards and 8 years had gone by. Reference was made to the photographs Ex.P1 to P36 to impress upon that there was development and high rises had come up across the highway and a petrol pump was abutting the acquired land. Factories were situated in the near vicinity and reference was made to factory of Perfetti which figured in photographs Ex.P7 to P9. Similarly, reference was also made to other photographs Ex.P1 to Ex.P6 and Ex.P10 to Ex.P36 showing other buildings and the five star hotel, namely, Sita Resorts whose land was stated to be almost abutting the land of the appellant-company. Reference was accordingly, made to the allotment letter dated 02.02.2000 (Ex.P38), whereby Orient Craft Limited a sister concern was allotted the land @ rate of Rs.1254.72/- per square yard for the plots bearing No.13 to 15 in Sector-5, IMT and appellant's land was little more than then 30000 square meters allotted, since the acquired land would come to 35566 square meters. It was, accordingly, contended that Orient Craft Limited had filed a writ against the enhancement asked by the HSIIDC for the allotment which had been reduced to Rs.3,313/- per square meter which came to Rs.2,770/- per square yard and, therefore, the price of allotment in favour of Orient Craft Limited was Rs.4,024/- per square yard. The allotment made was 1 kilometer inside from the

location of the land of the appellant and accordingly 15% increase was liable to be paid on cumulative basis from the date of 2 years between the allotment date and the Section 4 notification dated 06.03.2002. It was, accordingly, contended that annual increase should be between 10% to 15%, as it was an urban area and, therefore, it was accordingly, submitted that per acre value would come to Rs.1,94,76,160/-. Resultantly, after enhancement of 15% increase on Rs.4,024/- addition of Rs.603.6/- would take the value to Rs.4,627.6/- and, therefore, with addition of Rs.29,21,424/- the market value would be Rs.2,23,97,584/- for the first year . Similarly, for the second year 15% increase would be Rs.694.1/- on Rs.4627.6/- and price would be Rs.5321.7/- per square yard to claim addition of Rs.33,59,637.60/- to take the per acre price to Rs.2,57,57,221/-. Additional amount of 30% were sought on account of the locational advantage and compensation of Rs.5321.7/- per square yard. Allotment letters dated 30.06.2006 (Ex.P39) of commercial site to Ultra Home Construction Private Limited for Rs.95.10 crores of Tower 'J' and similarly allotment to M/s Ajay Enterprises Private Limited (Ex.P40) for Tower 'K' for the bid price of Rs.101.50 crores and Uppal Housing Private Limited (Ex.41) for Tower 'L' for bid price of Rs.93 crores vide allotment letters dated 30.06.2010 were accordingly referred to, to submit that costing was Rs.1,25,608.67 per square yard. Even, if development cut of 30% and the de-escalation of 10% and waiting period of 5% was applied, the market value turned out to be Rs.56,523/- per square yard on the date of Section 4 notification.

44. Similarly, arguments were addressed on the application for additional evidence under Order XLI Rule 27 CPC pertaining to **CM-10147-CI-2017** to submit that IDC and EDC had been demanded on 02.11.2007 by the Director, Town and Country Planning, Haryana and, therefore, the land was commercial in nature. Reference was made to the site plan to show that commercial towers in favour of M/s Raheja Builders and the conveyance deed executed was by the HSIIDC itself and it could not be disputed and, therefore, the same could be taken into consideration and the authenticity of the documents were beyond doubt and essential to decide the issue in question.

(Arguments by HSIIDC & State)

45. Mr. Ashwani Kumar Chopra, Senior Counsel appearing on behalf of the HSIIDC submitted that acquisition of the land was not be treated as a windfall and as per provisions of Section 23 of the 1894 Act, the date of publication of Section 4 was to be seen for the purpose of assessing market value of the land on the said date. The nearest sale transaction of the land around the date of notification was to be taken into consideration and it was, accordingly, submitted that the sale deeds should be taken into account to see the value of the land and the sale deeds of the year 2002 did not exceeded a sum of Rs.16 lakhs per acre. The burden of proof had been placed upon the claimants, as they had failed to produce the sale transactions by which the market value of the land could be assessed. It was, accordingly, submitted that appeals had been remanded for fresh disposal alongwith the cross-objections filed

and, therefore, parties were free to urge all points for redressal of the respective cause. The directions of the Apex Court was to decide the matter afresh and not to be influenced by the judgment in **Udal's (supra)** and in **Satish Kumar Gupta's (supra)**. The future transactions could not be taken into account and neither cumulative increase was safe for long periods, since there was a period of more than 7 years. The cumulative method would not be proper and, therefore, the sale deeds on the record and the ones which were sought to be produced as additional evidence should be taken into consideration. The potentiality of the land and the use it was to be put was not to be considered while referring to Section 24 of the Act.

46. The bonafide sale transaction proximate to the point of acquisition to the land situated in the neighbourhood of the acquired land possessing similar value or utility having taken place between willing vendee and willing vendors would reflect the true value. The awards between the same parties would only be admissible if it could be projected that the land was similar and the advantages and disadvantages were identical. Resultantly, letter of allotments were also not proper parameter. The value of land being acquired should be taken into consideration and the nature of the land and the suitability of the land which were the relevant factors. Therefore, reliance was placed upon **Lal Chand Vs. Union of India 2009 (15) SCC 769** to submit that DDA brochures had to be discarded as not relevant piece of evidence and it was

not permissible to refer to allotment rates and to small plots in a developed lay out. It was, accordingly, contended that the land was being sold at higher rates subsequently after being fully developed and the claimants would not be entitled for higher price, while placing reliance upon the judgment passed in **R.P.Singh Vs. Union of India 2005 (7) SCC 24**. On the issue of auction sales, it was submitted that auction sales stand on a different footing and the over enthusiasm of the bidders could not be the true market price and, therefore, it is not safe to rely upon the said sale deeds.

47. Accordingly, reference was made to the judgment of the Apex Court dated 21.02.2017 to contend that this Court was not barred to receive additional evidence and the matter was remanded for fresh decision in accordance with law and it was for substantial cause and procedural technicalities should not stand in the way. Accordingly, reliance was placed upon the judgment of the Apex Court in **Union of India Vs. Ibrahim Uddin 2012 (8) SCC 148** and in **Chapala Chinnabbayi & others Vs. Nasalasetti Anusuyama & others 2006 (3) RCR (Civil) 526** to submit that applications could be allowed at the belated stage also. Substantial cause was to be kept in mind and, reliance was placed upon **K.R.Mohan Reddy Vs. M/s Net Work Inc Rep. th. M.D. 2007 (10) SCR 872**, therefore, for the purpose of doing justice, it was contended that the same could be brought on record by way of additional evidence and it was necessary for this Court for

pronouncement of satisfactory judgment and same could also be allowed after remand. The application for additional evidence filed by M/s Kohli Holdings Private Limited was opposed on the ground that Annexure A/1 was demand for the development of EDC and IDC and had nothing to do with the market value of the land and similarly Annexures A/2 and A/3 were auction sales and not relevant for determining the market value. The certified copy of the documents had not been placed on record and, therefore, the same were not admissible.

48. Mr. Sudeep Mahajan, Addl. AG, Haryana appearing for the State and also for the HSIIDC in some matters contended that the likely usage of the land by the appellants was forbidden by law under Section 24 and potentiality could not be taken into consideration. Merely, because an industrial area was situated nearby and development had taken place in the locality, the fact of the land being primarily agricultural in nature could not be lost sight off. Accordingly, reference was made to the affidavit of RW-4 and the evidence of the said witness to show that the said witness did not say that the land was being put for any commercial use. The land was 15 Kms. away from Gurgaon itself and, therefore, CLU was required for and had to be applied for and the rate of increase in rural areas should be only between 7% to 7.5% and not 10% to 12% as in the urban and semi-urban areas. Future sale transactions could not be taken into consideration and on an earlier occasion in Phase-I locational advantage was never given and, therefore, M/s Kohli Holdings Private Limited could not be given different parameters and for Phase-II

consolidated compensation should be awarded. The reduction of 67% was vouched for by placing reliance upon **Chandrashekar (D) by LR's & others Vs. Land Acquisition Officer & another** 2012 (1) SCC 390.

(Contention on behalf of Intervenor)

49. Mr. Sunil Chadha, Senior Advocate appearing for the MSIL submitted that they had been allotted 600 acres of land and conveyance deed was executed in August, 2008 @ Rs.19 lakhs per acre (Ex.P1). Accordingly, reference was made to the judgment passed in **Udal's case (supra)** to submit that company had a right to be heard at least and assist the Court, since they would be adversely affected and the appeal was remanded for fresh decision on merits. There was an enhancement clause in the letter of allotment and, accordingly, he supported the additional evidence which was sought to be brought on record by the HSIIDC and submitted that 7.5% was the maximum increase which should be granted on the base price, which was to be calculated.

50. Keeping in view the above contentions, the record was perused of the concerned RFAs.

51. A perusal of the record of **RFA No.2373 of 2010 'Madan Pal Vs. State of Haryana and another'**, which arises out of order passed in land reference petition of Satish Kumar Gupta's case, would go on to show that the claim was made @ Rs.3,000/- per square yard amounting to Rs.1,45,20,000/- per acre, whereas the case of the respondent-Corporation was that rate should be Rs.2,75,000/- per acre. The purpose

of notifying the land was for setting up of IMT Manesar Phase-III and the land was needed by the Government for public purpose. As per the award dated 24.12.2007, it was to vest in the names of the industries department. The petitioner examined one Jaswant Rai, Patwari as PW1, who brought on record site plan Ex.PW1/A, which showed the locations of the land regarding the acquisition made on 15.11.1994, which was shown in blue colour and pertained to Phase-I. Similarly, the land acquired vide notification dated 06.03.2002 was depicted in yellow colour, whereas the Phase-III acquisition vide notification issued on 07.03.2002 was shown in orange colour. Similarly, for the notification for Phase-IV dated 26.02.2002, the land was shown as green. Similarly, Ex.P8 was also placed on record, which is another site plan which showed the IMT Master Plan and the location of M/s Orient Craft Limited in Sector-5, the situation of Sita Resorts, land of M/s Kohli Holdings Private Limited falling on the national highway and the allotments made by way of auction to M/s Uppal Housing and M/s Ultra Home Construction. The location of Perfetti Factory was also depicted and similarly the location of 500 acres land allotted to MSIL in Phase-III falling in Sector 3-A and the location of village Bas Kusla, Bas Huria, Dhana.

52. Pran Sukh had appeared as PW2 and deposed about the fact that industries of National and International repute had already been set up just like Honda Scooters & Motor Cycle, Mitsubishi Electrical, Motorola, Johnson Mathey, Videcon Jay Yushin, FCC Rico Ltd., Denso

Haryana Ltd., Norcool, Hero Motor, JNS, M/s Sunbeam Ltd., M/s Omax Ltd. Wet and Wild Resort, Carrier Aircon and numerous others. He further deposed that fully developed sectors of IMT Manesar were adjacent and near to the acquired lands for Phase-II and Phase-III and the land was of same quality, value, location and potentiality as of villages Naharpur Kasan, Khoh and Manesar and all lands were adjacent to each other and were in the same block. The entire land of village Kasan, Bas Kusla, Naharpur Kasan, Khoh and Manesar were interconnected. The acquired lands were connected by 8 lane road from Bas Kusla to Manesar and also with National Highway No.8. Manesar was near the acquired land having Engineering College, Poly Technical College, Senior Secondary School, Government Hospital and 30 branches of Banks, school, Weigh-bridges, Petrol Pumps and fully developed Bazaar. Pran Shukh had also placed on record copy of the judgment dated 19.05.2006 in **RFA No.2699 of 2003 ‘Pran Sukh and others Vs. Haryana State and others’** as Ex.P1, wherein Rs.15 lakhs was granted for the acquisition of land measuring 1490 acres 3 kanals and 17 marlas in villages Manesar, Naharpur Kasan, Khoh and Kasan for IMT Manesar, Phase-I, which had admittedly been enhanced by the Apex Court to Rs.20 lakhs also in **Pran Sukh’s case (supra)**. He was, accordingly, cross-examined on the issue that the land had potentiality of industrial, commercial, and residential purposes, but that it could not be used without obtaining CLU for that purpose. There was no cross-

examination effected upon him qua the facilities which were being in Manesar or the fact that Bas Kusla was connected to the Manesar with a 8 lane wide road. His Counsel had tendered on record Ex.PY on 10.11.2009 in rebuttal evidence, certified copy of sale deed dated 28.04.2004, which was the further sale of the same piece of land for Rs.13,62,00,000/-

53. The written statement had not been filed by the State who had taken the plea that the written statement filed by the HSIIDC be read as written statement on behalf of respondent-State also.

54. The defence of the HSIIDC mainly on record was through the statement of one Dalbir Singh Bhatti, Manager, who took the plea that the land could not be used until CLU was obtained and land was situated far away from Gurgaon and IMT. He admitted that the matter was in challenge before the Apex Court in appeal and 80% of the plots in Phase-I were already allotted at the time of acquisition of notification under Section 4 in the year 2002. He further admitted that 50% of the factories were built and constructed on allotted plots in Phase-I at the time of acquisition and 80% of the factories were under construction on the allotted plots. He admitted that the land of Phase-II, III and IV was also acquired for industrial plots and they after development were allotted on different rates in different phases. The plots of Phase-II were sold @ Rs.2,200/- per square meter and plots in Phase-I were allotted @ Rs.3,000/- per square meter. He further submitted that 60 meters metaled road was also constructed, which was leading to the area near Phase-II

and some of the acquired land was adjacent to the road leading from village Kasan to village Bas Khusla. He admitted that the rates were fixed by the HSIIDC in a particular phase and for a particular area and had volunteered since infrastructure was provided for the same. No separate rates were earmarked for different villages for the land falling in different villages. He denied the factum that any commercial plots for shops, hotels, IT Parks or multiplexes in Phase-III were there and it only comprised of industrial plots. He admitted that persons after obtaining CLU could build industry of any kind. It further came out in cross-examination the land had become part and parcel of IMT and part of the acquired land was within the vicinity of village Bas Khusla. Sita Resorts, a five star hotel was situated within 3 Kms. from the nearest portion of the acquired land. The location of Duracell and Perfetti was at a distance of 2 Kms of nearest portion of the acquired land and he denied that there was full development near the acquired land.

55. PW3, Kuldeep, Patwari from the office of HSIIDC had brought the record, whereby allotment was done in favour of Orient Craft Limited on 02.02.2000 (Ex.P4) and record of Tower, J, K and L, whereby allotment was done on 30.06.2006. Copy of the master plan of IMT as Ex.P8 was objected to being black and white photocopy and the site plan Ex.P8 was explained in cross-examination as not bearing the signatures of Chief Town Planner. The amount which was being received in auction for commercial sites had been used by HSIIDC in providing facilities to the plot holders, which was working on the basis of 'No Profit No Loss'

basis. He also admitted that for the auction plots there was enhanced compensation element.

56. Similarly, in **RFA No.4188 of 2010** filed by Bhagwan Singh, the record attached of Om Parkash's case with which it was decided would go on to show that in reference petition claim was made @ Rs.40 lakhs per acre. The stand taken by the HSIIDC was that unless CLU was obtained, the land was under a legal disability and could not be put to any other use.

57. PW-1 Ram Mehar appeared and deposed that he was owner of 7 acres of land situated at village Dhana and it had potential, since it was near to the National Highway No.8 and Pataudi Rewari Road which was a direct approach road. Reputed companies like Maruti, Honda, Denso and other companies had started production at the time of notification under Section 4. The land was interconnected with the developed area of villages Khoh, Manesar, Kasan, Hotel Sita Resorts and Duracell factory. He admitted that the land is at a distance of 2-3 Kms from National Highway No.8 and just adjacent to IMT, whereby the above said factories are 3-4 acres away from the acquired land. He admitted that he had purchased the land in the year 1998. Similarly, PW-3 Deep Chand submitted that 3 acres of his land was acquired but could not produce any sale deed regarding the rate of land. He admitted that he had not purchased or sold any land @ Rs.5,000/- per square yard. Jaswant Rai, retired Patwari was again examined as PW-6 to place on record the site plan Ex.PW6/B, whereby the acquired land was shown in

different colours. PW-7 Dalbir Singh was examined to prove the map Ex.P20 and the revenue record of the village. PW-8 Mahavir Singh also produced map Ex.P18 of village Naharpur Kasan, Khoh, Kasan, Bas Haria, Bas Khusla and Dhana to show the location of M/s Duracell India and marked-A and the acquisitions made for Phase-II was shown in green colour and land of village Kasan acquired for Phase-II was shown in yellow colour. He, accordingly, deposed that boundaries of villages Dhana, Bas Khusla are adjacent to the village Kasan. Bas Khusla is adjoining to the land of village Kasan and Bas Huria. Land of two villages is adjoining each other and had one compact and similar location and similar potential value. PW-9 Bijender Singh in his cross-examination has admitted that the land is situated about 4-5 Kms from the National Highway No.8 and also 5-6 Kms away from the Pataudi Road. PW-10 Smt. Sumitra from the office of Sub-Registrar, Gurgaon proved sale deeds Ex.P1, Ex.P3, Ex.P9 to Ex.P17, whereas PW-11 Sikander Lamba, Clerk of HSIIDC produced on record photocopy of the letter Ex.PW11/A of plot No.101 Sector-3 which was allotted @ Rs.2,200/- per square meter on 02.09.2002.

58. RW-1 Dalbir Singh Bhatti, again appearing as the witness of HSIIDC admitted that the acquired land of Phase-II was sold to MSIL @ Rs.19 lakhs per acre vide the conveyance deed dated 07.08.2008 (Ex.P1) and that from National Highway No.8, 60 meter wide road was also developed from land of Phase-I to Phase-II and III. He further admitted that the National Security Guard Complex was also located in Manesar

and also Duracell, a Hotel, namely, Sita Resorts were also in existence 5 years prior to the notification under Section 4 of the 1894 Act and were within the radius of 5 Km from the acquired land. He denied the factum of sale of land by M/s Duracell Private Limited through M/s Gillette India Limited vide the registered sale deed dated 28.04.2004 (Ex.P3) @ Rs.1,12,73,667/- per acre. He also admitted that the acquired land has direct approach by way of road and has electricity. The allotment in favour of M/s A.S. International of plot No.31, Sector 7, Industrial Estate, IMT, Manesar measuring 450 square meters dated 28.12.1999 was exhibited as Ex.P9, whereas to M/s Manjit Engineering Industries there was an allotment of plot No.101 in Sector 3, Industrial Estate, IMT Manesar was of 1012.50 square meters (1221.703 square yards) vide Ex.PW11/A. Similarly to M/s Krishna Maruti Limited plot No.48 in Sector 3 in Industrial Estate, IMT Manesar was allotted on 13.09.1999 (Ex.P11) @ Rs.1,46,69,500/- and plot No.78, Sector 3, Industrial Estate, IMT Manesar was allotted to M/s Royal Tool vide allotment letter dated 07.08.2002 (Ex.P14) @ Rs.39,60,000/-.

59. Similarly, the record of **RFA No.3383 of 2010 ‘HSI IDC Vs. Udal’** which is common to **RFA No.4188 of 2010 ‘Bhagwan Singh Vs. State of Haryana’** would go on to show that in the claim petition, it was alleged that land was adjacent to the road leading from National Highway No.8 to village Bas Kusla via village Kasan and the same leading from Gurgaon to Rewari via Pataudi. The Police Station of Manesar was at a

distance of 3 Km from the acquired land and resultantly Rs.3,000/- per square yard (Rs.1,45,20,000/-) was the price claimed, on the basis of the market value. The defence of the HSIIDC was similar.

60. Des Raj was examined as PW1. He admitted in the cross-examination that Pataudi Rewari Road was about 5-6 KM away from the acquired land, whereas the national highway is 2 KM from the acquired land. He denied that the national highway is 6 Km from the acquired land. He admitted that the Manesar is on the national highway and after that village Kasan came first and then Bas Khusla. Village Kasan was 2 Km from Manesar and Bas Khusla was 4Km from village Kasan. He further volunteered that this was by road and straight line distance was only 2 Km. He further admitted that there is no factory within or near the vicinity of the village Bas Khusla, but factory was there in village Kasan. Admission was also made that the acquired land was 16 Km away from the Gurgaon City by road and there was no petrol pump in village Bas Khusla and no residential colony developed by HUDA.

61. Similarly, Akshajara Plan Ex.PW2/1 was got exhibited by Jaswant Rai, Patwari which showed the position of the acquired land of different phases. PW3-Pran Sukh also admitted that none of the villages had any industry on the acquired land and that Bas Khusla was about 1 Km from the abadi of village kasan, which was at a distance of 1 ½ Km towards Manesar. He denied the suggestion that village Kasan was 4 Km away from village Manesar, but admitted that the national highway passes through the land of Manesar and not through the land of village

Kasan and Bas Khusla. He denied the suggestion of Pataudi Gurgaon Road being 5 Km away from abadi of village Hayatpur.

62. A perusal of the record of **RFA No.4646 of 2010** pertaining to M/s Kohli Holdings Private Limited would go on to show that for the land situated in village Manesar and Naharpur Kasan compensation was sought @ Rs.2 lakhs per square yard on the ground of proximity and the fact that the land was situated on the National Highway No.8 in the midst of most developed area and adjoining to Raheja Commercial Complex and Sita Resorts, a five star hotel. The 60 meters wide road was also abutting the land on one side going to village Bas Khusla & Dhana and the unit of Perfetti was in very close proximity. On account of the fact that no land in same location was available, the compensation was sought as the acquired land was in a rectangular block and the land of village Manesar was fully developed and all necessary and basic amenities like water, sewer, road and electricity were set up prior to the notification under Section 4 of the 1894 Act.

63. It was specifically pleaded by the company that its land was situated in a compact and contiguous block and land of the petitioner was situated in a rectangular block alongwith the road and on account of acquisition part of industrial premises, the value and utility had been greatly diminished. The utilization of the remaining land could not be done effected, on account of the severance of land from the acquired land and compensation was also, accordingly, prayed for.

64. PW-1 Yogesh Singh, Photographer deposed that he had taken 36 photographs on 07.11.2009 (Ex.P1 to P36) from his Digital Camera, which was as per the actual position on the plot. He was cross-examined on 10.11.2009 that the date was not mentioned on the said photographs. Statement of PW-2 S.K. Jha, Manager of M/s Ajay Enterprises was recorded to prove the auction on 30.06.2006 and the construction of the building in the name of Eros Corporate Park over the plot. Similarly, PW-3 Kuldeep, Patwari from the office of the HSIIDC brought the record of Orient Craft Limited, whereby the allotment was made on 02.02.2000 (Ex.P38), apart from the other allotment of commercial towers on 30.06.2006. Ex.P39 to P41, master plan of IMT, Manesar (Ex.P42) was also exhibited, whereby he admitted that after the acquisition the map was prepared and roads were carved out. Roads, sewer, water supply, electricity, water treatment plant, parks and other infrastructure were provided before the plots were allotted. The rates were to be calculated after incurring the cost of acquisition and cost of facilities provided to the plot holders.

65. B.M. Chhabra, the authorized person of the appellant company appeared as PW-4, gave his evidence as per the claim made in the reference petition. He, accordingly, by way of affidavit deposed that the site plan of the area Ex.42 which was a Government map showed the potentiality and the area was industrial and commercial and surrounded by several developed industries. The land had great potential for commercial area and on account of the acquisition of part of the land of

the petitioner, utility of remaining land had been greatly diminished, as the whole land of the petitioner was meant for development of prestigious IT Project. He further deposed that licence had been granted to develop IT Project on the remaining land and same had not been acquired by the HSIIDC and huge losses on account of acquisition had been suffered. The valuation of the land should have been done, keeping in view the urban and commercial nature of land which fell within the National Capital Region. Suggestion was put to him that the land was away from the national highway, he clarified that land was situated on the National Highway No.8 and was being used for agricultural purposes and that they had not applied the CLU of the acquired land. It was, however, clarified that an application for obtaining CLU was filed, but before grant of CLU process of acquisition was started. It was further clarified that sister concern Orient Craft had followed the rules regarding allotment of plot No.13 to 15. He denied the knowledge that 50% of the land goes waste in providing infrastructure like water, parks, road, water treatment plant, drainage system and other facilities.

66. Dalbir Singh Bhatti, HSIIDC Manager again appearing as RW-1 admitted that Map Ex.PW1/1 in different colours was correct and Phase-I which was shown in blue colour was partly developed at the time of notification under Section 4. The land was fully allotted to different persons and 50% factories were constructed. He also admitted that the lands of village Bas Kusla, Kasan, Naharpur Kasan and Khoh having same potentiality. The purpose of acquiring all land in all the villages is

one. The 60 meter metalled road was already constructed upto the acquired land of Phase-II from the National Highway No.8, which had been constructed under Phase-I. He further deposed that abadi of village Kasan was 1 Km from the acquired land and that was situated between the National Highway No.8 and Pataudi-Gurgaon Road. It was further elucidated that part of the acquired land was situated on National Highway No.8 and part of it was 2Km from National Highway No.8. He also admitted that before notification under Section 4 factories existed in the Manesar area for which the land had been acquired. He further admitted that the acquired land was fit for industrial, residential, and commercial purpose and other public utility purposes and has potentiality in the same. It was, however, his case that the land was only agricultural, but could be used for commercial purposes after obtaining CLU. He also mentioned that Manesar was 1 ½ Kms and Sita Resorts was adjacent to the acquired land. The factum of Duracell was admitted, but that it was in existence after acquisition and he volunteered that Perfetti factory was already in existence, but Duracell factory was constructed after acquisition. It was clarified that the acquired land was connected with National Highway No.8 on one side, but was not connected with Gurgaon-Pataudi Road. It was further clarified that from the city of Gurgaon the land of village Bas Khusla comes first then the village Kasan, whereas from National Highway No.8 land of village Bas Khusla comes first and then land of village Kasan. The abadi of village Kasan was 1 Km from the acquired land. The acquired land was situated

between National Highway and Pataudi Gurgaon Road. It was clarified that part of the acquired land was situated on National Highway No.8 while part of it is 2 Km from National Highway No.8 and the purpose of acquisition was same. Ex.P8, the sale deed dated 20.09.1996 between one Praladh Singh and Time Master India Private Limited would show that 1 kanal 1½ marlas land situated in village Naharpur Kasan was sold for Rs.3,53,000/- calculated @ Rs.25,00,000/- per acre. Similarly, Ex.PX was also brought on record which was the sale deed dated 28.04.2004 by M/s Gillette India Limited referred to above.

67. The sites of Uppal Housing and Ultra Home Construction and M/s Ajay Enterprises were stated to be 1 Km from the acquired land and he denied the fact the same are at a distance of 500-600 meter from the acquired land. Perfetti was at a distance of 500 meter from the land of company and across the national highway there was SIDCO Housing Complex. Ex.P44 was the CLU granted to the appellant-company on 18.02.2008 for setting up of the IT Park in 47 kanals 14 marlas (5.9625 acres) vide Licence No.27 of 2008.

(Discussion)

68. The record would thus go on to show that acquisition pertaining to the six villages for Phase-II, III and IV was for the purposes of Industrial Model Township. The site plans Ex.PW1/A, Ex.P8, Ex.PW6/B, Ex.P18 and Ex.P20 in question would go on to show that the land which was sought to be acquired was adjacent to the land which had

already been acquired for Phase-I on an earlier occasion in the year 1994. The same had been developed by carving out sectors and plots which had been duly allotted. Phase-II acquisition was in two phases, one was on the land belonging to M/s Kohli Holdings Private Limited falling in village Manesar, which was on the highway, whereas the other part of Phase-II was beyond Phase-I and next to the Abadi area of village Bas Khusla. The site plan would also go on to show that beyond Phase-I, acquisition for which had been made 8 years earlier, village Bas Khusla came first and, thereafter, village Bas Huria and then village Dhana. Village Kasan was situated below the land of the above said villages. The MSIL had been allotted 500 acres in Phase-III and which is part of village Dhana/Kasan/Bas Huria. Naharpur Kasan was closer to highway and strategically located closer to the Highway, and Phase-V had been cut out from the said village. The land falling in Phase-I had thus been developed by the respondent-Corporation by allotment to various industries and, therefore, value of the adjoining land would have gone up at a very fast rate. It was not disputed that the witnesses of the respondent-Corporation themselves had admitted that in Part-I 50% of the factories had been fully developed at the time of acquisition and 80% were under construction on the allotted plots. A 60 meter metalled road was also leading through Phase-I till the end which is available on the record going up to village Bas Khusla which had further enhanced the value of the land which was sought to be acquired due to the connectivity from the National Highway No.8. The appreciation can also be noticed from the sale deed dated

28.04.2004 (Ex.PY), whereby the earlier patch of land sold for 96 kanals 13 marlas for Rs.2,42,00,000/- (Rs.20 lakhs per acre) had been sold for consideration of a sum of Rs.13,62,00,000/- in village Naharpur Kasan which would translate to approximately Rs.1.13 crores per acre.

69. A perusal of Ex.PY would go on to show that M/s Duracell (India) Private Limited had become a deemed public limited company w.e.f. 01.04.1999 and the name was changed to Duracell India Limited and was amalgated with Indian Shaving Products Limited (now known as Gillette India Limited). Duracell (India) had taken permission to Change Land Use on 11.01.1995. The property of Duracell (India), therefore stood transferred to M/s Gillette India Limited, who vide the said sale deed transferred the same land of 96 kanals 13 marlas (12.8125 acres) to M/s Lattu Finance & Investment Limited for a sum of Rs.13,62,00,000/-.

70. The potentiality aspect had been noticed by the three Judge Bench of the Apex Court in '**Raghubans Narain Singh Vs. The U.P. Government through Collector of Bijnor**' 1967 (1) SCR 489. In the said case the Apex Court has held that the building potentiality of the acquired land had to be kept in mind regarding the evidence on record and whether the neighbourhood was developing in the direction of the acquired land. 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 and keeping in view the overall picture drawn the potentiality aspect had to be kept in

mind. The relevant portion reads as under:-

*“5. The first contention raised on behalf of the appellant is that the High Court's Judgment suffered from an infirmity in that it failed to take into account the potential value of the land as a building site in view of the evidence as to the town's recent development. This contention, in our view, has no substance. Market value on the basis of which compensation is payable under s. 23 of the Act means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition, with all its existing advantages, and its potential possibilities when laid out in its most advantageous manner, excluding any advantage due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired. As observed in **South Eastern Rail Co. v. L.C.C(1)**.*

"The value to be ascertained is the price to be paid for the land with all its potentialities, and with all the use made of it by the vendor."

*Dealing with the doctrine of potential value this Court in **N. B. Jeejabhoy v. The District Collector, Thana(2)** observed as follows :-*

"A vendor willing to sell his land at the market value will take into consideration a particular potentiality or special adaptability of the land in fixing the price. It is not the fancy or the obsession of the vendor that enters the market value, but the objective factor namely , whether the said potentiality can be turned to account within a reasonably near future..... The question therefore turns upon the facts of each case. In the context of building potentiality many questions will have to be asked and answered : whether there is pressure on the land for building activity, whether the acquired land is suitable for building purposes, whether the extension of the said activity is towards the land acquired, what is the pace of the progress and how far the said activity has extended and within what time, whether buildings have been put up on lands purchased for building purposes, what is the distance between the built-in-land and

the land acquired and similar other questions will have to be answered. It is the overall picture drawn on the said relevant circumstances that affords the solution."

It is clear that there is no evidence on record of any building activity of a substantial nature being carried on 'in the neighbourhood of the acquired land at about the time when the notification was issued in 1945. There is equally no evidence of any trend of development of the town in the direction of the acquired land. The only evidence was as to the existence of the school nearby, of the land abutting on the road and of some houses having been built on the opposite side of the road in some of the grove lands. Such evidence however would not constitute an ascertainable trend of development of the town in the direction of the acquired land or of any active building activity nearby. Clearly, therefore, no question of the valuation having to be made on the basis of the potentiality of the land as building site can possibly arise. The contention of Mr. Mishra in this regard therefore must be rejected."

71. In '**Suresh Kumar Vs. Improvement Trust, Bhopal**' 1989

(2) SCC 329, the potentiality of land, the possibility of it being used for building purposes was elaborated. The fact that the industrialization was taking place in the neighbourhood and prices were increasing tremendously was a factor, which had to be kept in mind, so that the market value was correctly determined, so that there was neither unjust enrichment for the benefit of the acquirer and the land owner was not unduly deprived. The proximity to a developed urbanized area had to be kept in mind and not to be ignored. The relevant paragraphs 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 non-agricultural 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.”*

72. The observation of the Apex Court in '**P. Ram Reddy and others Vs. Land Acquisition Office'** (1995) 2 SCC 305 have thus to be kept in mind that the building potentiality of the acquired land is a factor which is to be kept in mind on the date of the issuance of the Section 4 notification, even if the land was barren or waste. It was further held that a hypothetical lay out of the building plots in the acquired land similar to that of the lay out of buildings plots actually made in the other similar land had to be prepared and prices has to be fixed on that basis. The losses as such for developments i.e. for roads, drainage and sewerage is to be then kept in mind, while putting a cut on the value as such and while deducting the certain amount from the market value then assessed. While keeping in view the provisions of Section 23, the Apex Court in the case

of ‘Special Land Acquisition Officer Vs. Karigowda and others’ 2010 (5) SCC 708, held that the potentiality of the land on the date of the acquisition is to be considered and not the future potentiality, keeping in view Clauses-5 and 6 of Section 24.

73. The table of Exemplars is as under:-

<i>Exhibits</i>	<i>Date</i>	<i>Area/Village</i>	<i>Sale Consideration in Rs.</i>	<i>Value per acre in Rs.</i>
<i>Ex.P1</i>	<i>12.06.1997</i>	<i>2 kanal Bas Khusla</i>	<i>2,00,000/-</i>	<i>8 lakhs</i>
<i>Ex.P2</i>	<i>23.06.1997</i>	<i>1 kanal 10 marla Bas Khusla</i>	<i>4,50,000/-</i>	<i>8 lakhs</i>
<i>Ex.P3</i>	<i>18.09.1997</i>	<i>18 kanal Dhana</i>	<i>14,28,750/-</i>	<i>6,35,000/-</i>
<i>Ex.P4</i>	<i>18.08.2003</i>	<i>1 kanal 4 marla Kasan</i>	<i>7,30,000/-</i>	<i>48,66,666/-</i>
<i>Ex.P6</i>	<i>16.09.1994</i>	<i>96 kanal 13 marla (12.081 acres) Naharpur Kasan</i>	<i>2.42 crores</i>	<i>20 lakhs</i>
<i>Ex.P8</i>	<i>20.09.1996</i>	<i>1 kanal 1½ marla Naharpur Kasan</i>	<i>3,53,000/-</i>	<i>25 lakhs</i>
<i>Ex.PY</i>	<i>28.04.2004</i>	<i>96 kanal 13 marla Naharpur Kasan</i>	<i>13.62 crores</i>	<i>1.13 crores</i>

74. It is also, however to be noticed that CLU had been taken on the said land in Ex.PY and construction had also been made which would clear from Schedule-2 of the said sale deed dated 28.04.2004 and value had gone up considerably. The location of the said land, however, was much closer to the highway and, therefore, the price of the said land as such cannot be taken to be the market value of the land which was situated beyond the land which was already developed and further away from the highway. As noticed the land owners themselves have admitted that the land which was subject matter of acquisition was at a distance of

4 Kms from the national highway and from the other side, which was the road leading from Pataudi, the land was 5-6 Kms away. Thus, the land in question was situated between two roads and had potential as such to be developed for industrial purposes which the Corporation is doing, which was proved by the PW-8 Mahavir Singh by placing on record Ex.P18, the site plan. However, none of the witnesses have also deposed that there were any major road which was connecting National Highway No.8 and the road leading from Pataudi which was their case in the pleadings. The land was, thus, only having potential for the industrial growth provided the infrastructure was put in place, but admittedly it was agricultural land, even as per the evidence of the witnesses who only submitted that some industries in village Kasan closer to the highway were running.

75. It is a matter of record that for Phase-I a sum of Rs.20 lakhs per acre was held to be the market value for the acquisition made in the year 1994. The exemplar as such for the land pertaining to the date of acquisition closest in one point of time on the record is of one date (Ex.P8) dated 20.09.1996 between Parlhad Singh and Times Master India Private Limited for 1 kanal 1 ½ marlas in village Naharpur Kasan, which was sold for Rs.3,53,000/- which would translate to Rs.25 lakhs per acre as per the sale deed itself. It is, thus, apparent that the land value were increasing within a period of 2 years on account of the earlier acquisition as sale deed dated 16.09.1994 (Ex.P4) between two corporate houses was @ Rs.20 lakhs per acre which is a spurt of 12% per annum on cumulative basis.

76. Resultantly, once the land which was situated by side of an industrial belt and was capable for use of such as non-agricultural purpose, it necessarily has to be treated as non-agricultural land for determination of compensation. The location of land that was sandwiched between two major roads can, thus, be highlighted and, therefore, it can be safely concluded that it was urbanizable land situated near developed villages with close access to all infrastructure facilities. Reliance can be placed upon the judgment in '**Anjani Molu Desai Vs. State of Goa and another**' 2010 (13) SCC 710, which was followed by the Apex Court in '**Special Land Acquisition Officer and another Vs. M.K Rafiq Saheb**' 2011 (7) SCC 714 regarding this aspect, which has to be kept in mind.

77. It is to be noticed that the Apex Court recently in **Civil Appeal No.885 of 2018 arising out of SLP (C) No.15476 of 2016 'Surender Singh VS. State of Haryana and others'** decided on 25.01.2018, while remanding the matters to the Reference Court relating to the acquisition of 11.01.2005 for the purpose of construction of Express Highway known as 'KMP', set aside the compensation @ Rs.62,11,700/- per acre which had been fixed by this Court. Village Kasan was also involved alongwith 14 other villages and the Apex Court had held that the land was spread over 15 villages and distance amongst the villages had not been considered and the fact that whether there was any developed town and whether any activity was carried out in nearby

areas. Only keeping in view the determination of compensation on Rs.20 lakhs in Pran Shukh (supra) enhancement should not have been done. Resultantly, the following observations flowed which have to be kept in mind while determining the compensation on the acquired land in question:-

*“35. First, the acquired land, in these cases, was a huge chunk of land measuring around 520 acres, 2 kanals and 13.5 marlas. Second, the entire acquired land was not situated in village Kasan but it was spread over in 15 villages as detailed above. Third, there is no evidence to show much less any finding of the High Court as to what was the actual distance among the 15 villages against one another, the location, situation/area of each village, whether any development had taken place and, if so, its type, nature and when it took place in any of these villages, the potentiality and the quality of the acquired land situated in each village, its nature and the basis, the market rate of the land situated in each village prior to the date of acquisition or in its near proximity, whether small piece of land or preferably big chunk of land, the actual distance of each village qua any other nearby big developed city, town or a place, whether any activity is being carried on in the nearby areas, their details. Fourth, whether the acquired land in the case of **Pran Sukh (supra)** in village Kasan and the acquired land in question are similar in nature or different and, if so, how and on what basis, their total distance etc.*

36. These were, in our view, the issues which had material bearing while determining the rate of the acquired land in question.

37. The High Court, in the absence of any evidence on any of these issues, could not have determined one flat market rate of the acquired land in question by applying one isolated rate of one land situated in one village Kasan and adding 8% annual increase from 1994 in such rate and made it applicable to the

entire lands situated in 15 different villages. 38. In our opinion, it is only when the evidence had been adduced by the parties to the lis on the aforementioned issues, the Court would have been in a position to apply its mind objectively as to which method should be applied for determination of the rate, i.e., whether belting system or flat rate system or different rates for different lands depending upon the quality of land situated in different villages etc.

39. The fair market value of the acquired land cannot be decided in isolation on the basis of only one factor. There are several other factors, which govern the determination of the rate. These factors need to be proved with sufficient evidence. It must appear that the Courts have made sincere endeavor to determine the fair market rate of the acquired land and while determining has taken into account all relevant aspects of the case. It is the duty of the landowners and the State to adduce proper and sufficient evidence to enable the Courts to arrive at a reasonable and fair market rate of the acquired land prevalent on the date of acquisition.

40. Taking into consideration the aforesaid infirmities, which we have noticed, we have no hesitation in holding that the trial in these cases has not been satisfactory. We cannot countenance the cursory manner in which both the Courts below proceeded to determine the market rate of the acquired land. It has certainly caused prejudice to both the parties.”

78. It is in such circumstances, the above evidence has been examined by noticing the location of the land in question for recording with satisfaction that the potentiality of the land as such was an aspect which had been ignored by the Land Acquisition Collector and also by the Reference Court to the extent that industrialization was dawning in the neighbourhood and the necessary appreciation was taking place at a rapid rate. This was on account of the fact the land was adjoining the

first phase of development. The revenue estates were adjoining each other and on one side the national highway was running by the side of the lands of the revenue estates and on the other side another road was coming in from Pataudi and Rewari. The fact of the industries having already come in has already been noticed by the deposition of various witnesses that the big names had come in the neighbourhood and, accordingly, development was taking place and growth was at an exponent level in Phase-I of IMT. The argument raised by the HSIIDC that the land has to be pegged below Rs.20 lakhs, in such circumstances cannot be justified, keeping in view the fact that once the market value had been assessed for the notification 7 years earlier, the Corporation cannot turn around and say that the land values had decreased and were less than Rs.20 lakhs and rely upon the sale deeds of low values to contend that the highest sale deed had not exceeded Rs.16 lakhs.

79. In '**Ali Mohammad Beigh and others Vs. State of J&K'** **2017 (4) SCC 717**, the land was acquired of three different village for the purpose of re-settlement of the Dal Lake dwellers. It is, accordingly, 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 higher amount to some of the land owners and less compensation to others. Resultantly, compensation was assessed @ Rs.4 lakhs per kanal, while setting aside the judgment of the High Court, which had upheld the Reference Court

order by granting compensation @ Rs.2,50,000/- per kanal. The relevant portion reads 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."

80. The argument, however, which has now been raised by the counsels for the land owners that reliance should be placed for assessing the market value of the land in question on the basis of allotment letters for fully developed industrial plots and auction prices of commercial sites does not appeal to this Court.

81. In **Bhim Sain Vs. State of Haryana' (2003) 10 SCC 529,**

the Apex Court held that the prices fetched after full development cannot be basis for fixing compensation in respect of land which was agricultural.

82. A similar argument was for assessing the market value on the basis of plots sold by HUDA in Panchkula after development was raised and the same was repelled in '**Tara Devi Vs. State of Haryana and another 2005 (3) PLR 606**'. The relevant paragraph of the said judgment reads as under:-

“15. The appellants have placed reliance upon the sale of plots by HUDA at the rate of Rs. 1,172/- per sq. yard in Sector 25 in the month of January, 1994. It has been contended that the aforesaid price should be taken into consideration for assessing the market value in the present proceedings. However, in my considered view, the aforesaid sale price of the plots of HUDA cannot be taken to be reflecting the market value of the acquired land at the time of notification inasmuch as the aforesaid plots were sold by HUDA after developing the same externally as well as internally. Various amenities have been provided. Roads have been laid down. Parks have been developed. In the face of the other material available on the record the said sale price could not be taken into consideration for determining the market value.”

83. Reliance can be placed upon **Lal Chand (supra)**, wherein the Apex Court in that case accepted the argument raised that the DDA brochure whereby the application was sought for allotment of plots on sale deeds were not liable to be considered for working out the market value, since it was not safe or advisable to rely upon the allotments rates/auction rate in regard to the plots allotted by DDA in a developed lay out and, therefore, they have to be excluded as being not relevant.

The relevant part reads as under:-

“11. Third factor : Some development authorities allot plots on freehold basis, that is by way of absolute sale. Some development authorities like DDA allot plots on leasehold basis. Some have premium which is almost equal to sale price, with a nominal annual rent, whereas others have lesser premium, and more substantial annual rent. There are standard methods for determining the annual rental value with reference to the value of a freehold property. There are also standard methods for determining the value of freehold (ownership) rights with reference to the annual rental income in regular leases. But it is very difficult to arrive at the market value of a freehold property with reference to the premium for a leasehold plot allotted by DDA. As the period of lease is long, the rent is very nominal, some times there is a tendency among public to equate the lease premium rate (allotment price) charged by DDA, as being equal to the market value of the property. However, in view of the difficulties referred to above, it is not safe or advisable to rely upon the allotment rates/auction rates in regard to the plots formed by DDA in a developed layout, in determining the market value of the adjoining undeveloped freehold lands. The DDA brochure price has therefore to be excluded as being not relevant.”

84. In 'Ranvir Singh and others Vs. Union of India 2005 (12)

SCC 59, the brochures of the Delhi Development Authority upon which the High Court had placed reliance to fix the market price was held not to be justified on the ground that the market value of the fully developed land cannot be compared with wholly underdeveloped land. The relevant observations read as under:-

“27. We have noticed hereinbefore the concession of Mr. Nariman as regard inadmissibility of the notification issued by the Union of India determining the circle rates. The notifications issued by the Union of India, therefore, whereupon strong reliance has been

placed by the High Court cannot form the basis for determining the market value of the acquired lands. This leaves us with the brochure issued by the Delhi Development Authority. Before, however, we advert to the rival contentions raised by the parties in this behalf, it may be observed that the Delhi Development Authority was not a party before the High Court and an application was filed only before this Court for impleading it as a party. The Delhi Development Authority, thus, got no opportunity to raise any contention as to why the sale brochure should not be considered to be a determinative criterion for the purpose of fixation of market value of the lands in question. We may, furthermore, notice that a housing scheme at Rohini was floated by the Delhi Development Authority. The lands at Rohini were agricultural in nature. They were acquired in the year 1961. It became a residential area at the time of issuance of the notification in question issued under Section 4 of the Land Acquisition Act. The approximate population of Rohini was 8,50,000. There were work centres. Major facilities like health, education, social and cultural were thence available. The provisional rates for land in the said brochure were notified as under:

<i>Size of plot in sq. mts.</i>	<i>Category</i>	<i>Rate per sq. mt.</i>
<i>26</i>	<i>EWS/JANTA</i>	<i>Rs.100</i>
<i>32</i>	<i>LIG</i>	<i>Rs.125</i>
<i>48</i>	<i>LIG</i>	<i>Rs.150</i>
<i>60</i>	<i>MIG</i>	<i>Rs.200</i>
<i>90</i>	<i>MIG</i>	<i>Rs.200</i>

28. The High Court without having regard to different sizes and different categories of land separately took into consideration the value of 48 sq. mts. of land at the rate of Rs. 150/- per sq. mtr. It, keeping in view of the fact that the Delhi Development Authority sought to create lease-hold right whereas upon acquisition of land a free-hold right would be created, multiplied the said figure by two and arrived at a conclusion that the market value of 1 sq. mtr. of land at Rohini would be Rs. 300/-. The mean figure thereof was taken at Rs. 200/- per sq. mts. as wholesale price of free-hold plots

in a developed condition. From the said Rs. 200/-, 60% had been deducted towards costs of development and considering the large extent of land, the retail market price was worked out at Rs. 80/- per sq. mtr.

29. While adopting the said method, in our opinion, the High Court committed manifest errors. The market value of fully developed land cannot be compared with wholly underdeveloped land although they may be adjoining or situated at a little distance. For determining the market value, it is trite, the nature of the land plays an important role.”

85. Reliance can also be placed upon judgment of the Apex Court in '**Raj Kumar and others Vs. Haryana State and others**' 2007

(7) SCC 609. The relevant portion reads as under:-

“9. It is contended before us that the lands lay in a block and there was no reason for not awarding compensation at an equal rate for the lands in Satrod Khurd and Satrod Khas. But as noticed by the Awarding Officer, Reference Court and the High Court, the nature of the land, its present state, its present location, its comparative advantages and disadvantages, all justify the difference in the rate of compensation awarded. In any event, it cannot be said that there is any irrationality in the position adopted by the Reference Court and by the learned single judge and by the Division Bench while determining the compensation payable for the lands in Satrod Khurd and Satrod Khas. All the relevant aspects have been taken into consideration and we do not find any error in principle committed by the High Court justifying our interference in appeal. An argument was raised that the prices of lands fetched in auction had been ignored on the basis that prices fetched in auction sales cannot form the basis. It was submitted that there was no general rule that such prices cannot be adopted. On considering the relevant facts disclosed, it cannot be said that the High Court has committed any error in discarding those auction sales while determining the compensation payable. The element of competition in auction sales makes them not safeguards. Similarly, the

argument that when a compact piece of land is acquired there cannot be adoption of separate rates cannot be accepted in the light of the decision of this Court in Union of India & others v. Mangatu Ram, etc., 1997(3) RCR(Civil) 342 : [AIR 1997 Supreme Court 2704]. That case related to acquisition of lands in the vicinity of the present properties. The ratio of that decision also supports the distinction made by the Awarding Officer and the High Court in the matter of fixing the land value for the lands in Satrod Khurd and Satrod Khas.”

86. A similar view in **K.R.Mohan Reddy Vs. M/s Net Work Inc Rep. th. M.D. 2007 (10) SCR 872** has also been taken regarding the auction sale transactions by holding that auctions sales makes them unsafe guides for determining the market value and there is a likelihood that the said price should be either higher or lower than the market value and Courts are always wary while keeping the auction price in mind. The observations in '**Karnataka Housing Board Vs. Land Acquisition Officer, Gadag and others**' 2011 (2) SCC 246 would also thus be relevant for determining the market value and, therefore, should be referred to. The relevant portion reads as under:-

“6. We may deal with the last submission first. The standard method of determination of market value of any acquired land is by the valuer evaluating the land on the date of valuation (publication of notification under Section 4(1) of the Land Acquisition Act, 1894 - 'Act' for short) notification, acting as a hypothetical purchaser willing to purchase the land in open market at the prevailing price on that day, from a seller willing to sell such land at a reasonable price. Thus, the market value is determined with reference to the open market sale of comparable land in the neighbourhood, by a willing seller to a willing buyer, on or before the date of preliminary notification, as that would give a fair indication of the

market value. A 'willing seller' refers to a person who is not acting under any pressure to sell the property, that is, where the sale is not a distress sale. A willing seller is a person who knowing the advantages and disadvantages of his property, sells the property after ascertaining the prevailing market prices at the fair and reasonable value. Similarly, a willing purchaser refers to a person who is not under any pressure or compulsion to purchase the property, and who, having the choice of different properties, voluntarily decides to buy a particular property by assessing its advantages and disadvantages and the prevailing market value thereof. Of course, unless there are indications to hold otherwise, all sale transactions under registered sale deeds will be assumed to be normal sales by willing sellers to willing purchasers. Where however there is evidence or indications that the sale was not at prevailing fair market value, it has to be ignored. But auction sales stand on a different footing. When purchasers start bidding for a property in an auction, an element of competition enters into the auction. Human ego, and desire to do better and excel other competitors, leads to competitive bidding, each trying to outbid the others. Thus in a well advertised open auction sale, where a large number of bidders participate, there is always a tendency for the price of the auctioned property to go up considerably. On the other hand, where the auction sale is by banks or financial institutions, courts, etc. to recover dues, there is an element of distress, a cloud regarding title, and a chance of litigation, which have the effect of dampening the enthusiasm of bidders and making them cautious, thereby depressing the price. There is therefore every likelihood of auction price being either higher or lower than the real market price, depending upon the nature of sale. As a result, courts are wary of relying upon auction sale transactions when other regular traditional sale transactions are available while determining the market value of the acquired land. This Court in **Raj Kumar v. Haryana State, 2007(4) R.C.R.(Civil) 175 : 2007(5) R.A.J. 63 : 2007 (7) SCC 609** observed that the element of competition in auction sales makes them unsafe guides for determining the market value."

87. The onus of proving the market value under Section 23 always lies upon the land owners which has been laid down by the Apex Court and it is for them to prove on record relevant sale instances and other evidence. The principle that has to be kept in mind is on the basis of the price the willing purchaser is likely pay and the price which the land owner is willing to receive. Reliance can be placed upon judgment of the Apex Court in '**Gafar & others Vs. Moradabad Development Authority**' 2007 (7) SCC 614. The relevant observations read as under:-

“9. As held by this Court in various decisions, the burden is on the claimants to establish that the amounts awarded to them by the Land Acquisition Officer are inadequate and that they are entitled to more. That burden had to be discharged by the claimants and only if the initial burden in that behalf was discharged, the burden shifted to the State to justify the award. The Reference Court, in our view, could not give any adequate or tenable reasons for adopting the value it did. No evidence was clearly or properly discussed to justify a finding that the claimants had made out a case for enhancement of compensation. As observed by the High Court, it appears that on the materials available, even the amount awarded by the Awarding Officer was on the high side since he adopted the sale instance of a small extent of land and applied it to the larger extents that had been acquired under these notifications even without any deduction.”

88. The burden, thereafter, has shifted to the State to produce contrary evidence as held by the Apex Court in **Karigowda (supra)** which in the present case no effort has been made as such and rather evidence was closed without producing any sale deeds on record.

89. It has already come on record that MSIL had been allotted

land @ Rs.19 lakhs per acre vide Conveyance Deed dated 07.08.2008 (Ex.P1) for setting up a plant of manufacturing of passenger cars as per letter of allotment dated 05.04.2004 for a sum of Rs.97,50,00,000/-. It was also liable to pay the additional amount of the plot on account of enhancement of compensation, measuring 501.84 acres, which is part and parcel of the acquired land in the year 2002 in Phase-III, which works out to little over Rs.19.50 lakhs per acre and, therefore, the contention as such of the Corporation that the amount should be less cannot be liable to accepted. The plot was allotted as is where is basis without development and the MSIL was to set up its unit within 3 years. The pricing thus would obviously be concessional for the purposes of inviting other industries in the area as the benefit of having a big car manufacturer in the area, necessarily and naturally leads to springing up of smaller ancillaries. The Corporation being working on 'No Profit No Loss' basis would in such circumstances ensure that prices of smaller plots would be priced higher to compensate for the low price taken from MSIL looking into account the fact that it was a bulk allotment and of undeveloped land.

90. In such circumstances, keeping in view the settled law, this Court is of the opinion that the reliance of the counsels upon the allotment letters as such of various industrial plots or the auction instances of whatever sizes would not be a safe parameter/exemplars to assess the market value, as on the date of Section 4 notification. Resultantly, both the allotment letters and the auction/exemplars which had been relied upon by the counsel for the appellants were rightly

rejected by the Reference Court's and, therefore, no fault as such can be found in the said reasoning.

91. The Reference Court's, however, have not taken into account the aspect of sale deed dated 20.09.1996 (Ex.P8) in favour of Times Master India Private Limited which was 2 years after the first acquisition. They have applied the principle of 12% flat increase on the basis of acquisition of 1994 treating the same as base year without keeping in view the law laid down by the Apex Court in the case of **ONGC (supra)**.

92. In '**Ashrafi and others Vs. State of Haryana and others'** (2013) 5 SCC 527, the 12% increase was allowed at cumulative rate while taking 1983 as a base year, where acquisition in question was of 20.08.1992 and, therefore, the principles were applied for 9 years.

93. In the case of **ONGC (supra)**, it was noticed that the percentage of increase would depend upon the development in the surrounding area and where there was construction activities all around. It has already been noticed above that industrialization of the area was taking place and even the acquisition was for the said purpose and, therefore, this Court is of the opinion that the percentage of enhancement in the present case is to be @ 15% cumulative for determining the market value of the land by adopting the annual increase method. The relevant portion reads 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.”

94. The Apex Court, thereafter, in **Ashok Kumar Vs. State of Haryana 2015 (15) SCC 200** has also approved the method of increase by applying the cumulative factor for a period of 5 years.

95. Thus, if cumulative benefit by way of 12% cumulative increase is to be given on the base price of Rs.20 lakhs from 1994 to 2001 enhancement would come to as under:-

<i>Year</i>	<i>Principal amount(Rs.)</i>	<i>Enhanced Amount(Rs.)</i>	<i>Total amount(Rs.)</i>
<i>1994</i>	<i>20,00,000.00</i>	<i>--</i>	<i>20,00,000.00</i>
<i>1995</i>	<i>20,00,000.00</i>	<i>2,40,000/-</i>	<i>22,40,000.00</i>
<i>1996</i>	<i>22,40,000.00</i>	<i>2,68,800/-</i>	<i>25,08,800.00</i>
<i>1997</i>	<i>25,08,800.00</i>	<i>3,01,056.00</i>	<i>28,09,856.00</i>
<i>1998</i>	<i>28,09,856.00</i>	<i>3,37,182.72</i>	<i>31,47,038.72</i>
<i>1999</i>	<i>31,47,038.72</i>	<i>3,77,644.65</i>	<i>35,24,683.37</i>
<i>2000</i>	<i>35,24,683.37</i>	<i>4,22,962.00</i>	<i>39,47,645.37</i>
<i>2001</i>	<i>39,47,645.37</i>	<i>4,73,717.44</i>	<i>44,21,362.81</i>

CUT ON THE AMOUNT OF Rs. 44,21,362 @ 10% (Rs. 4,42,136/-) : 39,79,226/-

CUT ON THE AMOUNT OF Rs. 44,21,362 @ 20% (Rs. 8,84,272/-) : 35,37,090/-
96. Similarly, if the enhancement is to be granted @ 15% on

Rs.20 lakhs from 1994 to 2001, it works out as under:-

<i>Year</i>	<i>Principal amount(Rs.)</i>	<i>Enhanced Amount(Rs.)</i>	<i>Total amount(Rs.)</i>
<i>1994</i>	<i>20,00,000.00</i>	<i>--</i>	<i>20,00,000.00</i>
<i>1995</i>	<i>20,00,000.00</i>	<i>3,00,000/-</i>	<i>23,00,000.00</i>
<i>1996</i>	<i>23,00,000.00</i>	<i>3,45,000/-</i>	<i>26,45,000.00</i>
<i>1997</i>	<i>26,45,000.00</i>	<i>3,96,750.00</i>	<i>30,41,750.00</i>
<i>1998</i>	<i>30,41,750.00</i>	<i>4,56,262.50</i>	<i>34,98,012.50</i>
<i>1999</i>	<i>34,98,012.50</i>	<i>5,24,701.87</i>	<i>40,22,714.37</i>
<i>2000</i>	<i>40,22,714.37</i>	<i>5,70,328.12</i>	<i>46,26,121.52</i>
<i>2001</i>	<i>46,26,121.52</i>	<i>6,93,918.23</i>	<i>53,20,039.76</i>

CUT ON THE AMOUNT OF Rs. 53,20,039 @ 10% (Rs. 5,32,003/-) : 47,88,036/-

CUT ON THE AMOUNT OF Rs. 53,20,039 @ 20% (Rs. 10,64,007/-): 42,56,032/-

97. Similarly, if the benefit of 12% cumulative increase is to be given on the sum of Rs.25 lakhs after the sale deed from 1996 (Ex.P8) in favour of Times Master India Private Limited to 2001 enhancement would come to as under:-

<i>Year</i>	<i>Principal amount(Rs.)</i>	<i>Enhanced Amount(Rs.)</i>	<i>Total amount(Rs.)</i>
1996	25,00,000.00	--	25,00,000.00
1997	25,00,000.00	3,00,000.00	28,00,000.00
1998	28,00,000.00	3,36,000.00	31,36,000.00
1999	31,36,000.00	3,76,320.00	35,12,320.00
2000	35,12,320.00	4,21,478.40	39,33,798.40
2001	39,33,798.40	4,72,055.81	44,05,854.21

CUT ON THE AMOUNT OF Rs. 44,05,854 @ 10% (Rs. 4,40,585/-) : 39,65,269/-

CUT ON THE AMOUNT OF Rs. 44,05,854 @ 20% (Rs. 8,81,170/-) : 35,24,684/-

98. For enhancement @ 15% on Rs.25 lakhs from 1996 to 2001, the amount works out as under:-

<i>Year</i>	<i>Principal amount(Rs.)</i>	<i>Enhanced Amount(Rs.)</i>	<i>Total amount(Rs.)</i>
1996	25,00,000.00	--	25,00,000.00
1997	25,00,000.00	3,75,000.00	28,75,000.00
1998	28,75,000.00	4,31,250.00	33,06,250.00
1999	33,06,250.00	4,95,937.50	38,02,187.50
2000	38,02,187.50	5,70,328.12	43,72,515.62

<i>Year</i>	<i>Principal amount(Rs.)</i>	<i>Enhanced Amount(Rs.)</i>	<i>Total amount(Rs.)</i>
<i>2001</i>	<i>43,72,515.62</i>	<i>6,55,877.34</i>	<i>50,28,392.96</i>

CUT ON THE AMOUNT OF Rs. 50,28,392 @ 10% (Rs. 5,02,839/-) : 45,25,553/-
CUT ON THE AMOUNT OF Rs. 50,28,392 @ 20% (Rs. 10,05,678/-) : 40,22,714/-
99.

In such circumstances, this Court has made an attempt to apply all the factors and to assess the market price by resorting to both the principle of 15% cumulative increase given on the basis of the market price fixed by the Apex Court in 1994 and also by granting cumulative increase from the sale deed of the year 1996 (Ex.P8), keeping in view the observations of the Apex Court in **Civil Appeal Nos. 13132 to 13141 of 2017 'Manoj Kumar etc. Vs. State of Haryana and others'** decided on 13.09.2017. The Apex Court has observed as such that awards are relevant piece of evidence, but cannot be said to be binding with respect to the determination of the price and Court has to apply judicial mind to find out the current market value. It is in such circumstances, this Court is coming to the opinion that between 1994 to 1996 till the acquisition in the year 2002, the prices were increasing and in view of the development in the neighbourhood, on account of the industrial township being set up, the value was going up.

100. The issue, thus, arises of what is the cut which is to be applied and resultantly keeping in view the fact that the land was being developed for industrial area and large chunk of land had been allotted i.e. 500 acres had been allotted to MSIL. It is apparent that the

percentage of cut in the present fact and circumstances should not be more than 20%. Reliance can be placed upon the judgment passed in **'Kasturi Vs. State of Haryana' 2003 (1) SCC 354**, wherein 84 acres of land was acquired for the development of residential and commercial area by the HUDA in District Bhiwani. 20% cut had been applied and the same was upheld on the ground that the land had been acquired for plots and construction and, therefore, the argument raised that there should be no deduction was repelled by holding that normal deduction is of 1/3 of the price.

101. In **'Chakas Vs. State of Punjab and others' 2011 (10) SCR 618**, the deduction was reduced to 10% on account of the fact more than 525 acres was given to an industry, namely, M/s Nahar Industries Infrastructure Corporation Limited, out of 550 acres, which was acquired. As noticed in the present case also 500 acres has already been gone to MSIL and, therefore, this Court is of the opinion that more than 20% cut would not be justified in the facts and circumstances of the present case. The relevant portion reads as under:-

“20. As mentioned hereinabove, in the case in hand the bulk of the land that is almost 525 acres has been given to respondent No. 3, the Corporation for setting up its own industry and other infrastructure thereon. Thus, the lands likely to be used towards roads, sewage and other such facilities would be minimum as most of the vacant land would be utilised by respondent No. 3 for its own benefits.

21. Needless to say, once the industry is set up, it would be for the financial benefit and gain of respondent No. 3 year after year. Thus, looking to the matter from all angles, respondent No. 3 -

Corporation would be a great beneficiary at the cost of depriving the appellant - land owner of his sole livelihood of agriculture.

22. Therefore, it is neither desirable nor proper to deduct more than 10% of the amount in the base price fixed by us at Rs. 4,08,000/-. We accordingly do so.”

102. It is also a settled principle that than an element of guess work while fixing the market value would always remain, but principle has to be kept in mind that what a willing purchaser and a willing vendor are likely to exchange and the Court has to consider whether purchaser is willing to purchase a large chunk of land, if so at what price.

103. Thus, when we compare the enhancement firstly on the principle of cumulative increase on the price fixed by the Apex Court in **Pran Shukh's case (supra)** on Rs.20 lakhs @ 15% from 1994 till 2001, it works out to Rs.53,20,039/-. Similarly, if the enhancement of 15% is given on the basis of the sale deed Ex.P8 in favour of Time Master India Private Limited from 1996 to 2001, the amount works out to Rs.50,28,392/-. In case the cut of 20% is applied on the said amount, the amounts worked out to Rs.42,56,032/- in one case and Rs.44,22,714/- in other case.

104. Resultantly, if the average of both the formulas is also worked out the amount after giving 20% cut the average of said formulas would take the market value to Rs.41,39,373/- and, accordingly, after rounding it off, this Court is of the opinion that Rs.41.40 lakhs would be the appropriate market value for the land in question.

105. It is also to be kept in mind that the Apex Court in **Civil**

Appeal Nos.11913 to 11945 of 2017 'State of Haryana and another Vs. Pushpendra Kumar and others' decided on 05.09.2017 for village Naharpur Kasan has now fixed the market value @ Rs.1,96,21,292/-, which was after granting 15% cut on amount of Rs.2,30,83,872/- per acre as decided by this Court for the notification dated 11.02.2010, which was for carving out roads for Sectors 81 to Sector 95 in Gurgaon. Therefore, the argument as such of the counsels for the landowners that they would be entitled for the market value ranging from Rs.75 lakhs to Rs.2.5 crores for the acquisition made 8 years earlier in the year 2002 on the basis of increase by taking the allotment letters/auction prices is without any substance.

106. The enhancement as such for a period of 5 years on the basis of cumulative increase was applied by the Three Judges Bench in the case of **Ashok Kumar (supra)** and **Ashrafi (supra)** for 9 years, therefore, the argument as such which has been raised by Mr. Chopra that the matter should be remanded as such for leading fresh evidence and by looking into the additional evidence as such does not cut much ice with this Court. Another factor which has to be taken into consideration regarding the issue of additional evidence as noticed is that the Apex Court has already inter se the parties has held that it was not a case where it would fall within the parameter of Order XLI Rule 27 CP as the zimni orders would go to show that no effort had been made by the HSIIDC at any point of time to bring on record any sale deed which would depict the

correct market value apart from what the land owners had placed on record.

107. As noticed that by appreciating the evidence on record therefore, this Court has enough material in hand and by following the cumulative method for assessing the market value of the land, which is within the prescribed principles as an earlier award is a relevant piece of evidence, as has been held in **Ranvir Singh's case (supra)**. It is also settled principle that assessment of market value by these methods always is on the basis of little guess work and there is no exact formula as such to assess the market value with precision. Reference can be made to the judgment of the Apex Court passed in '**Trishala Jain and another Vs. State of Uttaranchal and another**' 2011 (6) SCC 47.

108. The applications for additional evidence, therefore, in the background of the case once it has been taken to the Apex Court which specifically framed a question as such and allowed the appeals on that ground would necessarily entail the dismissal of the applications, since the case does fall within the prescribed parameters and this Court does not feel handicapped in any manner for pronouncing the judgment and neither any substantial cause would be served by remanding the matter for fresh decision.

109. Even otherwise the material which was sought to be placed on record by M/s Kohli Holdings Private Limited is the demand of EDC and IDC vide the letter dated 02.11.2007 and, therefore, is not as such

relevant for the purposes of determining the market value of the land in dispute. The same was also available with the authorized person of the appellant-company, when he tendered his affidavit dated 10.11.2009, but at that point of time, the same had never been attached also. Similarly the auction in favour of M/s Raheja Developers Private Limited on 07.09.2001 would also be of no assistance, as similar allotment letters dated 30.06.2006 (Ex.P39 to 41) are already on record and even otherwise are not being taken into consideration on the ground that the principle is clear that the auction rates do not depict the market value of the land in question, on account of the fact that there is an element of competition and that over eagerness by certain buyers to buy certain properties leads to spike in prices and also the fact that the auction takes places after proper development of the acquired land. It is not disputed that for Phase-I, the land was acquired way back in the year 1994 and it is on account of the development of the land which was taking place, the prices were spiking and they would have peaked after a period of 7 years. Even otherwise the CLU granted is already on record dated 18.02.2008 (Ex.P44) in favour of the appellant-company and, therefore, the application for additional evidence bearing **CM-10147-CI-2017 in RFA-4646-2010** does not merit any indulgence and accordingly is dismissed.

110. Similarly, the applications filed by the HSIIDC bearing **CM-10373-10374-CI-2017 in RFA-2373-2010, CM-11943-CI-2017 in RFA-3383-2010 and CM-12927-CI-2017 in RFA-4646-2010** to

produce additional evidence and bring on record the sale deeds pertaining to the appellant-company for the month of November, 1994 are not liable to be allowed. The record would go on to show that the evidence of the land owners was closed on 10.11.2009 and case was fixed on 17.11.2009, when the witness of the HSIIDC was examined. Thereafter, the case was tagged with Udal's case. In the said case evidence of land owners had been closed way back on 24.04.2009 and opportunities had been given on 14.05.2009, 01.06.2009 and on 20.07.2009. Mr. Bhatti, had been examined on 19.08.2009 and thereafter opportunity had been given on 26.08.2009, which was the last opportunity and evidence was closed on 12.09.2009. Thereafter, the matter kept on pending for rebuttal evidence and eventually petitions were tagged on 17.11.2009. Eventually, the proceedings were deferred for 16.12.2009 for rebuttal evidence and on 12.01.2010. Thereafter, on 18.01.2010 (Ex.PX) was tendered in evidence in rebuttal evidence and the case was listed for arguments on 22.01.2010 and 25.01.2010, leading to the pronouncement of award on 27.01.2010. Thus, it is apparent that no effort at all were made at any stage to even tender the sale deeds of M/s Kohli Holdings Private Limited in evidence and therefore, on account of lack of due diligence and the fact that there was no refusal to admit evidence, the said sale deeds cannot be taken into consideration. Even otherwise sale deeds are of the year 1994 and the acquisition is of the year 2002 and, therefore, would not be relevant exemplars for assessing market value.

111. The argument on one hand raised by counsel for the HSIIDC

is that for such a long period, the sale deeds should not be taken into consideration by applying the cumulative increase method but on the other hand the sale deeds of the year 1994 are being sought to be brought on record and, therefore, also no benefit as such would accrue if the same are allowed to be brought on record nor it would serve any substantial cause or help in pronouncing the judgment in any manner. Apart from the fact that the Apex Court has already held inter se the parties regarding the said fact on the controversy.

112. The sale deeds sought to be exhibited pertaining to the year 2002 and are as under:-

S. No.	Document No.	Document Date	Sale Amount in INR	Village	Sale Area			Rate per acre in INR
					Kanal	Marla	In Acre	
1.	14674	06.02.02	1,02,500	Manesar	0	16	0.10	10,25,000
2.	15834	13.02.02	6,12,500	Kasan	9	13	1.21	5,07,772
3.	16714	21.03.02	2,32,000	Manesar	2	13	0.33	7,00,377
4.	3487	11.06.02	6,34,375	Kasan	10	3	1.27	5,00,000
5.	4099	25.06.02	7,75,000	Kasan	12	8	1.55	5,00,000
6.	4393	01.07.02	2,60,000	Kasan	4	3	0.52	5,01,205
7.	6110	07.08.02	5,31,000	Dhana	17	14	2.21	2,40,000
8.	8332	25.09.02	2,15,000	Khoh	3	1	0.38	5,63,934
9.	8886	10.10.02	1,81,500	Bans Hariya	6	9	0.81	2,25,116
10.	10603	27.11.02	2,50,000	Kasan	4	0	0.50	5,00,000
11.	11564	18.12.02	2,00,000	Naharpur Kasan	1	0	0.13	16,00,000

113. A perusal of the above table would go on to show that the rate varied between Rs.2 lakhs to Rs.16 lakhs per acre which was nowhere even close to the figure of Rs.20 lakhs per acre which had been assessed by the Apex Court of the adjoining land which had been acquired in the year 1994. Even otherwise as noticed the land owners had already brought on record allotment letters (Ex.P4 to P6) and sale

deed dated 16.09.1994 with M/s Duracell (Ex.P2) and also tendered into evidence the sale deed (Ex.PX) dated 28.04.2004 in favour of M/s Lattu Finance & Investment Limited and onus had shifted upon the Corporation who had chosen not to bring on record any other sale deeds. The evidence of the land owners had been closed on 12.05.2009 and the case was fixed for 19.05.2009 for evidence of the respondents. No evidence was present on 20.07.2009 and 19.08.2009. The witness was examined on 26.08.2009 and last opportunity was given on 12.09.2009 on which date the evidence was closed by Court order. Thereafter, in evidence Ex.PX had been tendered on 22.09.2009 and the matter kept on pending for rebuttal evidence from 30.09.2009, 12.10.2009, 20.10.2009, 27.10.2009 and 31.10.2009 and Ex.PY was tendered on 10.11.2009. Eventually, the evidence of the land owners in rebuttal was closed on 14.12.2009 and award was pronounced on 16.12.2009. It is, thus, apparent that sufficient opportunities was apparently granted to the HSIIDC, but no positive action was taken to produce any sale deeds on record and, therefore, no such case is made for permitting additional evidence, as there was no due diligence nor any refusal by the Reference Court. No substantial cause would be made out nor would be sale deeds have any relevance, keeping in view the discussion, since the sale consideration is less than what had been assessed by the Apex Court for the acquisition in 1994. The diligence had been lacking throughout as the matter had been decided twice earlier on 11.02.2011 and on 06.10.2015. Merely, because the Corporation is a Government Agency, they cannot take the plea that they

should be given more indulgence.

114. In similar circumstances in '**Surjit Singh and others Vs. Gurwant Kaur and others**' 2015 (3) PLR 667, the issue arose before the Apex Court that once the stamp of approval had been given on the controversy on an application in a civil revision filed before High Court that the application for additional evidence was not to be allowed by the Trial Court would it be permissible for the Appellate Court while hearing an appeal to allow an application for additional evidence. Accordingly, it was held that once an order had been upheld by the High Court on a subsequent stage notwithstanding the earlier controversy resorted inter se the parties and whether it would operate as resjudicata or not. It was, accordingly, held that even though under Order XLI Rule 27 CPC document may be taken on record in the interest of justice, but it was a case where judicial propriety would come in the way and, therefore, the Appellate Court order was set aside alongwith the order of the High Court. The relevant part reads as under:-

“17. In the case at hand, we do not intend to deal with the submission whether rejection of an application to take additional documents on record during the trial and the affirmation thereof in civil revision by the High Court would operate as res judicata or not, when an application is preferred under Order XLI Rule 27 of the CPC, for the provisions are different. But, we intend to deal with the exercise of jurisdiction and justifiability of the same regard being had to the special factual matrix of the instant case.

18. At this juncture, it is necessary to clarify that sub-rule (1)(a) of Order XLI Rule 27 is not attracted to the case at hand inasmuch as the documents were not taken on record by the trial

*court and error, if any, in the said order does not survive for reconsideration after the High Court has given the stamp of approval to the same in civil revision. Similarly, sub-rule (1)(aa) would not be applicable as the party seeking to produce an additional evidence on the foundation that despite exercise of due diligence, such evidence was not within his knowledge or could not, after exercise of due diligence, be produced by him at the time when the decree appealed against was passed does not arise, for the documents were sought to be produced before the trial court. Cases may arise under sub-rule (1)(b) where the appellate court may require any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. However, exercise of the said power is circumscribed by the limitations specified in the language of the rule. It is the duty of the court to come to a definite conclusion that it is really necessary to accept the documents as additional evidence to enable it to pronounce the judgment. The true test is, as has been held in **Parsotim v. Lal Mohan AIR 1931 PC 143**, where the appellate court was able to pronounce the judgment from the materials before it without taking into consideration the additional evidence sought to be adduced. The same principle has been accepted by a three-Judge Bench in **Arjan Singh v. Kartar Singh and others AIR 1951 SC 193**.*

19. Coming to the case at hand, the documents were sought to be introduced at the stage of hearing of the suit. Numerous opportunities were granted to file the documents, but the plaintiffs chose not to avail of the same. Therefore, the said documents were not accepted by the trial court. A civil revision was filed and dealt with on merits. Same set of documents were sought to be introduced before the appellate court as the additional evidence. The said documents are not such documents which are clinching and really essential for pronouncement of the judgment or for that matter any other substantial cause. There may be cases where on acceptance of public documents the decision on the lis in question would subserve cause of justice and avoid miscarriage of justice. In the instant case, the

documents which are sought to be filed before the appellate court as additional evidence are bank accounts which really are not clinching to put the controversy. As we find, it is extremely difficult to put the case under Order XLI Rule 27 (1)(b) to suggest that it is necessary to take the documents on record in the interest of justice and, additionally, when the said documents were rejected to be taken on record by the trial court and the said rejection had been affirmed by the High Court. We are conscious, the spectrum that can be covered under Order XLI Rule 27 (1)(b) may be in a broader one but in certain cases judicial propriety would be an impediment and the present case is one where the judicial propriety comes on the way. Therefore, we are of the considered opinion that the appellate court has erred in taking recourse to the said clause and allowing the application for taking additional evidence and similarly the High Court has committed illegality opining that the order passed by the lower appellate court does not suffer from any infirmity.

20. Be it stated, the learned counsel has referred to certain authorities which pertain to scope of Order XLI Rule 27 of the CPC, but they are distinguishable on facts as they relate to due diligence, relevancy of documents and the requisite approach. We have already opined that the documents are not so clinching to be accepted as additional evidence in exercise of jurisdiction under Order XLI Rule 27(1)(b), for the judicial propriety becomes an impediment and, therefore, there is no necessity to advert to the said authorities.

21. In view of the aforesaid analysis, the appeal is allowed and the orders passed by the lower appellate court and that of the High Court are set aside. There shall be no order as to costs.

115. As noticed between 1994 to 2002 major industries had stepped in IMT Manesar and, therefore, the market value of the land had undergone major spikes on account of the industrial growth taking place in Phase-I and, therefore, the sale deeds of 1994 as such would have no

relevance for determining the market value in the year 2002 and, accordingly, applications filed by the HSIIDC are dismissed.

116. The principles laid down by the Apex Court that for condoning the delay in applications for limitation would also be directly applicable for deciding the present applications, since the benefit is not to be given to Government agencies mechanically of leading additional evidence, keeping in view the provisions of Order XLI Rule 27 CPC which have to be kept in mind. The relevant observations of the Apex Court in '**Office of the Chief Post Master General and others Vs. Living Media India Limited and another**' 2012 (3) SCC 563 reads as under:-

*“12. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. **The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available.** The law of limitation undoubtedly binds everybody including the Government.*

13. In our view, it is the right time to inform all the Government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The Government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for Government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

117. Reliance can be placed upon the observations of the Apex Court in **'Union of India Vs. Ibbrahim Uddin 2012 (8) SCC 148,** wherein the principles were laid down that Order XLI Rule 27 CPC enables the appellate Court to take additional evidence in exceptional circumstances and only when conditions laid down the rule were found to exist, then the fresh evidence has to be let in. Parties guilty of remissness cannot be granted the said indulgence and the same is to be allowed only where cloud of doubt is to be removed. The relevant portion reads as under:-

“37. To sum up on the issue, it may be held that application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite condition incorporated in the statutory

provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage.”

118. The judgment relied upon by Mr. Chopra in the case of **North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (D)** by Lrs 2008 (8) SCC 511 would not be of much help, since in that case the appeal was allowed on the ground that the High Court was not aware of the pendency of the application under Order XLI Rule 27 CPC seeking relief to adduce additional evidence. Secondly there was an issue of an decree which was stated to be nullity since concealment of material facts had been there and respondents had played a fraud with the Court and in such circumstances, the appeal was allowed, which is not the case herein.

119. Similarly, the judgment in **K.R.Mohan Reddy Vs. M/s Net Work Inc Rep. th. M.D. 2007 (10) SCR 872** would also be no help to the Corporation since in that case an application under Order XLI Rule 27 CPC had been moved, but no notice was issued by the High Court and it had come up for hearing alongwith the appeal. Resultantly, the

judgment was set aside with directions that the applicant-respondent could file affidavit in support of the application and the appellant could file response to the original as also the additional affidavit if any and thereafter the matter could be reconsidered. Thus, the same is not applicable in any manner.

120. Similarly, the judgment in **Union of India Vs. K.V. Lakshman and others 2016 AIR (SC) 3139** was a case where the Appellate Court had issued notice and there was no one to oppose the application and the Union of India had not been served the notice of the appeal. It was a case where additional evidence was allowed on one side by the Appellate Court, which did not give the same benefit to the other side to lead additional evidence in rebuttal. It was in such circumstances, the matter was remanded to the trial Court for deciding the civil suit afresh on merits.

121. The argument raised from the land owners side is correct to the extent that the transactions could be undervalued and there could be distressed transactions or accommodation in certain manners, which could never be proved merely by allowing the application for additional evidence if certified copies of sale deeds and getting sale deeds on record without cross-examining the persons to elicit on what account the sale had taken place. The fact that the transfer of properties are under-valued to avoid stamp duty and registration charges is a well known factor which cannot be discounted as such. Once it was the case of the appellant itself

in the applications that numerous opportunities had been granted by the Reference Court, but they still could not lead evidence showing sale transactions, it does not lie in their mouth to argue in support of the applications. The onus having been shifted by the land owners, they could not be given second opportunity as such to start leading evidence afresh, as they cannot be given a premium for the negligence on their part.

122. The Apex Court in '**Udho Dass Vs. State of Haryana' 2010 (12) SCC 51** also held that there is a wide spread tendency to under value sale prices and Collector rate has only marginally corrected the anomaly, which fact could not be ignored. The relevant portion reads as under:-

“18. There is another unfortunate aspect which is for all to see and to which the Courts turn a Nelson's eye and pretend as if the problem does not exist. This is a factor which creates an extremely grim situation in a case of compensation based exclusively on sale instances. This is the wide spread tendency to under value sale prices. The provision of Collector's rates has only marginally corrected the anomaly, as these rates are also abnormally low and do not reflect the true value. Where does all this leave a landowner whose land is being compulsorily acquired as he has no control over the price on which some other landowner sells his property which is often the basis for compensation?”

123. Similarly, in '**Sanath Kumar Vs. The Special Tahsildar and another' 2011 (12) SCC 404**, it was held by the Apex Court that the acquisition of land deprives the land owners of his only source and specially industrial entrepreneurs would invariably pass on the cost of land to the consumers and, therefore, the interest of the land owners had

to be protected by applying the reasonable cut. The relevant portion reads as under:-

“11. In our view, the reasons assigned by the High Court increasing the percentage of deduction from 40 to 53 are legally untenable. While determining market value of the acquired land, the court must always bear in mind that in majority of cases the acquisition of land deprives the land owner of his only source of livelihood and sustenance. The acquiring authority and the beneficiaries of acquisition can always recover the cost of land from the allottees of plots. If the allotment is made to industrial entrepreneurs, they will invariably pass on the cost of land to the consumers of their products. Therefore, while increasing the percentage of deduction from the market value determined by the Reference Court, the High Court should have been extremely careful and circumspect and should have, keeping in view the law laid down by this Court, refrained from increasing the percentage of cut from 40 to 53, which resulted in depriving the landowners of their right to receive just and reasonable compensation.”

124. Similarly in **CM-11943-CI-2017 in RFA-3383-2010** wherein also the range of pricing is between Rs.2,40,000/- to Rs.10,25,000/- and sale deeds are of the year 2002. Therein also the evidence had been closed of the landowners on 22.04.2009 and the matter had been kept for evidence of the Corporation for 15.05.2009 and adjourned to 01.06.2009. In the absence of the evidence, proceedings were adjourned to 20.07.2009 and the statement of witnesses was recorded on 19.08.2009. On account of non production the evidence on 26.08.2009, proceedings were adjourned to 12.09.2009 and evidence was closed by Court order. The matter kept on pending from 12.09.2009 to 12.01.2010 for rebuttal evidence. Thereafter, on 18.01.2010 (Ex.PX) was

tendered in evidence in rebuttal evidence and the case was listed for arguments on 22.01.2010 and 25.01.2010, leading to the pronouncement of award on 27.01.2010. The arguments were heard on 25.01.2010 and judgment was pronounced on 27.01.2010.

125. Now, dealing with the applications for intervention and participation in the proceedings under Order 1 Rule 8-A CPC, the locus standi as such of the post acquisition allottee to file an application for determining the compensation under the 1894 Act had already been specifically decided. The question posed by the Apex Court as such reads as under:-

“2. Question for consideration is whether a post-acquisition allottee of land is necessary or proper party or has any locus to be heard in the matter of determination of compensation under the scheme of the Land Acquisition Act, 1894 (the Act). If not, whether the impugned order permitting additional evidence and directing remand is sustainable.”

126. After discussing the law on this issue and the fact that an earlier observation as such had been made in **Udal's case (supra)** it was held that the post acquisition allottee had no locus standi to be heard. Relevant paragraphs No.15 to 18 have already been reproduced above in paragraph No.25 and therefore the application is mis-conceived. Even otherwise, if the same is to be allowed, it would mean that all allottees of plots in Phase-II and IV would be necessary parties as such, as in view of the normal terms of the enhancement clauses in the allotment letters. Therefore, the argument as such cannot be accepted that merely because

the land had been allotted @ Rs.19 lakhs and on account of the enhancement if any MSIL would be burdened with additional financial liabilities and thus it would give them locus standi as such to file the application for intervening. The same is thus sheer abuse of the process of law, once the matter had already been decided inter se the parties and accordingly the applications filed by MSIL for intervention are dismissed.

(M/s Kohli Holdings Private Limited case RFA No.4646 of 2010)

127. However, coming to the land belonging to the M/s Kohli Holdings Private Limited the argument raised by Mr. Sarin, Senior Counsel that the market value of its land was much more than the other portion of Phase-II deserves acceptance. The claim petition would go on to show that the bulk of the land of 69 kanals 15 marlas of land was falling in village Manesar and only 4 kanals and 8 marlas were situated in village Naharpur Kasan. Apart from the said company as noticed by the Reference Court also another land owner Ram Niwas's land was situated in village Manesar, which fact was noticed by the Reference Court. It is not disputed that village Manesar is falling on the Jaipur-Gurgaon highway and the locational advantage of the land of the company was never examined. Merely because there were two portions of Phase-II under acquisition and award dated 22.07.2003 would show that from Manesar as many as 297 kanals 7 marlas of land was being acquired out of the total 1380 kanals 16 marlas. Therefore, balance of the land belongs to the village Bas Khusla, Kasan, Naharpur Kasan. It has already

been noticed that Bas Khusla is situated in the interior and at back of the Phase-I and other part of Phase-II of acquisition was thus adjoining the said village Bas Khusla. The locational advantage thus of the land which was adjoining a five star hotel, namely, Sita Resorts is also depicted clearly from the site plan (Ex.P42), wherein the land is depicted in purple colour and the hotel was only 100 meters away which has already been admitted by the witnesses of the respondents. Portion of the land acquired was also to create 60 meter wide road to connect and give access from the main highway to Phase-I which was being developed

128. Though, Mr. Sarin has relied upon the photographs as such to show that there was construction taking place across the highway and the land was commercial as such is not liable to be accepted, as admittedly the photographs were taken in the year 2009, just when the evidence was being led which is 7 years later from Section 4 notification. The potentiality of the land has already been noticed and that development was taking place at a fast and brisk pace and therefore, the said photographs as such can only be taken into account to notice that Sita Resorts which is depicted in Ex.P17 to P19 stood fully developed which is an admission as such by the respondents witness also and the distance was only half an acre between two. The commercial potentiality as such of the acquired land belonging to the M/s Kohli Holdings Private Limited cannot be denied and it cannot be given the same price which is being assessed for the other land owners whose land also was being acquired for Phase-II, III and IV. but admittedly situated well behind of

Phase-I. The island like location abutting the main road is an additional benefit to the appellant-company and the argument raised by Mr. Chopra and other land owners that the same compensation is to be granted to all since the acquisitions was for the same purpose cannot be accepted. The market value of the land situated 4 Kms and more from the national highway and in another revenue estate cannot be equated at the same level of the land which is falling on the highway.

129. 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**, which pertains to the acquisition for Manesar itself for the complex of the National Security Guards which is also depicted on the site plan. It was held therein that the market value of the land which abuts the highway would be more than the land which is far away from it. The relevant portion reads as under:-

“We see no warrant in law for the formula indicated above being applicable while finding the market value of acquired land as on the date of the said notification under Section 4. This mathematical formula completely disregards the location of the land which is acquired vis-à-vis the instance sale, the difference in the area acquired and the area of the sale instance and several other relevant factors in this regard. As has already been indicated hereinabove, the area which was acquired was 1130 acres and 4 marlas, only a small portion of which abutted on National Highway 8. Even if one was to disregard the quality of the land i.e irrigated, semi-irrigated or barren, one cannot be oblivious of the fact that the market value of land which abuts on the national highway would be much more than the land which is away from it. A price of the land which is landlocked and which is

farther away from the national highway cannot be the same as that which abuts on the national highway. The formula which had been applied by the High Court, however, seems to indicate that the price of the entire land irrespective of the location of different parcels of land is the same. The formula which was applied by the learned Single Judge of the High Court is obviously incorrect.”

130. The principles of allotment and the frontage aspect are something which is always to be kept in mind.

131 Similarly, in '**V. Hanumantha Reddy (Dead) by Lrs. Vs. The Land Acquisition Officer & Mandal R. Officer**' ' 2003 (12) SCC 642, the Apex Court held that land abutting National Highway always fetches more price than the land lying in the interior and it was now established principle of law and by no stretch of imagination, the sale instances can be compared with.

132. In '**Haridwar Development Authority, Haridwar Vs. Raghubir Singh and others**' 2010 (11) SCC 581, the issue was regarding the adoption of the belting method. Resultantly, it was held that proximity to access to the main road and highway were factors which were to be taken into consideration, while upholding uniform market value 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.”

133. In the present case as noticed acquisition in question pertained to three notifications, wherein for Phase-III 598 acres 5 kanals 12 marlas of 4 villages was being acquired. Similarly, for Phase-II 1380 kanals 16 marlas of land was being acquired, from the land belonging to additional two villages of Naharpur Kasan and Manesar and for Phase-IV 657 acres 4 kanals 3 marlas was being acquired belonging to 4 villages, whereby the land was being acquired for Phase-III.

134. As discussed above from the site plan also the lands are also situated beyond Phase-I and only a part of the land belonging to M/s Kohli Holdings Private Limited was abutting the main road, which was also acquired alongwith the land of Phase-II and, therefore, the market value of the land on the highway falling in village Manesar cannot be equated with the land situated well inside as contended by the other land owners and they cannot claim locational advantage as M/s Kohli Holdings Private Limited is entitled to. The principles laid down in **'Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona' 1988 (3) SCC 751**, thus, had to be kept in mind while assessing the market value in which plus and minus factors had been discussed by the Apex Court. The relevant portion of the said judgment reads as under:-

“4. The following factors must be etched on the mental screen :
(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court

cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of Notifications under Sections 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most

comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of Acquisition of land.)

(9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(1) The most comparable instances out of the genuine instances have to be identified on the following considerations :

(i) proximity from time angle

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may beevaluated interms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors :-

<i>Plus factors</i>	<i>Minus factors</i>
<i>1. Smallness of size.</i>	<i>1. Largeness of area.</i>

<i>2. Proximity to a road.</i>	<i>2. Situation in the interior at a distance from the road.</i>
<i>3. Frontage on a road.</i>	<i>3. Narrow strip of land with very small frontage compared to depth.</i>
<i>4. Nearness to developed area.</i>	<i>4. Lower level requiring the depressed portion to be filled up.</i>
<i>5. Regular shape.</i>	<i>5. Remoteness from developed locality.</i>
<i>6. Level vis-a-vis land under acquisition.</i>	<i>6. Some special disadvantageous factor which would deter a purchaser.</i>
<i>7. Special value for an owner of an adjoining property to whom it may have some very special advantage.</i>	

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say 10000 eq. yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction byway of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense.”

135. Recently, in '**Bhule Ram Vs. Union of India and another'** **2014 (11) SCC 307** it was held that the land which was having frontage on the highway would definitely have a better value than land farther away from highway and the geographical situation as such has to be taken into consideration. The finding given is that the appellant's land acquired is not at a distance of 6 kms from the national highway, but on the national highway. The other land owners whose land also was acquired for Phase-II, III and IV have their land which is situated well inside, which would be clear from the site plan discussed above.

136. Accordingly, keeping in view the location of the land of M/s Kohli Holdings Private Limited and the acquisition was of 70 kanals 05 marlas, the escalation factor of the land on highway would be relevant which has to be taken from the sale deed also in question of M/s Duracell (Ex.PY) which was pertaining to village Naharpur Kasan. It is itself also to be noticed that the appellant-company had been granted a licence, which was subsequently 6 years later on approximately 6 acres of land, which showed the commercial potentiality as such and situation of the land. The benefit of locational advantage and enhancement accordingly has to be given at a higher amount than what has been given to the land owners whose market value has been assessed @ Rs.41.40 lakhs per acre. The commercial potentiality of the land in question which falls on the highway, thus, cannot be lost sight off on account of the fact that the

appellant-company could have utilized the huge chunk of land it had with a frontage of 2 acres for development at a commercial level, keeping in mind the development that had taken place around the patch of land and even the fact that part of the land had been acquired for the purposes of providing an approach to the sectors which would be clear from the site plan (Ex.P42).

137. In such circumstances, the appreciation would be at a higher level and, therefore, on account of locational advantage, this Court is of the opinion that 50% locational advantage is to be granted on the sum of Rs.41.40 lakhs for land falling in village Manesar, which works to Rs.20.70 lakhs in addition and takes the market value of the land to Rs.62.10 lakhs. Similarly, the benefit of severance is also to be granted under Section 23 (1) of the 1894 Act to the appellant M/s Kohli Holdings Private Limited. Section 23 (1) reads as under:-

“23. Matters to be considered on determining compensation. -

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-

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thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land.”

138. It has already been noticed that the appellant-company had been granted a licence for setting up of an IT Park (5.9625 acres) vide Licence No.27 of 2008 (Ex.P44) and, thus, it lost out on approximately 9 acres of land which was acquired by the Corporation, which hived off the

best portion of the land of the appellant-company and by taking the frontage away which was falling on the highway. An additional benefit of 30% on the above said amount of Rs.62.10 lakhs would be the entitlement of the appellant-company.

139. It is also to be noticed that PW-4, B.M. Chhabra had appeared and given his evidence, as per the aspect of severance and the fact that for the balance land the licence had been granted to develop the IT Project and had deposed as per the averments made in the claim petition.

140. Accordingly, the appeals filed by the HSIIDC seeking reduction in the compensation and of MSIL are dismissed and those of the land owners alongwith cross-objections are allowed.

(i) The market value of the land falling in five village i.e. Naharpur Kasan, Kasan, Bas Huria, Bas Khusla and Dhana is assessed @ Rs.41.40 lakhs per acre alongwith all statutory benefits.

(ii) The market value of land in village Manesar is assessed @ Rs.62.10 lakhs per acre alongwith all statutory benefits.

(iii) The appellant-M/s Kohli Holdings Private Limited in RFA No.4646 of 2010 would be entitled for compensation Rs.62.10 lakhs per acre, on account of it being given benefit of 50% of locational advantage being situated on the highway and in village Manesar apart from that it would be entitled for 30% more compensation on account of severance charges on the abovesaid market value alongwith all statutory benefits.

(iv) The directions of the Apex Court in the case of Pran Sukh will also be adhered to while disbursing the balance amount of compensation.

(v) Where appeals have been filed by the land owners which were beyond period of limitation and applications have been filed for condoning the delay with a condition that the land owners will not be entitled for the interest during the said period, the Executing Court shall ensure that the amounts are calculated and disbursed, keeping in the view the said condition which has been passed in the case of each and individual land owner.

(vi) The appeals filed by the MSIL are dismissed on account of non-maintainability and in view of the observations of the Apex Court in the case of **Satish Kumar Gupta (supra)** being a post notification allottee.

MARCH 09, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No