

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.8761 of 2014 (O&M)

Reserved on 29.11.2018

Date of Decision: 13.12.2018

Swaran Kaur & Ors.

... Appellants

VS.

State of Haryana & Ors.

... Respondents

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

Present: Mr. ML Sharma, Advocate;
Mr. Shoaib Khan, Advocate;
Mr. Kabir Sarin, Advocate for landowners

Mr. Sudeep Mahajan, Addl. AG Haryana and
Ms. Vibha Tewari, AAG Haryana

Mr. RD Bawa, Advocate and
Mr. Samuel Gill, Advocate for HUDA (RFA-74-2015)

G.S. SANDHAWALIA, J.

(1) This order shall dispose of 46 Regular First Appeals filed by the landowners and the State and for the sake of brevity, the RFA No.8761 of 2014 is being treated as the lead case. The details of the RFAs are tabulated hereunder:-

RFA filed by	RFA No.
Landowners --	1074 of 2007, 7826 to 7830, 7863 to 7875, 8761, 8945 to 8947 of 2014; 74 of 2015
State --	567, 568, 570, 571 to 573, 575 to 578, 580 to 588, 590 to 592 of 2015

(2) Present set of appeals filed under Section 54 of the Land Acquisition Act, 1894 arise out of the notification dated 28.07.1999 whereby land measuring 24.71 acres was acquired in the revenue estate of village Maheshpur, Hadbast No.368 for public purpose of development and utilization of land as residential and commercial for Sector 21, Panchkula under the Haryana Urban Development Act, 1977.

(3) In the first award of the Reference Court, Panchkula dated 02.11.2006 only ₹ 518 per sq.yards (₹ 25,07,120 lakhs per acre) has been awarded as market value. To come to the said assessment, the Reference Court had placed reliance upon the award of the notification dated 26.04.1995 whereby vide award (Ex.R1), a sum of ₹ 350/- had been awarded per sq.yards for the said village. Resultantly, the said award being the best piece of evidence in order to determine the market value was kept in mind while granting 12% increase for 4 years to work out market value @ ₹ 518/- per sq.yards. Resultantly, the landowners are in appeal.

(4) However, vide award dated 05.05.2014 for the same notification, the Reference Court, Panchkula has granted ₹ 1440/- per sq.yards primarily on the strength of brochures issued by HUDA in the adjoining area and resultantly the State has also challenged the said enhancement by filing appeals. The Reference Court in the said set of cases placed reliance upon Ex.P15 which was a brochure issued by HUDA for allotment of land in the year 1997 to distinguish the award which was of the year 1995 by holding that the acquired land is situated adjoining to the developed area and further that the land was acquired for HUDA. Therefore, the brochure issued by the HUDA was taken into consideration as a benchmark to assess the market rate and keeping in view the fact that the same was issued on 12.11.1997 whereas the notification was issued on 28.07.1999 and the gap was of 20 months. 20% enhancement (₹ 800/-) was put on the same to assess the market value @ ₹ 4800/- per sq.yards. Thereafter 50% development cut was put on account of the common purposes like parks, roads, green belts, community centres, schools, temples etc. to bring down the market value to ₹ 2400/- and thereafter another 40% (₹ 960/-) cut was

put towards development charges and resultantly, the market value was assessed @ ₹ 1440/- which is seriously objected to by the State.

(5) Mr. ML Sharma and Mr. Shoaib Khan, Advocates have justified the fixing of market price on the ground that the area was situated right behind the developed portion and therefore, the market value as such was properly assessed as it is surrounded by residential and commercial area. Reliance is placed upon the evidence both in the form of oral and development plans for the said purpose. It is further submitted that even otherwise now the Supreme Court in **Ashok Kumar & Ors. vs. State of Haryana & Ors. (2015) 15 SCC 200** for the notification dated 26.04.1995 has further enhanced the amount from ₹ 350/- to ₹ 715/- and even if 12% enhancement is granted on the same, the market value would still come to ₹ 1125/- (₹ 54,44,000). In the alternative, it is argued that 15% cumulative increase be granted in the facts and circumstances of the case and if that is done ₹ 1250/- per sq.yards would be market value (₹ 60,50,000/-).

(6) In RFA No.8761 of 2014, the appeal pertaining to the reference court order dated 05.05.2014, a Civil Misc. Application No.11735-CI-2018 for additional evidence has been filed for placing on record Annexure A1 to A5 which are judgments passed by this Court pertaining to the similarly situated lands in district Panchkula along with site plan (Annexure A4).

(7) Record of the case pertaining to the award of the Reference Court dated 02.11.2006 would go to show that for the land acquired, the Land Acquisition Collector vide award No.2 dated 05.11.2001 had awarded ₹ 6,50,000/- per acre.

(8) The case of the landowner, in the first reference petition, who is a developer, was that it was the owner of land measuring 50 kanal 13 marlas

and the amount awarded was very low. The Land Acquisition Collector had not taken into consideration the location, situation, nature, potential value and surrounding situations. The land was within the municipal limits of Panchkula and was situated in the commercial and residential area and surrounded by highly developed sectors, residential as well as commercial and government establishments was surrounded from all side much before the publication of the notification under Section 4 by sectors 4, 12, 12-A, 20, 22 and 25 of the HUDA. Private Nursing homes, schools, banks, police posts, bus stand, markets of all commodities etc. were already there. The underground water was also potable and the acquired land was even and in level with the road. All facilities and necessary amenities like roads, water supply, sewerage, electricity, telephone etc. were available before the issuance of the notification. Resultantly, claim of ₹ 3000/- per sq.yards had been sought.

(9) In support of the reference petition under Section 18, the appellant examined PW1 Dinesh Kumar, Head Draftsman Office of District Town Planner, Panchkula who brought the lay out plan/demarcation of Sectors 21, 22, 23, 24, 25, 26, 27, 28 and also sectors 4,5&11. He had also brought development plan of Sector 21, Part-II which was acquired for residential and commercial purposes. The said witness deposed that the claimant had applied for licence of a commercial establishment and file was in the office of Director, Town and Country Planning, Sector 18, Chandigarh.

(10) PW2 Ashok Kumar Kaushal, Assistant Haryana Estate Agricultural Marketing Board, Panchkula deposed to the factum of allotment to the Marketing Board @ ₹ 1141/- per sq.meter without external

development and internal development except sewerage and road, lights provided by HUDA. He deposed that the plots were sold after its complete development @ ₹ 1071/- per sq.feet and after auction which was done in the year 2005, one plot was sold @ ₹ 35,10,000/-, the area of which was ₹ 1000/- sq.feet.

(11) PW3 Ram Niwas Walia, Draftsman, prepared the site plan Ex.P1 which showed the acquired land in red colour. The site plan was prepared on the basis of the plan prepared by the Town and Country Planning for setting up Panchkula Urban Estate and its extension to Sector 22 to 23.

(12) PW4 Bhupinder Goel in his affidavit in affirmative stood by the pleadings of Section 18 reference petition apart from the fact that the claimant had applied for licence for setting up commercial establishment to the Director, Town and Country Planning, Haryana vide letter dated 27.10.1997 and 04.09.1999. He deposed that the DTCP vide letter dated 24.01.2000 had returned the application of the claimant due to the reason that the proposed land had been notified under Section 4 of the 1894 Act on 28.07.1999 and the title of the land was not clear. The other objection raised was that the proposed land does not fall in any urban area as defined in sub-Section (o) of Section 2 of the Haryana Development and Regulation of Urban Areas Act, 1975. Resultantly, it was stated that the licence should have been given as investment of ₹ 5 crores had been made in the land in question apart from purchasing the land. It is averred that the licence was for commercial complex at Village Maheshpur and that HUDA had already proposed 18 mtr. wide road adjacent to the site in 2nd phase of Sector 21 and they were being deprived from setting up a commercial establishment.

Reference was made that notification under Section 4 of the 1894 Act firstly was issued in 1973 to acquire the land of 27 villages of Panchkula and village Maheshpur was also included and part of the land falls in Sector 11, 12 & 12-A, Panchkula. The possession of land was given to the allottees in 1988 to 1990 and the Sectors were fully developed after 1991. The location of the land was on the main 18 mtr.wide road and also on V-2 road and was open from all sides and surrounded by the residential colonies and residential houses and the market value of the land was not less than ₹ 5000/- per sq.yard. The said witness denied the suggestion that the adequate compensation had been awarded by the LAC and the land was uneven at the time of notification under Section 4.

(13) Similarly, PW5 Baljinder Singh Halqua Patwari, Majri, Tehsil and District Panchkula also deposed that the total land of village Maheshpur had been acquired except this land. The land was even and surrounding land had already been acquired. Potentiality for residential and commercial purposes of the acquired land which have already been acquired in village Maheshpur was the same. He denied the suggestion that the land was uneven and he could not tell whether the same was even or uneven at the time of acquisition because he had not visited the said land.

(14) It is pertinent to mention that no oral evidence on behalf of the respondents was produced and mainly documents were tendered and the evidence was closed vide order dated 11.09.2006.

(15) On the basis of the evidence as such the Reference Court rightly came to the conclusion that the location of the land was prime and it had potential for residential, commercial and institutional purposes. The claimant himself had applied for the land for commercial usage. The relevant

findings have not been challenged as such by filing any appeal or cross-objection by the State are as under:-

“If the above referred oral as well as documentary evidence led by the petitioner is appreciated in totality, the sectors of Haryana Urban Development Authority have already developed around and acquired land as land of village Maheshpur was already acquired for Sector 21, Part-I. Further, from site plan Ex.P1 and Aks Sajra Ex.P44 and P45, the prime location of the acquired land has been proved. It has also been established by evidence on record that the acquired land has potential for residential, commercial and institutional purposes. The present petitioner applied for licence from Director, Town and Country Planning and process for the same was started, but the licence was not granted by the Government to the petitioner as this very land was acquired by the respondents as proved by documents Ex.P2 to Ex.P34. From these documents, it is further established that all the necessary formalities as desired by the Department have already been completed by the petitioner for obtaining licence to use the land in dispute for commercial purposes. This acquired land was situated within municipal limits. Hence, keeping in view the location, potentiality of the acquired land, the Land Acquisition Collector has granted inadequate compensation.”

(16) However, the Reference Court rightly did not take into consideration the rate which was given for the notification dated 21.12.1994 on the ground that the location of land was different as it was on the main Ambala Kalka Shimla road whereas the present acquired land was situated towards Ghaggar river side in Sector 21 part-II and therefore the award

could not be taken into consideration while assessing the market value of the

land in question. Similarly, the sale deeds pertaining to the year 1994 & 1996 (Ex.P37, P38 & P42) were also ignored as they were very small portions in the form of plots and same was the position regarding Ex.P41 & P43. The Reference Court was also correct in not granting any compensation regarding loss of business as no licence was granted to the claimant-company and no business was started by the petitioner at all. Nothing has been pointed out from record in the form of any such evidence that expenses were entailed by the company as such for carrying out any construction activity on leveling the land etc.

(17) Similarly, if the record of case pertaining to the award dated 05.05.2014 whereby the Reference Court decided as many as 26 claim petitions is examined, it would be clear that in the petition under Section 18 of the 1894 Act it was claimed that the land was situated in a dense commercial area and surrounded by residential and commercial markets and was situated in the heart of the city. HUDA was selling plots @ ₹ 5000/- per sq.yard. and the minimum rate fixed by the Revenue Department was @ ₹ 3200/- per sq.yard.

(18) The statement of PW1 Parveen Kumar Gupta, Assistant Town Planner O/o District Town Planner, Panchkula deposed that Ex.P1 was a lay out plan of Sector 21, Panchkula and particular khasra Nos. had been developed and Sector 21 was abutting NH-22. In cross-examination, he admitted that only the land which is fit for urbanization is approved by Government and Chief Administrator, HUDA and that hospitals, schools, bus service and all modern amenities were available in Sector 21, Panchkula.

(19) PW2 Baljinder Singh, Patwari, in his statement deposed that the land shown in red colour (Ex.P14) and the land shown in fluorescent green

colour was acquired vide notifications (Ex.P12 & P13) which are dated 26.04.1995 and 23.04.1996 of villages Maheshpur and Fatehpur for the same purpose. Khasra Nos.10 & 11 of Fatehpur were acquired vide notifications (Ex.P12 & P13) which are adjoining to the land of village Maheshpur. He also deposed that Sector 21 is fully developed and inhabited having all modern amenities and facilities.

(20) PW4 Virender Singh deposed that for the notification dated 26.04.1995, this Court had granted compensation @ ₹ 600/- vide judgment in **RFA-2695-2002 (Ashok Kumar vs. State of Haryana)** on 05.11.2012. By 1999, the entire Sector 21 was fully developed and inhabited and the land in Sector 21 was actually being sold at much higher rates of more than ₹ 20,000/- per sq.yards in open market at that time. In cross-examination, he further elicited that the land was adjoining the already developed Sector 21, Panchkula and was acquired for extension of the same Sector. He further clarified that on the rear side of Sector 21, Part-I, Panchkula, land had been acquired prior to 1983 and thereafter the land was acquired vide notification dated 26.04.1995 and subsequently present acquisition was of 1999.

(21) Similarly, PW5 Gurmail Singh also deposed on the same lines and in cross-examination also, the same aspect was further clarified that earlier the land was acquired prior to 1983 and the land was thereafter acquired on 26.04.1995 and subsequently vide notification of 1999.

(22) A perusal of Ex.P2 which is the master plan would show that location of land falling in Sector 21 at point 'X' and the drawing was approved on 04.12.1986. As noticeable, PW1 - the official from the DTP, Panchkula has shown this land on the said site plan and therefore from the cumulative reading of this aspect, it is explicitly clear that the land in

question was part of fully developed portion of Sector 21 and the potentiality of the same as such cannot be lost sight of.

(23) A three-Judge Bench of the Apex Court in **Dollar Company, Madras vs. Collector of Madras, (1975) 2 SCC 730**, held that the market value on the date of publication of the notification of Section 4 is the factor which is to be taken into consideration. The party entitled to get the amount is what a willing purchaser would pay a willing vendor.

(24) In **Chimanlal Hargovinddas vs. Special Land Acquisition Collector, Poona, (1988) 3 SCC 751**, the factors which were to be kept in mind on the mental screen were that after having kept in mind the nearness to the developed area and it was to be a question of fact in each case to consider whether the acquisition of the land acquired was of such value which includes the potential value.

(25) The Apex Court in **P. Ram Reddy and others Vs. Land Acquisition Office (1995) 2 SCC 305** held that 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 building plots actually made in the other similar land had to be prepared and prices had to be fixed on that basis.

(26) Keeping in view the fact that judgments pertained to similarly-situated land situated in district Panchkula, this Court is of the opinion that CM-11735-CI-2018 in RFA-8761-2014 would have relevance and would be helpful for this Court. An application has been filed under Order 41 Rule 27 CPC i.e. CM-5596-CI-2015 in RFA-1074-2007 for adducing documentary

evidence. The judgments sought to be adduced were passed after the date of award of Reference Court which is impugned. Resultantly, the application i.e. CM-5596-CI-2015 in RFA-1074-2007 for additional evidence is allowed and the said judgment along with site plan is taken on record.

(27) Sufficient evidence has been brought on record that the land as such had immense potential being sandwiched by the development coming around right from 1983 onwards when initial acquisition of Panchkula was made and therefore the argument which is raised that the land was surrounded by developed areas and one of the landowners himself had applied for development of land for commercial purposes and therefore the enhancement which has to be made would fall in the higher bracket of 15% as claimed.

(28) It is not disputed that for the acquisition of 26.04.1995 on which the Reference Court had awarded ₹ 350/- the amount has been enhanced to ₹ 715/- per sq.yards. The Reference Court in the award dated 05.05.2014 however was not right in discarding Ex.P18 which is the judgment of this Court in **RFA-2695-2002 (Ashok Kumar vs. The State of Haryana)** decided on 05.11.2012 for the same village also, wherein a sum of ₹ 600/- per sq.yard.

(29) In **Printers House Pvt.Ltd. vs. Mst. Saiyadan (Deceased) by her LRs (1994) 2 SCC 133**, a three-Judge Bench of the Apex Court held that the location, size, shape, potentiality has to be determined independently even if the plots have been acquired pursuant to the same preliminary notification. It was held that the best evidence for determining the market value of the acquired land could be an authentic transaction of sale relating to the very acquired land or a portion thereof or any other land which could

be favorably compared with the acquired land. The same would be the position when the available evidence relates to land covered by a previous award. It was further held that when there are several comparable sales or awards pertaining to different lands, what is required of the court is to choose that sale or award relating to a land which closely or nearly compares with the plot of land the market value of which it has to determine, and to take the price of land of such sale or award as the basis for determining the market value of the land under consideration.

(30) It is settled principle that while awarding compensation, the Court has to examine the location of the land and similarity on the basis of which the exemplar is being taken into consideration. The relevant portion of the Apex Court judgment in **Printers House Pvt. Ltd.** (supra) reads as under:-

“16. If the comparable sales or previous awards are more than one, whether the average price fetched by all the comparable sales should form the 'price basis' for determination of the market value of the acquired land or the price fetched by the nearest or closest of the comparable sales should alone form the 'price basis' for determination of the market value of the acquired land, being the real point requiring our consideration here, we shall deal with it. When several sale-deeds or previous awards are produced in Court as evidence of comparable sales, Court has to necessarily examine every sale or award to find out as to what is the land which is the subject of sale or award and as to what is the price fetched by its sale or by the award made therefor.

17. If the sale is found to be a genuine one or the award is an accepted one, and the sale or award pertains to land which was sold or acquired at about the time of publication of preliminary Notification under the Act in respect of the acquired **land, the market value of which has to be determined, the Court, has to mark the location and the features (advantages and disadvantages) of the land covered by the sale or the award. This process involves the marking by Court of the size, shape, tenure, potentiality etc. of the land.** Keeping in view the various factors marked or noticed respecting the land covered by the sale or award, as the case may be, presence or absence of such factors, degree of presence or degree of absence of such factors in the acquired land the market value of which has to be determined, should be seen. When so seen, if it is found that the **land covered by the sale or award, as the case may be, is almost identical with the acquired land under consideration, the land under the sale of the market value determined for the land in the award could be taken by the Court as the 'price basis' for determining the market value of the acquired land under consideration.** If there are more comparable sales or awards of the same type, no difficulty arises since the 'price basis' to be got from them would be common. But, difficulty arises when the comparable sales or awards are not of the same kind and when each of them furnish a different 'price basis'. This difficulty cannot be overcome by averaging the prices fetched by all the comparable sales or awards for getting the 'price basis' on which the market value of the acquired land could be determined. It is so, for the obvious reason that such 'price basis' may very largely depend even on no comparable sales or awards. Moreover, 'price basis' got by averaging comparable sales or awards which are not of the same kind, cannot be a correct reflection of the price which the willing seller would have

*got from the willing buyer, if the acquired land had been sold in the market. For instance, in the case on hand, there are three claimants. The plots of their acquired land, which are five in numbers, are not similar, in that, their location, size, shape greatly vary. One plot of land of one claimant and another plot of another claimant appear to be one type. Another plot of land of one of them appear to be of a different type. Yet another plot of the second of them appears to be different. If so far as third claimant's plot of land is concerned, it appears to be altogether different from the rest. Therefore, if each of claimants were to sell her/his respective plots of land in the open market, it is impossible to think that they would have got a uniform rate for their land. The position cannot be different if the comparable sales or awards when relate to different lands. Therefore, when there are several comparable sales or awards pertaining to **different lands, what is required of the Court is to choose that sale or award relating to a land which closely or nearly compares with the plot of land of market value of which it has to determine**, and to take the price of land of such sale or award as the basis for determining the market value of the land under consideration.”*

(31) The reliance on the brochures as such by the Reference Court was not justified in such circumstances. Reference can be made to the Apex Court judgment in **Lal Chand vs. Union of India & Anr. (2009) 15 SCC 769**, wherein the DDA brochures rates were sought to be projected as ones which would show the correct market value. Resultantly, it was held that the brochure price had to be excluded being not relevant and it was not safe or advisable to rely upon such allotment rates/auction rates. Relevant portion of the judgment 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.”

(32) In **Ranvir Singh and others v. 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:

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

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."

(33) Reliance can also be placed upon judgment of the Apex Court in **Raj Kumar and others v. 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 safe guides. 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."*

(34) A similar view in **K.R.Mohan Reddy v. 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 v. 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."*

(35) Resultantly, this Court is of the opinion that the State is well justified in holding out that market value as such could not be calculated or assessed on the basis of brochures of HUDA and the Reference Court was not justified in doing so.

(36) As noticed for the notification dated 26.04.1995, the Apex Court in **Ashok Kumar** (supra) had already assessed the market value @ ₹ 715/- and if 12% enhancement is granted on the same, the amount comes to ₹ 1125/- per sq.yard for the difference of 4 years between the two notifications. However, as discussed above, this Court is of the opinion that due to immense potentiality of the land, the percentage of the cumulative enhancement in the present case is liable to go upto 15% in view of the law laid down by this Apex Court in **The General Manager, Oil and Natural Gas Corporation Ltd. vs. Rameshbhai Jivanbhai Patel & Anr. (2008) 14 SCC 745**. In the said case, while discussing the issue of development in urban areas, it was held that increase of 12 to 15% per annum on a cumulative basis can be given. The acquisition is also of the year 1999 when the market was spurting as such and in view of the specific evidence which

is being led regarding the location of the land. Rather in the said judgment it is also held that enhancement can be upto 50% on account of development and proposed development. 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.

(37) In **Udho Dass vs. State of Haryana (2010) 12 SCC 51**, the Apex Court also observed regarding the potentiality of the land which is being urbanized and commercialized and the fact that the payment of compensation has been spread over almost two decades and possession was taken at the time of passing of the award. The acquisition in question was of Sonapat and it was noticed that the increase was far beyond 10 or 12 or 15% per year and some time upto 100% a year for a land which has potential of being urbanized and commercialised. The relevant portion reads as under:-

“...This has, however, come to the land owner for the first time as a result of the judgment of the High Court which is under challenge in this appeal; in other words, a full 17 years from the date of Notification under Section 4 and 14 years from the date of the award of the Collector on which date the possession of the land must have been taken from the landowner. Concededly, the Act also provides for the payment of the solatium, interest and an additional amount but we are of the opinion, and it is common knowledge, that even these payments do not keep pace with the astronomical rise in prices in many parts of India, and most certainly in North India, in the land price and cannot fully compensate for the acquisition of the land and the payment of the compensation in dribblets. The 12% per annum increase which Courts have often found to be adequate in compensation matters hardly does justice to those land owners whose land have been acquired as judicial notice can be taken of the fact that the increase is not 10 or 12 or 15% per year but is often upto 100% a year for land which has the potential of being urbanized and commercialized such as in the present case. Be that as it may, we must assume that the landowners were entitled to the compensation fixed by the High Court on the date of the award of the Collector and had this amount been made available to the landowners on that date, it would have been possible for them to rehabilitate their holdings

in some other place. This exercise has been defeated for the simple reason that the payment of compensation has been spread over almost two decades. In this view of the matter, we are of the opinion that a landowner is entitled to say that if the compensation proceedings continued over a period of almost 20 years as in the present case, the potential of the land acquired from him must also be adjudged keeping in view the development in the area spread over the period of 20 years if the evidence so permits and cannot be limited to the near future alone. We, therefore, feel that in the circumstances, the appellants herein were fully entitled to say that the potential of the acquired land had not been fully recognized by the High Court or by the Reference Court. We must add a word of caution here and emphasize that this broad principle would be applicable where the possession of the land has been taken pursuant to proceedings under an acquiring Act and not to those cases where land is already in possession of the Government and is subsequently acquired.

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?"

(38) It is in such circumstances, this Court is of the opinion that 15% enhancement is to be applied in the present facts and circumstances and

taken place around it. Accordingly applying the 15% enhancement, table comes to as under:-

26.04.1995	26.04.1996	26.04.1997	26.04.1998	26.04.1999
₹ 715/- per sq.yard	₹ 107.25/- + ₹ 715/- = 822.25	₹ 123.33/- + ₹ 822.25 = 945.58	₹ 141.83 + ₹ 945.58 = 1087.41	163.11 + 1087.41 = 1250.52 (R.O. ₹ 1250) per sq.yard ₹ 60,50,000/- per acre

(39) Resultantly, the appeals filed by the State are allowed and the market value as assessed is @ ₹ 1250/- per sq.yard (₹ 60,50,000/- per acre) along with all statutory benefits and the award of the Reference Court dated 05.05.2014 is modified and the cross-appeals of the landowners are dismissed. Similarly, the appeal of the landowner *qua* the award dated 02.11.2006 is allowed by enhancing the market value in RFA No.1074 of 2007 to the above amount.

(40) The State shall also comply with the directions laid down by the Apex Court in *HSI IDC vs. Pran Sukh, (2010) 11 SCC 175.*

13.12.2018
vvishal

(G.S. Sandhawalia)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No