

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RFA No.3381 of 2013 & other
connected appeals
Reserved on : 26.04.2018
Decided on : 25.05.2018

HSIDC Now HSIIDC

... Appellant

Versus

Roshan Lal and others

... Respondents

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

<i>Sr. No.</i>	<i>RFA Numbers filed by Landowners</i>	<i>Name of Village(s)</i>
1	7294, 7295, 7296/ 2013 74, 75, 769, 770, 771, 582, 2442, 2443, 2444, 1803, 515, 517, 3388, 1805, 1576, 518, 1799, 5274, 9741, 776, 1261, 42, 1804, 530, 9805, 1802, 2206, 2207, 528, 1800, 2205, 777, 7382, 2199, 4966, 4967, 527, 6619, 1242, 1513, 4664, 1038, 1806, 9373, 2204, 1801, 516, 246, 679, 594, 2906, 1514, 529, 1039, 4643, 9737/ 2014, 316 & 2230/2015	Lakhnoula (Nakhrola) Reference Court Awards Dated 31.08.2013 27.11.2013 10.01.2014 19.03.2015
	<i>RFA Numbers filed by HSIIDC</i>	
2	5162, 5203, 5136, 5103, 5156, 5113, 5206, 5122, 5125, 5201, 5114, 5138, 5145, 5148, 5119, 5116, 5161, 5142, 5140, 5105, 5186, 7276, 5102, 5189, 5146, 5205, 5110, 5193, 5192, 5191, 5198 with X Objection No. 69- CI of 2014, 5190, 5183, 5170, 5157, 5141, 5106, 5173, 5196, 5209, 5135, 5188, 5150, 5180, 5160, 5123, 5177, 5109, 5121, 5172, 5184, 5165, 5166, 5153, 5139, 5115, 5164, 5120, 5174, 5144, 5178, 5137, 5202, 5126, 5143, 5210, 5154, 5127, 5194 with X Objections No. 90-CI of 2014, 5200, 5199, 5167, 5187, 5134, 5208, 5179, 5176, 5124, 5118, 5111, 5152, 5112, 5175, 5171, 7277, 7278, 7279, 5185, 5158, 5195, 5108, 5197, 5168, 5204, 5159, 5181, 5207, 5182, 5104, 5169, 5163, 5151, 5128, 5107, 5117, 5131, 5129, 5155, 5130, 5132,5149, 5147, 5133/ 2014, 4697/2016 with X Objection No. 8-CI of 2017	Lakhnoula (Nakhrola) Hadbast No.110

Sr. No.	RFA Numbers filed by Landowners	Name of Village(s)
	RFA Numbers filed by Gram Panchayat Nakhrola	
3	2908/ 2014	Lakhnoula (Nakhrola)
	RFA Numbers filed by landowners	
4	2727, 2638, 6865, 2507, 3839, 2822, 4105, 4018, 4019, 2726, 3837, 2512, 3833, 3838, 2515, 2510 (O & M), 4225, 2730, 2541, 3830, 3831, 4224, 3836, 3834 (O & M), 3832, 2728, 2729, 2508, 4398, 2514, 3828, 2511, 2542, 3829, 2509, 2513, 2540, 3835, 2539, 4106/ 2013 55, 2255, 1013/2014	Naharpur Kasan Reference Court Awards Dated 24.12.2012 02.09.2013
	RFA Numbers filed by HSIIDC	
5	3417, 3399, 3394, 3427, 3397, 3414, 3422, 3412, 3416, 3426, 3413, 3425, 6211, 3419, 3424, 3387, 3385, 3420, 3389, 3405, 3383, 3418, 3410, 3393, 3391, 3390, 3407, 3442, 3401, 3388, 3403, 3392, 3396, 3441, 3436, 3411, 3423, 3421, 3415, 3384, 3402, 3386, 3435, 3437, 3438, 3428, 3434, 3404, 3398, 3431, 3443, 3440, 3432, 3433, 3439, 3430, 3382, 3408, 3381, 3409, 3406, 3429, 3400, 3395/ 2013 2900, 2901, 3651, 2902, 2899, 2898, 4077, 4078, 4079/ 2014	Naharpur Kasan Hadbast No.111
	RFA Numbers filed by landowners	
6	3450/ 2017	Nawada Fatehpur Hadbast No.112 Reference Court Award Dated 21.03.2017
	RFA Numbers filed by landowners	
7	5418, 8048, 6549/2013, 4963, 4965, 4964, 3371, 3669, 3943, 3942/ 2014 3499 /2015, 4694 of 2016	Shikohpur Reference Court Award Dated 27.04.2013

<i>Sr. No.</i>	<i>RFA Numbers filed by Landowners</i>	<i>Name of Village(s)</i>
	<i>RFA filed by HSIIDC</i>	
8	7661, 7669, 7672, 7673, 7671, 7666, 7667, 7663, 7662, 7665, 7670 with X Objections No. 18-CI of 2014, 7664, 7668/2013	Shikohpur Hadbast No.160
	<i>RFA Numbers filed by Landowners</i>	
9	6853/2013	Naurangpur Reference Court Award dated 13.05.2013
	<i>RFA Numbers filed by HSIIDC</i>	
10	7692 to 7696/ 2013	Naurangpur Hadbast No.157

Present: Mr. Pritam Singh Saini, Advocate for the HSIIDC.

Mr. Shailendra Jain, Senior Advocate with
Mr. Satyendra Chauhan, Advocate,
Mr. Shakti Kaushik, Advocate for
Mr. Vinod S. Bhardwaj, Advocate,
Mr. Pradeep Chhoker, Advocate for
Mr. P.R. Yadav, Advocate,
Mr. Virendra Rana, Advocate,
Mr. Sudhir Aggarwal, Advocate,
Mr. Sushil K. Sharma, Advocate for
Mr. M.L. Sharma, Advocate,
Mr. Amit Rohilla, Advocate for
Mr. Saurabh Arora, Advocate,
Mr. Prikshit Yadav, Advocate for
Mr. Jaivir Yadav, Advocate
Mr. Satish Singla, Advocate for
Mr. Vishal Garg, Advocate
Mr. Abhimanyu Kalsi, Advocate for
Mr. Rakesh Dhiman, Advocate and
Mr. Sanjay Vij, Advocate
for the landowners/cross-objectors.

Mr. Sudeep Mahajan, Addl. Advocate General, Haryana,
for State as well as for HSIIDC.

Ms. Safia Gupta, Assistant Advocate General, Haryana.

G.S. Sandhawalia, J.

The present judgment shall dispose of 324 appeals and 4

cross-objections filed by the landowners of five villages, namely, Naurangpur, Shikohpur, Nawada Fatehpur, Naharpur Kasan and Lakhnoula (Hadbast Nos.157, 160, 112, 111, 110) for the acquisition for the public purpose for setting up for Chaudhary Devi Lal Industrial Model Township, Phase-V, Manesar, which was to be planned and developed as an integrated complex for industrial, commercial, recreational and other public utilities. Similarly, appeals of HSIIDC have also been filed, challenging the market value of land fixed @ ₹ 50,43,315/- per acre under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') against the Awards passed by the Reference Courts at Gurgaon, the dates of which are mentioned above in the columns.

2. The awards bearing No.8 to 12 in question were all passed on 09.03.2006 by the Land Acquisition Collector and the market value of the acquired land was fixed @ ₹12.50 lakhs per acre as on the date of the notification under Section 4 read with Section 17 (2) (C) of the Land Acquisition Act, 1894 (for short 'the Act') dated 17.09.2004. The same had been followed up by the notification under Section 6 of the Act dated 27.10.2004. As per Section 6 notification land measuring 956 acres 5 kanals 18 marlas of land was acquired which included 114 kanals 14 marlas of village Manesar, however, the appeals do not pertain to village Manesar in the present set of cases. The details of land acquired in the 5 villages is as under:-

Sr. No.	Villages	Area	
		Kanal	Marla
1.	Nabada Fatehpur	65	8
2.	Naurangpur	68	15
3.	Manesar	114	14
4.	Lakhnoula	3515	01
5.	Naharpur Kasan	3672	15
6.	Shikopur (43B-9B-0B)	217	5
	Total	7653	18
	Or 956 Acre 5 Kanal 18 Marla		

3. Various Reference Courts passed awards for the 5 villages which are subject matter of appeals both by the land owners who are dissatisfied with the amount of compensation awarded @ ₹50,43,315/- per acre, whereas the appellant-Corporation seeks reduction in the amount awarded by the Reference Court, Gurgaon.

4. The first set of cases which was decided was on 24.12.2012, whereby 70 cases were decided pertaining to village Naharpur Kasan and the lead case was **LA Case No.1408 of 2009/2011 'Roshan Lal Vs. State of Haryana and others'**. The said award was followed up by a subsequent award dated 02.09.2013.

5. A perusal of RFA No.3381 of 2013 which is filed by HSIIDC against the land owners would go on to show that the sale deed dated 16.08.2004 (Ex.P24) for land measuring 32 kanals 2 marlas in favour of M/s Conway Developers Pvt. Ltd. for a sum of ₹2,31,12,000/-, whereby the market value would work out to ₹58 lakhs per acre, which was pertaining to village Naurangpur, land of which is also the subject

matter of the same acquisition was discarded by the Reference Court on the ground that it did not pertain to village Naharpur Kasan.

6. For assessing the market value @ ₹50,43,315/-, the basis for calculating the market value, the judgment of this Court in **RFA No.2373 of 2010 'Madan Pal Vs. State of Haryana and another'** decided on 11.02.2011 (Ex.P26) as such was taken into consideration, in as much as at that point of time, this Court had awarded ₹37.40 lakhs per acre value of the land for village Naharpur Kasan qua the notification dated 06.03.2002 and 07.03.2002, which was of the same and adjoining villages and by applying a 12% cumulative increase for the gap of 2 years 7 months 21 days.

7. Similarly, the other Reference Court, vide award dated 02.09.2013, which is subject matter of RFA No.4078 of 2014, followed the earlier award dated 24.12.2012 and awarded the same amount of compensation.

8. It is pertinent to mention that the said judgment (Ex.P26) dated 11.02.2011, **Madan Pal** (supra), was set aside in '**HSI IDC Limited Vs. Udal and others**' 2013 (14) SCC 506 decided on 02.07.2013 and the matter was remanded to this Court for fresh decision. It is further important to keep in mind that the matter was again decided on 06.10.2015 and the Coordinate Bench had remanded the matter to the Reference Court while granting leave to Maruti Suzuki India Limited (MSIL) to lead evidence with other parties to enable the Reference Court to assess fair value of the acquired land in accordance with law after

considering the evidence produced on record.

9. Some of the land owners being dissatisfied with the remand order had approached the Apex Court in '**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. It was, accordingly, held that the MSIL was not a necessary or proper party and it was post-acquisition allottee and, therefore, it could not be permitted to be impleaded and even liberty to lead additional evidence was not permitted, in view of the matter not falling within the ambit of Order 41 Rule 27 CPC.

10. In pursuance of the remand orders, this Court decided **RFA No.2373 of 2010 'Madan Pal (III) Vs. State of Haryana and another'** on 09.03.2018 and eventually the appeals filed by the HSIIDC seeking reduction in compensation and of the MSIL were dismissed and those of the land owners alongwith cross-objections were allowed regarding notifications dated 26.02.2002 (Phase-IV), 06.03.2002 (Phase-II) and 07.03.2002 (Phase-III) for the 6 villages. The operative part of the said order reads as under:-

“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.”*

11. It is, thus, apparent that the basis on which the enhancement as such which was granted has been modified. The amount of ₹37.40 lakhs now stands enhanced qua village Naharpur Kasan to the extent of ₹41.40 lakhs.

12. Similarly, for Village Shikohpur, when the reference petitions were decided vide award dated 27.04.2013, which was for public purpose, for establishment of a CRPF Academy, the landowners placed on record as many as 12 sale exemplars out of which only one was pre-notification, dated 29.09.2002 (Ext.P-4). The allotment letters which had also been relied upon were rightly discarded as it could not be made

the basis of determining the market value. Ex.P-4 was not taken into consideration whereby the value came to ₹8,05,929/- per acre since it pertained to the year 2003. Accordingly, the judgment in **Roshan Lal (supra)** wherein ₹50,43,315/- had been awarded, was held to be a safe exemplar to award compensation for the land acquired in the said village, for 43 bighas 9 biswas.

13. Thereafter, vide award dated 13.05.2013, Reference Court decided the market value of land falling in Village Naurangpur. The landowners exhibited 2 sale deeds in favour of M/s Conway Developers Pvt. Ltd. (Ex.P-24 & P-25) dated 16.08.2004, for 32 kanals 2 marlas and 46 kanals each, whereby the average price worked out to ₹57,60,000/-. Another sale deed was also there in favour of M/s Logical Developers but being post-notification, having been executed on 21.04.2005, was rightly kept out of consideration. The sale deeds (Ex.P-24 & P-25), however, were held not to be reflecting the true market value and not a safe method to determine the market value, on the ground that it was in favour of a private developer. Resultantly, the safer method of following the judgment in **Roshan Lal's case (supra)** was adopted to award the same amount of compensation.

14. Thereafter, on 31.08.2013, another Reference Court decided the cases pertaining to Village Lakhnoula and various sale deeds were exhibited. Reliance was placed upon the earlier award passed in **Roshan Lal's case (supra)** by holding that the land of Village Lakhnoula and Village Naharpur Kasan were at an equal distance from Village Manesar.

The land of Village Naurangpur was shown in blue colour in the site-plan which was acquired for development of industrial plot.

15. Similarly, for village Lakhnoula record of the lead case in **RFA No.5102 of 2014 'HSIIDC Vs. Ram Niwas and others'** would go on to show that 21 sale deeds were exhibited which were taken, showing a wavering picture of the land ranging from ₹15 lakhs to ₹72 lakhs. The land was noticed to be adjacent to the commercial zone shown in blue colour where the CLU was granted for development of industrial and commercial plots. It was, thus, held that the land was at a strategic position and was showing to be quite valuable land having great potential for further development. The distance from village Manesar was held to be equal as from village Naharpur Kasan and, therefore, the same amount of market value was granted despite Lakhnoula being located at a strategic location, the beaten path was followed to assess the sale value of the same amount.

16. On 27.11.2013, award dated 31.08.2013 was followed and similarly, vide award dated 10.01.2014, for village Lakhnoula, the same officer followed the earlier award. The Reference Court on 19.03.2015, followed the award dated 31.08.2013 on the principle of being best piece of evidence and pertaining to the same acquisition.

17. For land falling in Village Nawada Fatehpur, the award was passed on 21.03.2017 wherein also, the sale deeds (Exts.P-2 to P-5) were discarded as being not relevant evidence to substantiate the claim regarding the market price some of them being of the year 2007, to follow

the judgment in **Roshan Lal's case (supra)**.

18. Counsel for the appellant has, accordingly, argued that the benefit of cumulative increase be given by following the principle in '**Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another**' 2008 (14) SCC 745 as per the market value assessed in **Madan Pal (III) (supra)** on 09.03.2018. The amount is liable to correspondingly increase to ₹55,04,809/- if 12% enhancement is given and similarly to ₹58,85,786/- if 15% enhancement is to be given. It is also argued that if the sale deed dated 16.08.2004 (Exts.P24 & P25) is to be taken into consideration, the market value would work out approximately around ₹58 lakhs per acre, since the sale deed was for ₹57,60,000/- and, therefore, appeals of the landowners are liable to be allowed. He further argued that two sale deeds in favour of M/s Conway were on the same date and total land which was purchased 78 kanals 2 marlas (9.75 acres) and, therefore, once a large chunk of land was sold, the question of applying any cut would not be applicable. He has placed reliance upon the judgment of the Apex Court passed in '**Subh Ram Vs. State of Haryana and another**' 2010 (1) SCC 444 and in **Haryana State Industrial Development Corporation Vs. Pran Sukh & others** 2010 (11) SCC 175.

19. Mr. Pritam Singh Saini, appearing for HSIIDC has submitted that once a sale deed was available it should have been relied upon and which had been discarded in the cases of village Naurangpur by the Reference Court in its award dated 13.05.2013 (RFA No.7692 of 2013)

on the ground that it was a sale deed in favour of private builder pertaining to the acquisition of village Naurangpur. He, accordingly, submitted that the deduction is to be made on account of development cut. He has placed reliance upon '**Lal Chand Vs. Union of India and another**' 2009 (15) SCC 769, '**Haridwar Development Authority, Haridwar Vs. Raghubir Singh and others**' 2010 (11) SCC 581, '**Phool Singh and others Vs. Land Acquisition Collector and another**' 2011 Latest HLJ (H.P) 1102, '**Nirmal Singh etc. Vs. State of Haryana through Collector**' 2015 (2) SCC 160 and in '**Major General Kapil Mehra and others Vs. Union of India and others**' 2015 (2) SCC 262

20. Five questions that arise for consideration before this Court are as under:-

(i) Whether the principle of cumulative increase is liable to be granted from the year 2002 to the notification of the year 2004 ?

(ii) Whether the Courts below were justified in rejecting the sale exemplars in favour of M/s Conway Developers Ltd. ?

(iii) Whether deduction is to be made on account of development cut, in view of the large chunk of land which is being acquired for the purpose of developing the Chaudhary Devi Lal Industrial Model Township, Phase-V, Manesar and if so, to what extent ?

(iv) Whether land falling on the Highway would get a better price and therefore, would be entitled for higher compensation or whether uniform compensation should be granted to all landowners of five villages?

(v) Whether application for additional evidence filed by the landowners of Naharpur Kasan is liable to be allowed and whether the same would be covered under the provisions of Order 41 Rule 27 CPC ?

Discussion of Evidence:

21. Keeping in view the settled principle that sale exemplar is the best evidence and even sale examples of adjoining villages can be kept into mind while granting compensation and for assessing the market value, as has been held in '**Union of India Vs. Harinder Pal Singh and others**' 2005 (12) SCC 564, **Charan Dass (dead) by L.Rs. Vs. Himachal Pradesh Housing and Urban Development Authority and others**' 2010 (13) SCC 398, '**Premwati Vs. Union of India and others**' 2013 (7) SCC 57 and '**Ram Kanwar and others Vs. State of Haryana and another**' 2015 (1) RCR (Civil) 234. The record needs to be perused as it would be necessary to come to the conclusion to answer the questions which have arisen for consideration as noted in the para 20.

22. A perusal of the record of the lead case of village Naharpur Kasan in **Roshan Lal (supra)**, wherein the lions share of as much as 3672 kanals 15 marlas of land was acquired would go on to show from the site plan Ex.P28, which was brought on record that the land acquired for the 6 villages in question had been shown in different colours. The land falling in village Naharpur Kasan was situated beyond the limits of village Manesar which was abutting the highway and shown in green colour. Above said land falling in village Nawada Fatehpur was shown in dark blue colour, which was away the highway but was closer to the town

of Gurgaon. Similarly, large chunk of land of village Nakhrola (Lakhnoulia) was abutting the National Highway No.8 was shown in yellow colour. Village Naurangpur which was falling on the highway was shown in blue colour and was closest to Gurgaon and immediately on top of it was village Shikhopur shown in orange colour, which was away from the highway, but was closer to the town of Gurgaon.

23. The said site plan can be co-related directly with site plan-Ex.R5, which was brought on record by RW-1 Dalbir Singh Bhatti, Senior Manager, HSIIDC. The said plan would go on to show that the land which was acquired for all 6 villages and the land which had not been notified and one for which the CLU had been granted and the land that had been released. The said site plan would also show that the roads which were to be laid out in the area including the zoning whether it was to be used for residential purpose, group housing, reserved for stadium, play grounds, industrial zone, commercial zone reserved for institution use etc.

24. The witness of the appellant-Corporation RW-1 Dalbir Singh Bhatti himself has admitted that some portion of the land was abutting the National Highway No.8 and IMT Manesar touched the boundaries of acquired land on two sides i.e. southern side and western side. In his cross-examination he admitted that 80% of the area of IMT Manesar had been developed at the time of issuance of notification of Section 4 of Act. This 80% area had been acquired vide notification dated 15.11.1994, which was subject matter of acquisition in the case of **Pran Sukh**

(supra), whereby the rate had been fixed @ ₹20 lakhs per acre.

25. From the record of village Shikhopur, the lead case of which was **LA Case No.252 of 2009/2011 'Shimbhu Dayal and others Vs. State of Haryana and others'** decided on 27.04.2013, from the cross-examination of PW-1 Sunder Lal it would be clear the acquired land was falling in Sector 81-A and 82-A and was facing the highway and they were residential sectors, which were being developed by Vatika Developers. It the cross-examination, it has been elucidated that the acquired land was one and half acre away from the highway.

26. PW-2 Suresh Kumar, Assistant Draftsman, who produced Master Plan of 2021 and 2025 as Ex.P5 and Ex.P6 stated that Metro Route had been extended upto IMT Manesar. Sector 81-A and 82-A were 3 ½ kms from the IMT Manesar and Sector 81-A was facing National Highway No.8 and there was a proposed Metro Route. The lay out plan of Sector 81-A and 82-A can be verified from Ex.P5 and Ex.P6 to show the potentiality of the land and the location which was closer than Manesar and on the Delhi-Jaipur Highway.

27. PW-3 Mangat Ram-Patwari, who prepared Ex.P1 Akshazara deposed that acquired land bearing Khasra No.216, 217 is about 600 feet from National Highway No.8 and boundary of village Lakhnoula was adjoining the land bearing Khasra No.216 and 217. The land of village Naurangpur was adjacent the acquired land and IMT Manesar was about 1 ½ KM.

28. PW-4 Laxman Singh, Halqa Patwari of Shikhopur submitted

that residential area of IMT Manesar was 5 Kms from the Toll Plaza and the National Highway was to be widened for the Toll Plaza. He, however, could not tell the distance of the acquired land from the Toll Plaza. PW-5, Ram Avtar, Assistant Manager, HSIIDC also submitted that Sector 81-A and 82-A are residential sectors.

29. RW-1 Dalbir Singh Bhatti admitted that the land was at a distance of 2-3 KM from the IMT Manesar and National Highway No.8 was at a distance of 1/1.5 KM. He in his cross-examination further admitted that after CLU is granted 60% of the land could be utilized for developing the area. The remaining 40% is to be utilized for basic amenities.

30. A perusal of the record in the case of village Naurangpur lead case of which was **LA Case No.418 of 2009/2011 'Kartar Singh and others Vs. State of Haryana and others'** decided on 13.05.2013 would go on to show that in the petition under Section 18 it was specifically averred that land of seven villages are adjoining to each other and the market value should be determined one and the same. There was great potential and accordingly market value was sought for @ ₹20,000/- per square yard, apart from other statutory benefits. The same witness (Mr. D.S. Bhatti) of the Corporation has admitted that some of the portion of village Naurangpur fell on National Highway. He admitted that out of total 956 acres around 300 acres had been released and denied the fact that the land falls in National Capital Region. The sale deeds of M/s Conway Developers Private Limited were duly exhibited as Ex.P2

and Ex.P3 by calling the official of the Sub-Registrar, namely, Ashok Kumar (PW-1).

31. The Master Plan of 2023 and 2025 was also brought on record. PW-2 Jagdish-Assistant Draftsman admitted that as per the Master Plan of 2021 and 2025, some part of village Naurangpur falls in agricultural zone and some portion in residential zone and some part in industrial zone.

32. The record in the case of village Lakhnola lead case of which was **LA Case No.177/2009 'Ram Niwas Vs. Haryana State and others'** decided on 31.08.2013 would go on to show that PW-1 Umed in his statement has submitted that National Highway No.8 was 500 meter away from the acquired land. He has admitted that Dairy Development Training and Authority Centre, Haryana is in existence for the last 15 years within the revenue estate of village Nakhrola.

33. PW-2 Ram Mehar in his cross-examination has averred that the acquired land abuts the National Highway No.8 and his hotel/dhaba, namely, Laxmi Hotel, was situated on the same highway and the name was recorded in the revenue record. He stated that the same was now part of Sector 81. PW-3 Vidya Devi deposed that village was 8-9 KM away from the Gurgaon City and IMT Manesar 2 Km from the acquired land. The sector of IMT Manesar was abutting the acquired land. The National Highway No.8 was a express way upto Dharuhera and where there was a provision of service road for the use of local residents. The Airport of Delhi was 20Kms from the village. Some industries were in existence

surrounding the acquired land i.e. Perfetti Biscuit Factory and Government School was also in existence.

34. PW-4 Rajinder Singh-vendor proved the sale deed Ex.P5 dated 16.08.2004, which was in favour of M/s Conway Developers Private Limited and admitted that it was abutting the National Highway No.8. He further volunteered that the same was abutting the revenue estate of village Lakhnola and there was more sale deeds of same date dated 16.08.2004. The sale consideration was made through cheque as well as in cash was also elucidated in cross-examination and that the land was agricultural in nature.

35. Ex.R1 was brought on record by RW-1 Dalbir Singh Bhatti, Senior Manager of HSIIDC, which is similar as Ex.R5 referred to earlier which was the computerized copy of the layout plan on the acquired land wherein the abadi area of village Lakhnola and Naharpur Kasan was shown in yellow colour. The area shown in blue colour showed the running industries and the land released by the Government and area earmarked by red dotted lines was the acquired land. The witness also deposed that the revenue estate of villages Lakhnola, Manesar, Naharpur Kasan, Shikhopur, Naurangpur and Nawada Fatehpur were adjoining each other, but he stated that each village had different potential value of the land. He admitted that from Point A to Point B shown in Ex.R1, the acquired land touched the National Highway No.8. He also admitted that the area shown in blue colour was fully developed at the time of issuance of notification under Section 4 of the Act.

36. Ex.P7 was a sale deed dated 05.12.2003 pertaining to 14

kanals 11 marlas of land situated in village Lakhnola between two Corporates, namely M/s Dominant Web Pvt. Ltd. and M/s Exhibition & Fairs International Pvt. Ltd., wherein for a sum of ₹75,48,000/- the land was sold and the sale consideration was paid through cheque. The per acre rate would come to ₹41,51,103/-. Similarly, Ex.P13 sale deed dated 27.08.2003 for land falling in village Lakhnola was sold to M/s Reliance Industries Limited for land measuring 8 kanals 8 marlas, which had a front on the national highway on the southern side and was sold for ₹53,50,000/- and per acre rate would come to ₹50,90,238/-.

37. Ex.P18 was a sale deed dated 17.03.2005, which was post notification, in favour of M/s New Light Bio Technology Pvt. Ltd. for the land measuring 2 Bigha 7 Biswa 4 Biswani, which fell in village Shikopur was sold for ₹1,00,30,000/- and per acre value would come to ₹68,28,936/-. Ex.P22 was a site plan prepared by Parwinder Singh, Advocate, which showed the land of villages, which was acquired, in different colours and also depicted the CLU granted to Industry M/s Enkay Rubber, which fell in village Lakhnola and also showed location of Perfetti and Duracell industries, which were falling in the adjoining villages of Manesar and Naharpur Kasan. Mark-A which was produced by PW-4 Ratti Ram depicted the acquired land, which was shown in yellow colour of the said land owner.

38. The record in the case of **RFA No.3450 of 2017 'Rattan Lal and others Vs. State of Haryana and others'**, pertaining to village Nawada Fatehpur would go on to show that in the petition under Section

18 it has been averred that there was a distance of 5 Km from the National Highway No.8 and land in question was at a distance of 8 Kms from IMT Manesar. The Gurgaon City was at a distance of 10 Kms. The said fact of distance was sought to be improved by the appellant-Rattan Lal in the affidavit submitted by him, wherein it was stated that the land was 1 Km from IMT Manesar and he denied the fact in the cross-examination that the acquired land is more than 5 Km away from the National Highway No.8. The site plan was exhibited by PW-2 Parkash Chand Saini, Draftsman to depict the location in pink colour, which showed the land fell on top of village Lakhnola and similarly abutting Naharpur Kasan which was below to it.

CM-4287-CI-2017 in RFA No.2510 of 2013 (Issue No.(v) firstly):

39. The present application under Order 41 Rule 27 CPC read with Section 151 CPC has been filed in **RFA No.2510 of 2013 'Mahabir Singh and others Vs. State of Haryana and others'** arising out of the Award dated 24.12.2012 **Roshan Lal (supra)** has been filed seeking to produce additional evidence on record. Reference was made to various zimni orders passed in the said case to submit that there was a casual approach to adduce evidence and, therefore, the additional evidence as such, would assist this Court to determine the correct market value of the acquired land. Accordingly, sale deeds Ex.A1 to A51, site plan Ex.A52, Ex.A53 were sought to be brought on record on the ground that they are per se admissible in terms of the Section 51-A of the Act.

40. The chart would go on to show that sale deeds starting from

17.07.1996 had been appended pertaining to village Naharpur Kasan, whereby the value of the land varied from ₹25 lakhs per acre and which went upto ₹45 lakhs in the year 1997. Similarly for the year 2004 the value was of ₹82,28,571/- per acre for the sale deed at Serial No.41 to 43.

41. A perusal of the said sale deeds would go on to show that they are speculative in nature and land in the sale deeds was purchased by connected persons measuring 7 marlas each. The purchaser in one is Rajiv Kumar son of Shri Murari Parsad Singh resident of J.F. 43A, IInd Floor, Khirki Extension, Malvi Nagar, New Delhi. In the second the purchaser is Saurabh Nehru resident of same address and similarly by Annexure A-43, 7 marlas of land was purchased by Smt. Bindwasni resident of same address. Thus, these sale deeds are obviously executed for the purpose of enhancing the market value of the land in question, for which the landowners were well aware that the same was going to be subject matter of acquisition and the same are doubtful in nature and cannot be relied upon in manner.

42. The sale deed at Serial No.44 onwards are post-notification and are not liable to be taken into consideration in any eventuality, keeping in view the settled principle of law that the market value is to be assessed on the basis of the sale deed at the time of issuance of notification under Section 4 dated 17.09.2004.

43. The sale deeds are in favour of B.J. Estate Pvt. Ltd. and B.L. Estate Pvt. Ltd. who are registered at a same address in 13 Vasant Lok, New Delhi, who is the purchaser in the sale deeds referred to which are

relevant are of 19.02.1997 and 20.02.1997 (Annexures A-36 to A-40)

The categorical jump in prices between the year 1996 to 1997 from ₹25 lakhs to ₹45 lakhs for the land in village Naurangpur, which is closer to Naharpur Kasan would go on to show that there was an astronomical surge, as such even if the benefit of land in village Naurangpur is to be granted. The purchaser is the same who had purchased large chunks of land in the said area for purposes of getting benefit of the development taking place. The sale deeds were already in existence and could have easily been brought on record so that the other side could have rebutted the same as to explain the jump and the artificial surge of prices. The sale deeds of village Naurangpur, which had been executed for ₹45 lakhs per acre in the year 1997 on the site plan Ex.A52 and A53 would also go on to show that they are across the highway and situated in village Naurangpur and also fall on the road which is leading to Village Naurangpur leading from National Highway No.8. Therefore, the value would be much higher in view of the peculiar location and it has got access to main highway from the wide road and, therefore, it should not be a safe exemplar to rely upon the said sale deeds of 1997, keeping in view the fact that the acquisition is of the year 2004 in question.

44. It is pertinent to notice that in both the site plans the location of M/s Conway Developers Private Limited has consciously not been shown, though sufficient opportunities was as such were with the land owners. As noticed it has already come on record in the evidence in Ram Niwas' case of PW4, Rajinder Singh, the vendor that the location of M/s

Conway Developers Private Limited is situated across the highway and abutting the main highway. It is obvious that the land owners are also playing hide and seek by avoiding showing the exact location of the M/s Conway Developers Private Limited, which fell on the highway and would naturally have a higher value and potential being closer to Gurgaon.

45. The zimni orders would go on to show that issues were framed on 09.10.2010 and no evidence was present on 10.11.2010. The consolidation of cases was done on 06.12.2010 and no evidence was present on 21.03.2011 and on 02.05.2011 and further cases were consolidated. The cases were received by transfer on 04.08.2011 by another Reference Court and thereafter further transferred to the officer who had decided the cases. No evidence was present on 14.02.2012 and statement of the first PW was recorded on 13.03.2012. On 23.04.2012 PWs were present, but evidence was not recorded. On 17.05.2012, evidence of three witnesses were recorded and it was noticed that 10 opportunities were availed by the petitioners and, therefore, the cases were adjourned to 07.06.2012. On the said date statements of 2 PWs Ashok Kumar and Manoj were recorded and Dalel Singh partly examined. The said witness was not present on 09.08.2013 and certain documents were tendered into evidence. The cross-examination was not conducted on 16.08.2013 and evidence was eventually closed by order on the said date by noting that no further opportunity would be granted as 12 opportunities were availed of and order was pronounced on 31.08.2013.

46. Thus, it would be apparent that the proceedings were conducted for over a period of 1 year and 6 months and sufficient opportunities as such were given to lead evidence. As many as 28 documents were exhibited by the land owners. There is also sufficient material on record for this Court to enable it to pronounce judgment in the form of sale deeds and the lacuna cannot be permitted to fill under Order 41 Rule 27 CPC, as held by the Apex Court in **Satish Kumar Gupta** (supra).

“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 N. Kamalam v. Ayyaswami, 2001(4) R.C.R. (Civil) 193 : (2001) 7 SCC 503 : para 19. There was no ground for remand in these circumstances.”

47. Accordingly, this Court is of the opinion that the present application does not have any merit and the same is dismissed.

Issue No.(i)

48. Coming to the issue No.(i) on the principle of cumulative increase whereby this Court has assessed the market value @ ₹41.40 for Village Naharpur Kasan in **Madan Pal III** (supra) and whether the same principle should be followed to award a sum of ₹55,04,809, if 12% enhancement is granted and ₹58,85,786/-, if 15% enhancement is granted. While deciding the above-said market value for the notifications dated 26.02.2002, 06.03.2002 and 07.03.2002, a finding has already been recorded for earlier Phases-II, III & IV of IMT, Manesar, by noting the

location of the land and it was concluded as urbanisable land situated near developed villages with infrastructural facilities. The evaluation was fixed on the basis of sale deed dated 20.09.1996 in favour of M/s Times Master Pvt. Ltd. and keeping in view the cumulative increase calculated at both 12% & 15% and also keeping in view the fact that on an earlier occasion, the amount had been fixed at a sum of ₹20 lakhs and thus, the market value had been assessed. The benefit of the landowners of M/s Kohli Holdings Private Limited, Village Manesar had been given in the peculiar facts and circumstances as it was situated bang on the Highway having a frontage of 2 acres and was given additional 50% locational advantage and also 30% more on account of severance charges as the balance land had been granted CLU. If the same principle is applied for the acquisition in question, in the present case, which is for the notification under Section 4 dated 17.09.2004, it would amount to following the cumulative increase method for a period of 8 years since the sale deed in question at that point of time was of 1996 and also the earlier acquisition of 1994 had also been kept in mind. The said principle, beyond a period of 4-5 years, was not approved by the Apex Court, keeping in view the law laid down on an earlier occasion in **Rameshbhai Jivanbhai Patel's case** (supra).

49. In **Civil Appeal Nos. 13132 to 13141 of 2017 'Manoj Kumar etc. Vs. State of Haryana and others'** decided on 13.09.2017, the principle of following the earlier award for which there was a 6 years gap by giving an cumulative increase without going into the factual

matrix, was not approved while setting aside the earlier judgment of this Court pertaining to Jagadhri. Relevant portion reads as under:

*“14. In our opinion, the High Court could not have placed an outright reliance on the decision of Swaran Singh's case, without considering the nature of transaction relied upon in the said decision. The decision could not have been applied ipso facto to the facts of the instant case. In such cases, where such judgments/awards are relied on as evidence, though they are relevant, but cannot be said to be binding with respect to the determination of the price, that has to depend on the evidence adduced in the case. However, in the instant case, it appears that the land in Swaran Singh's case was situated just across the road as observed by the High Court as such it is relevant evidence but not binding. As such it could have been taken into consideration due to the nearness of the area, but at the same time what was the nature of the transaction relied upon in the said case was also required to be looked into in an objective manner. Such decisions in other cases cannot be adopted without examining the basis for determining compensation whether sale transaction referred to therein can be relied upon or not and what was the distance, size and also bonafide nature of transaction before such judgments/awards are relied on for deciding the subsequent cases. It is not open to accepting determination in a mechanical manner without considering the merit. Such determination cannot be said to be binding. We have come across several decisions where the High Court is adopting the previous decisions as binding. The determination of compensation in each case depends upon the nature of land and what is the evidence adduced in each case, may be that better evidence has been adduced in later case regarding the actual value of property and subsequent sale deeds after the award and before preliminary notification under section 4 are also to be considered, if filed. It is not proper to ignore the evidence adduced in the case at hand. **The compensation cannot be determined by blindly following the previous award/judgment. It has to be considered only a piece of evidence not beyond that.** Court has to apply the judicial mind and is*

*supposed not to follow the previous awards without due consideration of the facts and circumstances and evidence adduced in the case in question. **The current value reflected by comparable sale deeds is more reliable and binding for determination of compensation in such cases award/judgment relating to an acquisition made before 5 to 10 years cannot form the safe basis for determining compensation.***

15. The awards and judgment in the cases of others not being inter parties are not binding as precedents. Recently, we have seen the trend of the courts to follow them blindly probably under the misconception of the concept of equality and fair treatment. The courts are being swayed away and this approach in the absence of and similar nature and situation of land is causing more injustice and tantamount to giving equal treatment in the case of unequal's. As per situation of a village, nature of land its value differ from the distance to distance even two to three-kilometer distance may also make the material difference in value. Land abutting Highway may fetch higher value but not land situated in interior villages.

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

17. There is yet another serious infirmity seen in following the judgment or award passed in acquisition made before 10 to 12 years and price is being determined on that basis by giving either flat increase or cumulative increase as per the choice of individual Judge without going into the factual scenario. The said method of determining compensation is available only when there is absence of sale transaction before issuance of notification under section 4 of the Act and for giving annual increase,

evidence should reflect that price of land had appreciated regularly and did not remain static. The Recent trend for last several years indicates that price of land is more or less static if it has not gone down. At present, there is no appreciation of value. Thus, in our opinion, it is not a very safe method of determining compensation.

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

50. Thereafter, in **CA No.17790-17801 of 2017 titled *State of Haryana Vs. Chetin Kaur***, decided on 26.09.2017, the enhancement of 12% cumulative increase granted was also set aside for land of Sirsa as it was on the basis of an earlier award of 1994 whereas the acquisition was of the year 2002.

51. Therefore, issue No.(i) claiming market value on the principle of cumulative increase from the date of Section 4 notification i.e. 2002, is not liable to be accepted, as it would amount to giving the cumulative increase from 1996 in effect.

Issue No.(ii)

52.. On this issue of sale exemplars in favour of M/s Conway

Developers Pvt. Ltd., which was rejected, firstly, on account of the fact that it was of the adjacent village and cannot be held to be justified, in any manner. The acquisition, as noticed, was for the land falling in Village Naurangpur also in the said notification for 68 kanals 15 marlas and the 2 sale deeds in question, for total 78 kanals and 2 marlas (Ext. P24 & P25 for 32 kanals 2 marlas and 46 kanals were executed on 16.08.2004) a month prior to the Section 4 notification and were for large chunks of land and would have been relevant for the purposes determining the market value. It is settled principle that the sale deeds of the adjoining villages can also be taken into consideration. Reference can be made to the judgments of the Apex Court in **Charan Dass (supra)** wherein it has been held that sale instances of the same villages and of the adjoining villages also, in the absence of the sale deeds of the same village, can be taken into consideration. Relevant portion reads as under:

“As already noted, the first step being the determination of the market value of the land on the date of publication of Notification under sub-Section (1) of Section 4 of the Act. One of the principles for determination of the market value of the acquired land would be the price that a willing purchaser would be willing to pay if it is sold in the open market at the time of issue of Notification under Section 4 of the Act. But finding direct evidence in this behalf is not an easy task and, therefore, the Court has to take recourse to other known methods for arriving at the market value of the land acquired. One of the preferred and well accepted methods adopted for ascertaining the market value of the land in acquisition cases is the sale transactions on or about the date of issue of Notification under Section 4 of the Act. But here again finding a transaction of sale on or a few days before the said Notification is not an easy exercise. In the absence of such evidence contemporaneous transactions in respect of the lands,

which have similar advantages and disadvantages is considered as a good piece of evidence for determining the market value of the acquired land. It needs little emphasis that the contemporaneous transactions or the comparable sales have to be in respect of lands which are contiguous to the acquired land and are similar in nature and potentiality. Again, in the absence of sale deeds, the judgments and awards passed in respect of acquisition of lands, made in the same village and/or neighbouring villages can be accepted as valid piece of evidence and provide a sound basis to work out the market value of the land after suitable adjustments with regard to positive and negative factors enumerated in Sections 23 and 24 of the Act. Undoubtedly, an element of some guess work is involved in the entire exercise, yet the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard.”

53. The Reference Court could have well given a appropriate cut, keeping in view the fact that the sale deeds were of land on the Highway and had a better locational advantage being closer to Gurgaon, preferred to just brush them aside and to fall back on the safe beaten mode, by giving a cumulative increase on the award which had been passed by this Court on an earlier occasion, which was not the proper method to assess the market value. Similarly, the finding which has been recorded by the Reference Court for Village Naurangpur also, in which the 2 sale deeds were exhibited, merely because it was in favour of a private developer, was not justified. The Reference Court could have put an appropriate cut on the sale deeds in question, keeping in mind the location of the land being on highway, which was the subject matter of said sale deeds and thereafter, proceed to assess the market value, since it is settled principle that assessment of market value cannot be done

mathematically and with arithmetical precision. There is always an element of guess work involved, as has been held in '**Trishala Jain and another Vs. State of Uttaranchal and another** '2011 (6) SCC 47. Resultantly, issue No.(ii) is decided in favour of the landowners that the sale exemplars of M/s Conway Developers Pvt. Ltd. should have been taken into consideration for assessing the market value and would have evidentiary value.

Issue No.(iii)

54. On issue No.(iii) regarding the principle of deduction, the factual matrix is apparent that the acquisition is of a huge chunk of land, as noticed, measuring 956 acres 5 kanals 18 marlas falling in these 6 villages including Manesar of which we are not concerned in the present set of appeals and the land references in question never dealt with the said village. In comparison, the sale exemplars which have come on record and which are liable to be taken into consideration are of much smaller portion. The total area of M/s Conway Developers Pvt. Ltd. is 78 kanals 2 marlas (9.7 acres). Therefore, is a miniscule area in comparison to the acquisition which has been made. Therefore, placing blind reliance upon the said sale deeds for assessing the market rate, cannot be taken into consideration without applying the appropriate cut on the settled principles of loss of amount whereby roads and parks are provided in a planned development. Even the witness of HSIIDC himself has stated that after the grant of the CLU, 60% area can be developed whereas the remaining 40% is to be utilized for basic amenities. Even otherwise, to

get a ready and willing buyer for such a huge chunk of land is not feasible and it is only in the case of planned development, if the State is acquiring the land of such huge area or where in the case of a company interested such a transaction can take place.

55. The judgment in **Subh Ram** (supra), which has been relied upon and which was for establishment of a Jail wherein 1/3rd deduction had been made by the Reference Court in the said case had been upheld by this Court. An argument was raised before the Apex Court that since the purpose of acquisition was for construction of Jail and no development activity was to be carried out, was repelled, on the ground that the purpose of acquisition, as such, is not to be taken into consideration. It was held that development would involve series of services of considerable expenditure and these standardized into 1/3rd deduction towards expenses of development and where the valuation of agricultural land is to be based on the sale price of smaller developed plot in a private lay-out, development cut has to be made. The usage of land after acquisition was not to be taken into consideration under Section 24 and it was held that it is mandatory to put a development cut. The observations as such in **Atma Singh Vs. State of Haryana 2008 (2) SCC 568** made were held to be per incuriam. Relevant portion reads as under:

“13. The legal position is therefore clear and well settled. But in Atma Singh, after reiterating the said principle regarding deduction of development cost, this Court made an observation that no deduction need be made having regard to the purpose of acquisition, which requires to be clarified. We extract the relevant portion below:

"15. The question to be considered is whether in the present case those factors exist which warrant a deduction by way of allowance from the price exhibited by the exemplars of small plots which have been filed by the parties. The land has not been acquired for a Housing Colony or Government Office or an Institution. The land has been acquired for setting up a sugar factory. The factory would produce goods worth many crores in a year. A sugar factory apart from producing sugar also produces many by-product in the same process. One of the by-products is molasses, which is produced in huge quantity. Earlier, it had no utility and its disposal used to be a big problem. But now molasses is used for production of alcohol and ethanol which yield lot of revenue. Another by product degases is now used for generation of power and press mud is utilized in manure. Therefore, the profit from a sugar factory is substantial.

Moreover, it is not confined to one year but will accrue every year so long as the factory runs. A housing board does not run on business lines. Once plots are carved out after acquisition of land and are sold to public, there is no scope for earning any money in future. An industry established on acquired land, if run efficiently, earns money or makes profit every year. The return from the land acquired for the purpose of Housing Colony, or Offices, or Institution cannot even remotely be compared with the land which has been acquired for the purpose of setting up a factory or industry. After all the factory cannot be set up without land and if such land is giving substantial return, there is no justification for making any deduction from the price exhibited by the exemplars even if they are of small plots. It is possible that a part of the acquired land might be used for construction of residential colony for the staff working in the factory. Nevertheless where the remaining part of the acquired land is contributing to production of goods yielding good profit, it would not be proper to make a deduction in the price of land shown by the exemplars of

small plots as the reasons for doing so assigned in various decisions of this Court are not applicable in the case under consideration."

The above observations no doubt seem to suggest that where the acquisition is for a residential lay out, deduction towards development cost is a must, but if the acquisition is for an industry which does not require forming a layout of sites, the market value of small residential plots may be adopted without any cuts towards development cost. The said observations are made with reference to the special facts of that case. If they are read out of context to support a contention that the purpose of acquisition is a relevant factor to avoid the deduction of development cost in valuation, it may then be necessary to consider the said observations as having been made per incuriam, as they overlook a mandatory statutory provision – Section 24 (clause fifthly) of the Act and the series of decisions of larger benches of this Court which hold that when value of large tracts of undeveloped lands is sought to be determined with reference to small residential plots in developed area, it is mandatory to deduct an appropriate percentage towards development cost. But it may be unnecessary to consider whether the observations are per incuriam as para 15 of the decision makes it clear that what is stated therein, is with reference to the special facts of that case, with a view not to disturb the smaller deduction of 10% by the High Court, and not intended to be statement of law."

56. It was, in such circumstances, held that the deduction of 10%, which had been granted in **Atma Singh's case** (supra), where the acquisition was for a factory and which was producing goods worth many crores and would give good returns would be applicable.

57. Similarly, the judgment in **Pran Sukh's case** (supra), the sale deeds between M/s Heritage Furnitures Pvt. Ltd. and M/s Dura Cell India Pvt. Ltd., which pertained to 12 acres of land, which was executed between two corporate entities was the sale exemplar taken into

consideration. The interference by the Apex Court was on two accounts, one that in first bunch of appeals, ₹15 lakhs had been fixed as market price and in the second, ₹12 lakhs, by relying upon the same sale deed which was for 12 acres of land. The cut also had been imposed of 1/3rd in the first bunch of appeals and 1/4th in second bunch, was also under doubt and also no cut was granted, as such, keeping in view the fact that the acquisition was of 1490 acres 3 kanals 17 marlas in one set and 256 acres 3 kanals 17 marlas in other set.

58. In **Haridwar Development Authority, Haridwar** (supra), 38.6.8 bighas of land was being acquired for housing colony. The argument that there should be no deduction or not, was repelled, which was 25% in the said case, keeping in view judgment passed in **Lal Chand's case** (supra). Similarly, in **Nirmal Singh's case** (supra) also, deductions have been approved, which was for acquisition of 44.3 acres of land for residential and commercial purposes and keeping in view the similar sale exemplars.

59. 60% deduction, as such, was made in **Kapil Mehra's case (supra)** which was an acquisition for 12 bighas, for development of Vasant Kunj, which was as per development plan of Delhi. 40% deduction granted by the High Court and 1/3rd towards development costs, was modified to deduction of 35% towards utilization of land or towards roads, drains, parks and further deduction of 25% towards development charges. In **Chandershekar (dead) by LRs & others Vs. Land Acquisition Collector & another (2012) 1 SCC 390** also, it was

held that the development cut could be imposed upto 75%. The percentage of cut, therefore, accordingly discussed under the first component which could be taken under the first step, which was to be provided for development infrastructure and secondly under the second component which was towards the expenditure which has to be incurred in providing and raising infrastructure and civic amenities and the cost for levelling hillocks and filling up low lying lands and ditches, plotting out smaller plots and the like, thus came in the second portion. It was noticed that the land acquired was 144 acres and the exemplar was only 40x60 square feet (2400 square feet) and keeping in view those factors in mind, the reduction which had been done by the High Court to fix the compensation @ ₹65,000/- per acre was held to be justified. In such circumstances, the argument which has been raised that there should be no development cut, is not justifiable, in view of the settled position of law. Thus, appropriate cut is liable to be made, which shall be discussed in the next issue, keeping in view the location of the land.

Issue No.(iv) **The value of land falling on the Highway**

60. From the evidence which has been discussed above and the site-plan in question, one aspect is amply clear that the land is more than the earlier acquisition in **Madan Pal III** (supra) and it is of villages closer to the Highway, as noticed, where lion's chunk is going to Naharpur Kasan (3672 kanals 15 marlas), which in comparison to Lakhnoula (3515 kanals 1 marla) is not abutting the Highway, whereas Lakhnoula and Naurangpur (68 kanals 15 marlas) have this advantage.

Similarly, Shikohpur (217 kanals 5 marlas) and Nawada Fatehpur (65 kanals 8 marlas) are closer to Gurgaon, which would be apparent from Site-plan (Ext.P28), though at a little distance from the Highway. The potentiality of the land also cannot be disputed being closer to Gurgaon and before Manesar, on the Prime Expressway National Highway No.8, leading to Jaipur. The proposed Metro route which was going to Manesar, which would be clear from the Master-Plan of 2021 and 2025 also passes through the land. The land in Village Sikohpur was 1 ½ acres away from the Highway, as per the statement of the witness himself, though it fell in the lay-out plan of 82 & 81-A. Manesar was approximately 2 kms away from the acquired land and portion of which was developed earlier, was also touching its boundaries.

61. From Ext.R1, which was the computerized copy of the lay-out plan, the witness of Corporation also admitted that from Point-A to Point-B, the acquired land which was falling in Village Lakhnoula, touched the National Highway No.8, which was shown in blue colour. In such circumstances, keeping in view the settled principle that land situated on the Highway always gets a better price, this Court is of the opinion that the land falling in Village Naurangpur and Lakhnoula are entitled for a better pricing than the land which falls in Naharpur Kasan, in comparison to the other 2 villages. Similarly, the land falling in Village Sikohpur and Nawada Fatehpur, value would also be at par with Village Naharpur Kasan and cannot be given the same value as the land abutting and falling on the National Highway.

62. In '**V. Hanumantha Reddy (Dead) by Lrs. Vs. The Land Acquisition Officer & Mandal R. Officer**' 2003 (12) SCC 642, the difference of the land falling away from the highway and that abutting the national highway was kept in mind to hold that the land falling on the highway always fetches more price than the land falling in the interior. Resultantly, it was held that the sale deeds which are not abutting the national highway had been rightly relied upon by the High Court to assess market value.

63. In **Haridwar Development Authority, Haridwar** (supra), it was held by the Apex Court that there was a small and compact portion of land, which was acquired measuring 38.6.8 bighas, then a uniform rate can be given and the said methodology adopted by the High Court was upheld. It was, however, noticed that if a large tract of land is acquired and some lands are 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, whereas the interior lands would be entitled for the lesser value. It was, accordingly, held that when other end is 2-3 Kms away, the same rate cannot be adopted and belting method from highest to lowest could be adopted. In a case of large tract of land which was being acquired which are without any special road access, then only it could be logical to award one uniform rate.

64. In the present case, as noticed, two villages are falling on the National Highway and, therefore, the villages at back cannot claim the same rate, keeping in view the said principle.

65. In '**Ashok Kumar and another Vs. State of Haryana' 2016 (4) SCC 544**, the claim of the landowners who did not have access to the national highway to seek similar market value was denied. The relevant portion reads as under:-

“12. In the case of the appellants herein, it is an admitted position that the properties do not abut the national highway. Admittedly, it is situated about 375 yards away from the national highway and it appears that there is only the narrow Nahan Kothi Road connecting the properties of the appellants to the national highway. Therefore, it will not be just and proper to award land value of ₹250/- per square yard, which is granted to the property in adjoining village. Having regard to the factual and legal position obtained above, we are of the considered view that the just and fair compensation in the case of appellants would be ₹200/- per square yard.”

66. In '**Bijender and others Vs. State of Haryana 2017 (8) Supreme Court 1999**', the belting system was upheld for the acquisition in Safidon in District Jind, which was for development and utilization of residential and commercial sectors. The acquired land in that case was a large chunk of land having its frontage abutting the roadside and it was held that the belting system was rightly applied for determination of fair market rate.

67. This Court is well aware of the principle of uniformity which is normally granted, but the fact remains that once this Court is doing the exercise and keeping in view the factors which have to be assessed on the mental screen while assessing the market value, the value of the land falling on the Highway cannot be lost sight of, while placing reliance upon the judgments of the Apex Court and looking at the hypothetical

lay-out which are Exts.R1 & R5, which have themselves been brought on record by the Corporation. The observations in '**P. Ram Reddy and others Vs. Land Acquisition Office**' (1995) 2 SCC 305, thus, come to mind, which are as under:-

“11. The material to be so placed on record or made available in respect of the said matters and the like, cannot have the needed evidentiary value for concluding that the acquired land being used for building purposes in the immediate or near future unless the same is supported by reliable documentary evidence, as far as the circumstances permit. When once a conclusion is reached that there was the possibility of the acquired land being used for putting up buildings in the immediate or near future, such conclusion would be sufficient to hold that the acquired land had a building potentiality and proceed to determine its market value taking into account the increase in price attributable to such building potentiality.

12. Then, comes the question of determining the market value of the acquired land with building potentiality. Undoubtedly such market value of the acquired land with building potentiality comprises of the market value of the land having regard to the use to which it was put on the relevant date envisaged under [Section 4 \(1\)](#) of the LA Act plus the increase in that market value because of the possibility of the acquired land being used for putting up buildings, in the immediate or near future. If there is any other land with building potentiality similar to the acquired land which had been sold for a price obtained by a willing seller from a willing purchaser, such price could be taken to be the market value of the acquired land, in that, it would have comprised of the market value of the land as was being actually used plus increase in price attributable to its building potentiality. If the prices fetched by sale of similar land with building potentiality in the neighbourhood or vicinity of the acquired lands with building potentiality, as on the relevant date envisaged under [Section 4 \(1\)](#) of the LA Act, are unavailable, it becomes necessary to find out whether any building plots laid out in a land similar to the

acquired land had been sold by a willing seller to a willing buyer on or near about the relevant date under Section 4(1) when the acquired land had been proposed for acquisition and then to find out what would be the price which the acquired land would have fetched if had been sold by making it into building plots similar to those sold. In other words, an hypothetical lay- out of building plots in the acquired land similar to that of the layout of building plots actually made in the other similar land, has to be prepared, and the price fetched by sale of building plots in the lay-out actually made should form the basis for fixing the total price of the acquired land with building potentiality, to be got if plots similar to other plots had been made in the latter land and sold by taking into account plus factors and minus factors involved in the process.”

68. Similarly, the smallness of the size and the largeness of the area which has been acquired proximity to roads and frontage of the same, some special advantageous factors which have been given in **'Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona' 1988 (3) SCC 751**, would be applicable. Relevant portion reads as under:-

<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>	

69. In '**Surender Singh Vs. State of Haryana and others**' 2018 AIR (SC) 1013, the Apex Court has held that one isolated rate of one land cannot be made applicable to the entire lands and various factors have to be taken into account as to the distance between each village and development carried out in the neighbourhood area. The site plans have to be taken into consideration where the development taken place and quality of the acquired land of each village are material issues to assess the market rate after taking into account all reasonable aspects. The relevant portion reads as under:-

“34. In our considered opinion, the approach of the High Court in the facts of these cases does not appear to be right inasmuch as the High Court failed to take into consideration several material issues which arose in these cases and had bearing on determination of the fair market rate of the land in question under Section 23 of the Act.

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 endeavour 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.”

70. Resultantly, keeping in view the above principle in mind and keeping in view the location of the land and in view of the evidence which has come on record, the market value as such in the said area of the land falling on the national highway was hovering around ₹57 lakhs per acre on the date of Section 4 notification on 17.09.2004. The first instance as noticed is of sale deeds in favour of M/s Conway Developers Private Limited, which has been produced by the vendors themselves and which was falling on the National Highway and as noticed it is closer to Gurgaon than the land which is acquired since it was for village Naurangpur.

71. The other instance which can be kept into mind is Ex.P13 dated 27.08.2003 for 8 kanals 8 marlas (slightly over one acre) which was executed in favour of M/s Reliance Industries Limited falling in the limits of Lakhnoola. The frontage was on the National Highway No.8 of southern side itself as per description of the plot and the sale deed in question is more than a year prior in point of time. Keeping in view the growth factor and the potentiality of the land in question, which has been discussed in the evidence above that the IMT Manesar was being developed since the year 1994 in the vicinity and market value had already been assessed @ ₹20 lakhs per acre at that point of time and for the year 2002 the market value had been assessed @ ₹41.40 lakhs per acre for adjoining village Naharpur Kasan, the pressure of building activity was immense and pace of progress was rapid. The industries had been built up and exempted from acquisition which has been shown in

blue colour in the site plans. The distance to Manesar was only 2 Km away, where the main activities were taking place. Gurgaon city was only 11 Kms situated on the other side and the overall picture that can be drawn up was that there was certainable trend of development from both sides towards the land in question. The site plan showed that the land was situated in more advantageous location and the potentiality was immense.

72. Keeping in view these circumstances, the enhancement of 12% would be required on the sale deed Ex.P13 for which the value of land which was ₹50,90,238/-. The 12% benefit is ₹6,10,828/- and per acre value works out to ₹57,01,066/- per acre. As noticed Ex.P13 is of one acre of land and, therefore, the smallness of the plot is not applicable in the facts and circumstances, as one acre of land falling on the highway cannot be said to be a small portion of land. The description also shows that it had a 75.8 meter frontage on the highway as per the dimensions given and, accordingly, this Court is of the opinion that a 15% cut for development would be appropriate in the facts and circumstances, which is liable to be put to assess the market value, which comes to ₹8,15,159/-. Thus, reducing it from ₹57,01,066/-, the market value works out to ₹48,45,907/- per acre (rounded off to ₹48,46,000/-) for the land falling in village Naurangpur and village Lakhnoura, which are abutting the highway. The sale exemplar being of higher value is, thus, being preferred over Ex.P7, which is not falling on the Highway also.

73. In similar circumstances in '**Chakas Vs. State of Punjab**

and others' 2011 (10) SCR 618, when the land was being acquired for setting up of industry and infrastructure, it was held that the deduction of 50% of value towards the development charges was not justified by the Reference Court. It was noticed that the land was to be used for the industrial unit for which it was being acquired and, therefore, 10% reduction was upheld.

74. It is pertinent to notice here also that acquisition was for mixed purpose and the Corporation is going to recover the costs as such from the eventual allottees and, therefore, 15% reduction would be justified in the facts and circumstances.

75. In '**Kasturi Vs. State of Haryana' 2003 (1) SCC 354**, the 20% cut was applied when 84.23 acres was acquired for development of residential and commercial area in Bhiwani. The argument that there should be no reduction was repelled by noticing that the sale exemplar was of 3 kanals of land located on the main road itself and resultantly the 20% cut was applied by the Single Judge and which had been upheld by the Division Bench was also kept intact.

76. As noticed that the land which was acquired in the year 2002 is further away and closer to Manesar and away from Gurgaon, the market value of which has been assessed @ ₹41.40 per acre for village Naharpur Kasan and other villages of the compact block in **Madan Pal (III) (supra)** on 09.03.2018. The earlier development having taken place in and around village Manesar, it being the hub of development and the IMT Manesar coming around it on the first account way back in the year

1994, the value of land of village Manesar and its surrounding were a relevant factor, whereby the industry concerned on an earlier occasion, namely, M/s Kohli Holding Pvt. Ltd. has been given a higher rate. Therefore, though the present land might be falling closer to Gurgaon as such, but away from the hub of development which is taking place at Manesar cannot be equated with same compensation, which has been given to M/s Kohli Holdings Pvt. Ltd and the landowners of village Manesar. The acquisition is of 2½ years later and, therefore, keeping in view the said factors also in mind, compensation for the land falling closer to the town of Gurgaon would be liable to be granted which was granted in the earlier acquisition for the land further away and, therefore, the assessment which has been made @ ₹48,45,907/- per acre (rounding it off to ₹48,46,000/- per acre) would be a much appropriate market value.

77. For the land of other villages i.e. Nawada Fatehpur, Naharpur Kasan, Shikopur an other 10% is liable to be reduced on the said compensation assessed and, therefore, the market value is assessed @ ₹43,61,317/- per acre (rounding it off to ₹43,61,400/- per acre) for the said villages. From the evidence of witnesses discussed above, it would be clear that village Nawada Fatehpur and Shikhopur are at a distance from the highway. Nawada Fatehpur is at a distance of 4-5 Kms and Shikhopur is situated where the land was acquired for CRPF and also situated behind Naurangpur and not abutting the National Highway.

78. The evidence which is on record upon which one can safely

fall back, in the present set of cases is in the form of the 2 sale deeds in M/s Conway Developers Ltd. (Exts. P24 & P25) in one set of cases, which show that the market value was ₹57,60,000/- per acre in village Naurangpur. But as noticed above, the location has not been specifically brought to the notice of this Court, though an application for additional evidence has been filed, bringing on record the site-plans. One witness PW has deposed that it is abutting the main Highway and appropriate cut has, thus, to be fixed upon the same and especially since the land was towards Gurgaon, as noticed and abutting the Highway. Thus, if a 15% cut is given on the same, on account of locational advantage, it would work out ₹8,64,000/- and the market rate would be ₹48,96,000/- per acre which is around the same price as is being fixed @ ₹48,46,000/- per are.

79. Resultantly, the appeals of the HSIIDC are allowed, whereas the appeals of the landowners for further enhancement and cross-objections for enhancement which are filed are dismissed and the awards passed by the Reference Courts are, accordingly, modified.

(i) The market value of the land falling in two villages, namely, Naurangpur and Lakhnoula is assessed @ ₹48,46,000/- per acre alongwith all statutory benefits on 17.09.2004.

(ii) For the land falling in villages Nawada Fatehpur, Naharpur Kasan and Shikhopur, the market value is fixed @ ₹43,61,400/- per acre alongwith all statutory benefits on 17.09.2004.

(iii) The directions of the Apex Court in the case of **Pran Sukh (supra)** will also be adhered to while disbursing the balance

amount of compensation.

(iv) 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 individual land owner.

MAY 25, 2018

Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No