HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RFA No.3133 of 2008 (O&M) and
connected appeals and cross-objections
Reserved on: 14.02.2019
Date of Decision: 29.03.2019

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State of Punjab & Anr. ... Appellants

VS.

Surinder Ahuja & Anr. ... Respondents

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

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Present: Ms. Monica Chhibber Sharma, Sr.DAG Punjab

Mr. Anish Setia, Advocate;
Mr. Vishal Ranja, Advocate;
Mr. Surinder Singh, Advocate
for the landowners/cross-objectors

Mr. CM Munjal, Advocate;
Ms. Seema Arora, Advocate;
Mr. Vinod Khunger, Advocate;
Mr. AK Khunger, Advocate
For the landowners

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State appeals	RFA Nos.31 to 47; 2691 to 2700, 3997 to 4015 of 2007, RFA Nos. 1206 to 1218, 1425, 3123 to 3134, 3198 to 3211, 3814 to 3827, 5551 of 2008;
Landowners	RFA Nos.223 to 235, 2742, 2743, 3461 to 3469 of 2007 RFA Nos. 408, 409, 411, 609 to 618, 967, 739 to 762, 3256 to 3262, 3660 to 3666, 5458 of 2008, RFA Nos.193 to 204, 3389 to 3393 of 2009
Cross-objections	XOBJR No.117-CI-2008 in RFA No.2691 of 2007 XOBJR No.88-CI-2011 in RFA No.1207 of 2008 XOBJR No.89-CI-2011 in RFA No.1208-2008 XOBJR No.96-CI-2011 in RFA No.1212 of 2008 XOBJR No.94-CI-2011 in RFA No.1215 of 2008

G.S. SANDHAWALIA, J.

(1) The present set of 195 appeals along with the 5 cross-objections filed by the landowners and the State are directed against various awards

details of which are given below of the Reference Court, Ferozepur pertaining to notifications dated 14.11.2000 and 24.11.2000 for 11 villages, namely, Sabuana, Odian/Qddian, Karni Khera, Awa, Kotha, Alamshah, Salim Shah, Mauzam, Dona Sikandari, Muhar Kheewa and Muhar Jamsher. The public purpose of acquisition was for the purpose of construction of Aspal Extension Drain/Ditch Channel from RD No.0 to 62500 falling in Satluj River.

(2) The villages are in close vicinity to Fazilka town on both sides and the drain goes towards Satluj River creek towards Indo-Pak border and therefore the villages keep on getting further away from the Fazilka town as per the sequence given, with village Awa being closest to MC limits and in the centre. The area acquired of the said villages is as under:-

			Ref.Court Award date	**Difference**
1.	Sabuana	25.35 acre	22.09.2006	10% only Severance
2.	Odian/ Qddian	51.01 acre	22.09.2006 17.12.2007	10% only Severance 5 lakhs plus 50% severance
3.	Karni Khera	50.21 acre	13.11.2007	5 lakhs + 50% Severance
4.	Awa	33.14 acre	11.10.2007	₹ 2,56,000 + 3 Lakhs 10% Severance
5.	Kotha	15.76 acre	11.10.2007	₹ 2,56,000/- 10% only severance
6.	Alamshah	31.88 acre	20.02.2007 10.01.2008	20% only Severance ₹ 5 lakhs 50% Severance
7.	Salem Shah	46.26 acre	18.07.2007	10% only Severance
8.	Mauzam	6.96 acre	04.08.2007	20% only Severance
9.	Dona Sikandari	13.2 acres (as per award of LAC)	28.03.2007	₹ 2,56,000/-+20% Severance
10.	Muhar Kheewa	52.83 acre	28.03.2007	₹ 2,56,000/- + 20% Severance
11.	Muhar Jamsher	17.72 acres	28.03.2007	₹ 2,56,000/- + 20% Severance

(3) The Collector vide award dated 06.08.2001 had fixed the market value @ ₹ 2,25,000/- per acre for *chahi nehri* land, ₹ 1,60,000/- for *barani* and for *gair mumkin* ₹ 3 lakhs per acre. Apart from the market value the landowners were also held entitled for compensation of tubewell, trees, structures etc. and for the orchard Surinder Kumar and his son Vikramaditya were held entitled for ₹ 1,01,139.50 each for fruit trees standing in their land.

(4) Vide the first award dated 22.09.2006 for villages Sabuana & Odian while disposing of 17 reference petitions, the market value as such was not varied however on account of severance 10% enhancement was granted. Apart from that the payment of ₹ 10,000/- for the 4 tubewells was granted. The Reference Court examined the site plan (Ex.P41) to notice that the acquired land was on the southern side of the abadi of Village Odian and extended considerably away. As per the landowners' evidence led, the acquired land was at the distance of 2 KM from the Municipal limits of Fazilka. The abadi area of village Rampura which was also depicted was discussed to hold that the same was touching the Municipal limits and was on the Abohar-Ferozepur Road. The land had been acquired for the BSF Headquarters and therefore there was no similarity of the lands of the two villages. Similarly, the land of village Awa touched the Municipal limits of Fazilka town and the sale instance Ex.P43 to P45 related to village Sultanpura and Rampura were not applicable. The awards dated 27.11.2002 (Ex.P48) pertained to village Rampura and therefore being for the notification dated 29.06.1990 whereby market value was fixed @ ₹ 2,24,000/- per acre was not considered as a good guideline for grant of equal compensation. Similarly, the award dated 26.04.1989 which pertained

to the notification dated 04.01.1989 wherein ₹ 2 lakhs per acre has been fixed as market value for the same village Rampura was also discarded.

(5) Resultantly, applying the capitalization method *qua* the yield from the land as per the oral evidence and assessing the income @ ₹ 25,000/- per acre and applying 50% cut, the income was assessed @ ₹ 16,000/- per acre. The multiplier of '12' was applied to rate the market value less than ₹ 2 lakhs and the Court was of the opinion that since *solatium* had been given @ 30% the assessment of the Price Determination Committee constituted by the respondents was upheld. The issue of severance as such was noticed and that the width of the bridge leading to village Odian was only 7 ft. and the capacity was 9 tonnes load. Accordingly severance was only granted @ 10%. The reports of the Valuers for the tubewells @ ₹ 70,000/- per acre (Ex.P37 & P39) were rejected on the ground that the same could be shifted and compensation was enhanced from ₹ 4500/- to ₹ 10,000/- per tubewell.

(6) For village Alam Shah, vide second award dated 20.02.2007 while deciding 9 petitions, the amount awarded for market value was sustained but severance was granted @ 20%. The reasoning given for not enhancing compensation was that no record of the agriculture produce had been produced and the sale deeds Ex.R3 to R5 showed that the same had not been registered for more than ₹ 80,000/- per acre in the said village. The compensation had been given at higher rate than the amount of sale deed. The cotton factories and schools were in village Sultanpura and not in village Alam Shah and merely because it was adjoining village was not sufficient to hold the potentiality was equal. The sale instance of village Sultanpura Ex.P17 which was of a 5 marla plot and was also not shown in

the site plan was accordingly rejected. On account of the bridges having been provided on some places, 20% had been given on account of severance.

(7) For village Muhar Kheewa while deciding the 20 reference petition vide third award dated 28.03.2007, the compensation of the market value of land was enhanced to ₹ 2,56,000/- per acre by applying capitalization formula whereas the compensation awarded for kothas and tubewells was enhanced by 100%. The amount of severance charges was fixed @ 20%. In the said award deduction on the income was reduced to 1/3rd and the annual income was thus assessed @ ₹ 23,337/- with the average net income taken @ ₹ 16000/- and the multiplier of '16' was applied to enhance the market value @ ₹ 2,56,000/- per acre.

(8) For village Salem Shah, vide fourth award dated 18.07.2007 while deciding 25 petitions, the Reference Court dismissed those reference petitions and severance charges were fixed @ 10% apart from ₹ 10,000/- granted for the tubewell. The reasoning to decline enhancement was that the acquired land was at a considerable distance towards the abadi of village Alam Shah and the site plan (Ex.PH5/1) which showed the location of the factories as such were adjoining the Municipal limits of Fazilka which was earlier the revenue limits of village Sultanpura and the land did not abut any prominent road. The three main roads from Fazilka emanated from Chowk Hanuman Mandir and village Rampur was on the main road leading to Abohar which was the headquarter of BSF and was within the municipal limits of Fazilka and therefore the value of the said village Rampura was higher than the land of village Salem Shah. The other road led to Ferozepur and third one led to Pakistan border and was National Highway No.10. The sale instances Ex.P16 to P22 of Sultanpura were rejected and similarly sale

deed Ex.P15 being of village Jandwala and of small plots ranging from one and half marla and 7 marlas and were of shops and small houses and were not proper guidelines for assessment of market value of agricultural land in question. It was noticed that Ex.R1 to R3 showed the value of the land of village Salem Shah was around ₹ 80,000/- per acre. The awards passed for village Rampura were not held to be helpful pertaining to the market value of the acquired land.

(9) For village Mauzum, vide fifth award dated 04.08.2007, the Reference Court also dismissed the land references but granted severance at 20%. The reasoning to deny the enhancement was that apart from oral evidence there was no corroboration and by considering the annual income of ₹ 16,000/- per acre and applying the multiplier of '12' the value would come to less than ₹ 2 lakhs per acre.

(10) For village Awa and Kotha, vide sixth award dated 11.10.2007 while deciding 14 reference petitions a sum of ₹ 2,56,000/- per acre and ₹ 3 lakhs per acre was given on the same principle and severance charges was given @ 10%. Reliance was placed upon Ex.P27 letter of Deputy Commissioner dated 24.05.1996 addressed to the Executive Officer, Municipal Council, Fazilka showing the value of the land for village Awa @ ₹ 3 lakhs per acre. The same was assessed for the sullage carrier drain and was distinguished on the ground that though the land was of village Awa but as it was touching the boundaries of Municipal limits of Fazilka and therefore it could not be applied in the present case. Resultantly, the acquired land falling between the National Highway and the Railway line as shown in Ex.P10 was assessed @ ₹ 3 lakhs per acre while rest of the land

across the Railway line being simple agricultural land was assessed @ ₹ 2,56,000/- per acre.

(11) For village Karni Khera vide seventh award dated 13.11.2007 the Reference Court has enhanced the compensation from ₹ 2,25,000/- per acre to ₹ 5 lakhs apart from granting 50% cut on account of severance charges. Apart from the said fixation of market value Surinder Kumar and his son have been granted ₹ 9 lakhs for 946 fruit trees against the compensation awarded by the State @ ₹ 1,01,139/50. The said landowners have also been held entitled for ₹ 1,79,000/- on account of damage to the drip system. Landowners, Rakesh, Manphool Ram, Lal Chand and Om Parkash were held entitled to ₹ 1 lakh each on account of damage and uprooting of their tubewell and as per the award of Land Acquisition Collector, Rakesh Kumar was awarded compensation to the tune of ₹ 6839/- for his tubewell. Hence compensation was enhanced to ₹ 1 lakh to Rakesh Kumar.

(12) The Reference Court noticed that village Sultanpur was situated on the same road and the compensation @ ₹ 5 lakhs had been assessed vide letter dated 24.05.1996 (Ex.PW6/1) by the Collector which was also for similar purpose, namely, Slug Carrier water. Since the acquisition in the present case was more than 4 years later i.e. 14.11.2000 and on account of price increase the landowners were entitled for enhancement. The sale deeds Ex.P1 & P2 whereby land had been sold for value @ ₹ 3,50,000/- and ₹ 6,40,000/- were also kept in view. Resultantly, keeping in view the amount assessed for Sultanpur and the fact that the landowners of Karni Khera were also close to abadi of Fazilka the amount had been enhanced.

(13) For the compensation of the fruit trees, it was noticed that on 38 kanals 1 marla fruit trees were standing and ₹ 1,01,139/50 each had been awarded. Reliance was placed on report Ex.P8 that the value of each tree would work out to ₹ 1922.50 per tree and resultantly, 464 fruit trees were uprooted for construction of drain. Similarly, 482 Malta trees had to be uprooted due to damage of drip system due to construction of the drain in the said land. The trees still had a fruit life of 20 years and resultantly, the compensation was assessed @ ₹ 1922.50 x 946 = ₹ 17,84,080/- but on account of undue burden on the State Exchequer only ₹ 9 lakhs was awarded. For the drip system only ₹ 5643/- had been awarded and the bills were taken into consideration of ₹ 1,27,000/- plus labour cost to award the said amount keeping in view the statement of Major Singh Sub Inspector. Keeping in view the fact that there were tubewells on the land Ex.P4 to P7 and there was a letter Ex.P33 issued to Om Parkash for depositing ₹ 18689/- for shifting the tubewell connection, a sum of ₹ 1 lakhs was awarded. On account of the severance of land 50% of the market value was granted plus statutory benefits both on the market value of tubewell, kothas and trees. It was also wrongly mentioned that solatium was to be granted @ 50% instead of 30%.

(14) For village Odian, vide eighth award dated 07.12.2007 a sum of ₹ 5 lakhs per acre was granted on the strength of letter of Deputy Commissioner dated 24.05.1996. Even though as noticed vide first award dated 22.09.2006 on an earlier occasion the market value had not been enhanced and reference petition was dismissed only with 10% severance charges, being granted. The reasoning given was by placing reliance upon the same letter dated 24.05.1996 of the Deputy Commissioner wherein ₹ 5

lakhs per acre had been awarded for village Odian and there was a difference of 4 years and 7 months and on account of the price rise and the time lag it was held that the village Odian falls on the same road and was only 1 KM from the land in question. The benefit of severance was also given @ 50% but wrongly mentioned on account of *solatium* and market value instead of severance after discussing various case laws on the same issue. The same mistake was repeated in the relief clause as such.

(15) Vide ninth award dated 10.01.2008 for village Alam Shah also ₹ 5 lakhs per acre was granted and it was also mentioned that 50% on account of solatium is to be granted while discussing the issue of bifurcation instead of statutory amount of 30%, in spite of the fact that vide 2nd award dated 20.02.2007, the reference had been decided and only 20% severance had been granted. The reasoning also given was similar that as per the site plan Ex.P2, the land was close to BSF Headquarter and for the slug water carrier drain ₹ 5 lakhs per acre had been awarded for the land of village Sultanpur and ₹ 3 lakhs per acre for the land of village Awa for the said purpose in 1996. The fact that Stamp Duty was being charged @ 9% suggested that the land had urban potentiality.

(16) On account of issue of 50% granted under the head of *solatium* also execution petitions for 50% for severance charges were dismissed of the landowners on the ground that they were entitled to 30% solatium and had been granted 20% more. The landowners have challenged the same in CR No.8326 & 8328 of 2014.

Argument of Counsels:

(17) Counsel for the landowners has accordingly, argued that if Ex.P2 dated 06.09.2000 for 4.5 marlas land is kept in mind, the market value

would be ₹ 6,40,000/- and similarly, the sale deed dated 24.07.1998 Ex.P1 of 9 marlas which was for ₹ 29,000/-, the market value would work out @ ₹ 3,55,520/-. It was thus submitted that Ex.P2 should be taken into consideration for fixing the market value as it was two months' prior to Section 4 notification dated 14.11.2000. It was further submitted that for Sultanpura a sum of ₹ 5 lakhs has been assessed by the Deputy Commissioner which was more than four years prior in time and therefore if cumulative enhancement @ 5% is granted on that account and the value would be more than what has been awarded which would come to over ₹ 6 lakhs. It is further submitted that as per the formula Ex.P18, adequate compensation had not been awarded for the fruit bearing trees.

(18) State on the other hand submitted that reliance upon the said sale deed Ex.P2 cannot be made as there is sufficient evidence that the said sale deed is in the nature of a plot and was purchased for raising construction. Similarly, the same is questioned on account of smallness of the plot on the ground that it is not a safe exemplar since approximately 50 acres of land was being acquired for the purpose of said public purpose in the said village and overall 313 acres of land whereas Ex.P1 pertained to 9 marlas of land. It was further submitted that even if the percentage of cut is applied on the said sale deed apart from enhancement the market value would not come to ₹ 5 lakhs for the difference of two years. It is accordingly argued that onus of proving the market value is on the landowners and in the absence of any sale deed of a reasonable chunk of land, the Reference Court was not justified in enhancing the compensation solely on the assessment of the land of adjoining village Sultanpur and adequate compensation had been fixed by the Land Acquisition Collector.

(19) The challenge was also made to exorbitant amount given on account of fruit trees and it was further submitted that in the original petition, there was no such averment regarding the uprootment of trees of 482 malta trees in 2005 for which also compensation has been granted. It is pointed out that neither the petition under Section 18 was amended and merely stating so in evidence would not as such improve the case of the landowners in the absence of specific pleadings. The amount for shifting the tubewells was also excessive and grant of *solatium* on the fruit trees and tubewells and additional amount under Section 23(1A) and Section 23(2) was not justified keeping in view the law laid down in **State of Punjab vs. Amarjit Singh & Anr, (2011) 2 SCALE 610**.

Points for consideration:

(20) Thus keeping in view the above discussion and the table reproduced in para 2 above, one fact would be clear that on account of two different Officers deciding the issues of market value for the villages in question different amounts of compensation have been given for the land which was acquired and for the same purpose. For village Odian, vide award dated 22.09.2006, only 10% severance charge was granted whereas on a subsequent point of time on 07.12.2007, compensation was enhanced to ₹ 5 lakhs and even the quantum of severance was also granted @ 50%. Similarly, for village Alam Shah vide award dated 20.02.2007 only 20% severance was granted and on a subsequent occasion almost a year later on 10.01.2008, ₹ 5 lakhs was granted while enhancing it from ₹ 2,25,000/- and severance amount was also increased to 50%. The said contradiction as such has also stemmed on the fact that the State also did not bring to the notice of the Reference Court that on earlier occasion for the same revenue estate the

compensation had not been enhanced. Therefore the said award would be a relevant piece of evidence which would necessarily have to be taken into consideration by the Court which was not done surprisingly for the reason best known to the State. Similarly, the State counsel failed to bring to notice of the Reference Court Ex.P52 wherein the award dated 28.03.2007 had been passed for village Muhar Kheewa wherein only ₹ 2,56,000/- had been fixed as market value plus 20% severance and the document had been tendered into evidence on 04.10.2007 by the landowners themselves. Apart from the difference in compensation, the issue of severance also has been dealt with in a very haphazard manner and with no uniformity for the same set of acquisition. In certain cases 10% severance has been granted whereas in other 20% and maximum severance has gone upto 50% in spite of the principles having been settled by this Court in **Tehal Singh vs. State of Punjab through Collector Land Acquisition Drainage Circle Patiala 1987 RRR 495**, and which has been consistently followed in various other judgments of this Court.

(21) Another disturbing factor to be noticed that in certain cases while referring to the capitalization principle to calculate the market value no enhancement was granted whereas while following the same principle for village Awa and Kotha while passing the award dated 11.10.2007, the market value was enhanced from ₹ 2,25,000 to ₹ 2,56,000/- per acre and also ₹ 3 lakhs for the land falling on the other side of the Railway track plus 10% severance charges. Similarly for Mohar Kheewa vide award dated 28.03.2007 the benefit of enhancement was granted to ₹ 2,56,000/- but 20% was granted as severance charges. In such circumstances the disparity which has occurred would require necessary correction. The said error is

apparent on the face of the record as such could have been avoided had the State kept in mind the principles laid down in **Smt. Maya vs. State of Haryana 2012 (4) PLR 747** while following the principles laid down by the Apex Court that the Land Acquisition Collector should refer the matter of the same notification together to the Reference Court so that all the cases can be decided together pertaining to the same acquisition. The relevant portion of the said judgment reads as under:-

> *"16. To streamline the dealing of cases under the Land Acquisition Act, with a view to ensure their expeditious disposal, this Court deems it appropriate to issue the following directions:*
>
> > *(1) The Land Acquisition Collector shall ensure that all the land owners who file objections furnish their complete addresses.*
> >
> > *(2) All the objections received by the Collector in land acquisition cases shall be referred to the court for adjudication maximum within three months after receipt thereof. Along with the objections or bunch of objections, a certificate shall be annexed by the Collector to the effect that all the objections received upto that date for the acquisition in question have been sent to the court.*
> >
> > *(3) Whenever a land reference is put up before the learned court below, to which it is entrusted, it shall ensure from the District Attorney/Assistant District Attorney and/or the Collector that all the objections received by the Collector upto date have been sent to the court for adjudication. A certificate to the effect has to be placed on record. In case the land references were received on different dates and were put up on different dates either for first hearing or for hearing after notice, the learned court below shall club all the land references arising out of the same acquisition to be heard on one date of hearing before it proceeds further in the matter. Assistance of the office of District Attorney is most relevant on this aspect.*

(4) In case some objections are received late by the Collector for any reason whatsoever, he shall be dutybound to refer the same to the court immediately after its receipt so that the same is clubbed with the cases already pending and are disposed of along with that. Information about the cases already sent to the court shall also be furnished by the Collector.

(5) In case any objection is received after the disposal of the land references by the learned Reference Court, the Collector while sending the same to the court for adjudication shall annex a copy of the award/judgment of the court along with that, pertaining to the acquisition in question.

(6) The decision of the land references arising out of the same acquisition in piece-meal on different dates has to be avoided at all cost unless the reference is received late.

(7) The learned courts below to keep in view the directions issued by Hon'ble Supreme Court in Mangat Ram Tanwar's case (supra) pertaining to disposal of land acquisition cases which are extracted below:

> *"6. We are aware of the problem of back long in most of the Courts. The references under Section 18 should be treated as a class by themselves entitled to priority attention. If care and attention are devoted at the appropriate time, these cases can be easily disposed of by clubbing them groupwise and recording evidence after taking the consent of counsel for the parties. Most of the acquisitions these days relate to large patches of land and ordinarily they are covered under one notification. Cases which are covered by a common notification should be clubbed together for which a statutory foundation is available in the Amending Act of 1984 in extending the benefit of higher compensation to all lands covered by a common notification even if dispute is not raised. If that is done the total number of cases where evidence would be necessary is likely to be reduced and better attention can perhaps be given. The High Courts*

should take special note of the pendency of land acquisition references and where it is possible a Court may be set apart for those cases.

7. We expect every reference court to dispose of the references ordinarily within one year of receipt of the reference and the outer limit should be the end of the second year. The High Courts in exercise of their controlling powers should ensure enforcement of this position so that all pending references in the subordinate courts at the original stage may be disposed of within time frame indicated above."

(8) The cases pertaining to acquisition of land for a canal/drain/road/channel/distributory or of similar nature, where the acquired land passes through different villages in the form of a strip, endeavour should always be made to entrust the cases to one court. Even if the same arise out of different notifications, though issued close in time, the learned courts below should also make efforts to decide these cases collectively after perusing site plan for the entire acquired land. It would be in the interest of all the parties concerned that a site plan showing location of the entire acquired land and also the surrounding area is produced by the State in court. The learned courts below to keep in view the observations made by this court in R.F.A. No. 686 of 1991 –Lokeshwar Dutt v. The State of Haryana and another, decided on 16.8.2010, pertaining to the same issue, which are extracted below:

> *" However, finding that number of cases are coming before this court, where this type of situation is being repeated on account of which the court finds it difficult to determine the fair value of the acquired land, which may result in injustice to either of the party. Not only that, in number of cases, the applications are filed by the land owners*

for producing additional evidence, which, in fact, should be part of the evidence to be led by the land owners/State at the very first instance. In many cases, the court, in the interest of justice, had to ask the State or the party to produce on record the site plan showing the exact location of the acquired land, sale deeds etc. to avoid injustice to either of the party. This unnecessarily delays the disposal of cases. The basic things, which should be brought on record to enable the court to determine fair value of the acquired land is the notification under Section 4 of the Act, copy of the award, site plan to the scale, showing the acquired boundary vis-a-vis its location such as its closeness to the city, village, highway, internal road with all its positive and negative factors. Another important fact is that such a plan should have the status as on the date of issuance of notification under Section 4 of the Act, the date being crucial for the purpose of determination of fair value of the acquired land. It would be appropriate if the sale instances sought to be produced by the land owners or the State are pointed out on the site plan to be produced on record by either of the party. In the absence of which it is difficult to locate the same and consider its true value. The site plan, which should be taken on record, should be on butter paper or cloth, as it is seen in a number of cases that when the appeals are heard after 15-20 years, the site plans, which are quite big and may be on thin tracing paper, are torn out making it difficult for the parties to refer to the same and also for the court to consider."

> *(9) At the time of filing of appeals against the awards of the learned Reference Court pertaining to an acquisition, the Collector/Land Acquisition Officer shall file an affidavit that appeals against all the awards of the learned Reference Court pertaining to the particular acquisition, have been filed.*

(10) This court in R.F.A. No. 4742 of 2010—The State of Haryana and another v. Sh. Tek Chand and others, decided on 11.10.2010, wherein the appeal was filed by the State against award of the learned court below despite the fact that the earlier award of the Reference Court, which had been relied upon for the purpose of determination of compensation in that case had already been upheld by this court and there was no merit in the appeal even on the date of filing thereof, had issued following directions:

> *"To avoid unnecessary adjournments of the cases, I deem it appropriate to direct that in all appeals filed by the land owners or the State following information must be furnished in the appeal itself:*
>
> > *(i) In case the learned Reference Court had relied upon any earlier award pertaining to same or any other acquisition, the fact as to whether any appeal against the same is pending or not, should be mentioned in the grounds of appeal. The number of such appeal and status thereof be also mentioned.*
> >
> > *(ii) In case no earlier award is relied upon by the Reference Court, it should be mentioned that the Reference Court has not relied upon any earlier award. The aforesaid facts should be mentioned in the last para of the grounds of appeal before the prayer clause. The Registry is directed to ensure compliance of the requirement. This may be brought to the notice of the Bar Association for notifying to the learned members of the Bar."*

(11) In case the State fails to file appeals in all the cases decided by the Reference Court and ultimately the amount of compensation is reduced by the higher court, the State shall be duty-bound to fix the responsibility of the person(s) concerned for the lapse and also recover the amount of loss suffered from the guilty officer(s)/official(s).

(12) The learned Reference Court should also ensure from the Collector and/or the District Attorney that no land reference pertaining to the acquisition of land in the area, which is prior in time, is pending for adjudication and in case there was any acquisition of land in the area prior in time, the award passed by the Reference Court or the higher court therein should always be brought to the notice of the court concerned.

(13) It should be ensured by the court that the land references pertaining to acquisition of land, which is prior in time, are decided first before taking up the cases of the acquisition carried out subsequently."

(22) In such circumstances the landowners are justified that only on account of their cases being decided by a different officer different market value has been granted. It has been time and again held that sale deeds are the best piece of evidence and the location of the land is most important. The determination of compensation of a previous award and the evidence considered on the same can also be considered by the subsequent Reference Court. The mistake which was committed in the earlier award can be corrected in the subsequent award on account of the better evidence having been adduced and led.

(23) It is settled principle that if the land situated is of similar quality with the adjoining village and evidence of the same is brought on record that they are identical and similar and the purpose of acquisition is the same, they would be also entitled for the same market value unless there are strong reasons as such to indicate the market value is liable to vary. Resultantly,

the disparity as such which has occurred amongst the landowners has led to this large scale unnecessary and uncalled for litigation had these matters been decided together by the Reference Court with a proper assistance from the State and the District Attorney by filing appropriate applications or clubbing the matters or at least bringing to the notice of the Reference Court of the decisions which have been rendered at an earlier point of time.

Discussion of Pleadings and Evidence:

(24) The evidence pertaining to the first award would go on to show that in cross-examination PW1 Kheta Singh himself admitted that the acquired land which is situated in village Odian was at 1 ½ Km to 2 KM from Fazilka. He denied that it was situated within the distance of 4KM. Similar was the deposition of PW2 Gurbachan Singh. Ex.P41 was prepared by Jangsher Bahadur, Draftsman the site plan which showed that the drain was cutting through the land of the village on the southern side and away from the municipal limits as the village intervened in between. PW6 Fauza Singh was resident of village Rampura and in his cross-examination also he stated that the said village is 1KM from the village and from the site plan it is clear that the Rampura was falling on the road which was leading to Abohar. PW7 who had brought the summoned record, deposed about the letter No.1247 of Deputy Commissioner Dated 24.05.1996 Ex.P42 whereby the rate for the land of village Sultanpura had been fixed @ ₹ 5 lakhs and ₹ 3 lakhs for village Awa for the purpose of construction of a Ganda Nala. In cross-examination he admitted that Village Awa was 2Km from city Fazilka and Village Odian was 1 ½ KM from Fazilka City. A perusal of the site plan would show that the village Awa is situated closer to municipal limits of Fazilka and was also closer to the NH-10 which is also called Sulaiman

Ki Road which was leading to the International Border. The distances were also marked on the said site plan showing that the land close to the said Highway was at Point B & C which was 1.5 KM and even the BSF headquarters in village Rampura at Mark A was also at a distance of 1.5 KM. A perusal of the letter (Ex.P42) would show that for village Sultanpura the value was fixed @ ₹ 5 lakhs per acre whereas for village Awa, the market value was fixed @ ₹ 3 lakhs and for the land falling in Fazilka Town itself was fixed @ ₹ 50 per sq.ft.

(25) In the statement of the Sunil Kumar Goel (RW1) Sub Divisional Officer, Project Divn. Drainage, Gidarbaha the width of the drain was reported to be 130 ft. of the internal side excluding the banks. The one side of the bank was 15ft. average and the other side of the bank was around 30 ft. The earth which was thrown out on the banks of the drain were around 50ft. average and that the drain could not be crossed without a bridge. He further deposed that the every landowner had been provided the bridge to cross over to the other side of the drain. The construction of the same had led to the land of the landowners being bifurcated. He could not tell the number of bridges constructed in the area of village Odian. The width of the bridge leading to Odian was stated to be 7 ft. the capacity of the bridge was 9 tonnes and was not meant for a vehicle like truck or truck trailor. Ex.P48 which was brought on record pertained to the LAC titled Darshan Singh vs. UOI which dealt with the acquisition of 29.06.1990 for the land falling in village Rampura whereby the market value had been assessed @ Rs.2,24,000/- per acre. Similarly, Ex.P49 was the decision of LAC Teja Singh vs. UOI which pertained to the notification dated 04.01.1989 for the same village Rampura wherein the market value had been assessed @ ₹ 2

lakhs per acre. He stated that 5 marla plot Ex.P43 of village Sultanpura was never shown in the Ex.P41 and therefore there can be no dispute as to the reason the Reference Court did not rely upon the same. Similarly Ex.P40 was a plot of 6 marlas plot which was purchased for house which was also discarded on the same ground.

(26) The evidence of reference petition of village Alam Shah which was decided on 20.02.2007 would show that the village was situated at a distance of 2Km from City Fazilka as per the case of PW1 Janak Raj. Similarly, PW2 Kewal Krishan also submitted that the land was situated at a distance of 2 KM from the bus stand Fazilka and the Indo-Pak border was situated at a distance of 4-5 KM from the acquired land. RW1 Sunil Kumar, other hand, stated that the acquired land was at a distance of 4 KM from the Bus Stand and there was a pucca BR bridge at RD No.2870 which was capable of carrying weight of any vehicle. He further deposed that there were pathways of bridges connected over the area of village Alam Shah. He admitted that the land in question was chahi and Nehri land and was being used for agricultural purposes at the time of acquisition. He further deposed that the area of Sultanpura adjoined the area of village Alam Shah. It is in such circumstances that the Reference Court as such has not taken into consideration Ex.P17 for 5 marla plot of village Sultanpura as the same was not shown on the site plan.

(27) The evidence of the third reference petition for the award dated 20.03.2007 of village Mohar Kheewa would show that as per the cross-examination of PW1 Kuldip Singh there was no college or high school in the village though there was a Middle School. The distance from the bus stand was stated to be 3KM and the link road ended at the border of Pakistan. As

per the deposition of PW2 Amir Singh, the border was situated 4-5 KM from the village and Satluj River was at a distance of 3 KM. As per his cross-examination the distance from Fazilka was at a distance of 3 KM and the bus stand of village Salem Shah came first then Mauzam and Amarpura which was at a distance of 1 or 2 KM from each other. He denied the suggestion that the lands near the border were cheaper. As per the Draftsman, Rajesh Kumar, the land of the claimants have been bifurcated as per the site plan Ex.P20 prepared by him while visiting the spot at the instance of the claimants. PW6 Tika Singh in cross-examination admitted that the village came first from Indo-Pak border and that when the River Satluj over-flowed, the flood water would run through drain of the village. He also admitted that the village Sultanpura fell within the municipal limits of Fazilka.

(28) RW1 Sunil Kumar – a common witness in cross-examination admitted that the entire land acquired had been awarded the same amount of compensation for 13 villages by the Price Fixing Committee. He also admitted that each landowner had not been provided separate bridge to cross-over the drain and the total width of the drain was 150 ft. and the total area acquired was 340 ft. The banks of the drain had been constructed on the both side of the acquired land.

(29) Pleadings of the evidence pertaining to village Salem Shah decided by the Reference Court vide award dated 18.07.2007 would show that the village was at a distance of 1 ½ KM from Fazilka and the octroi post was less than 1KM. The site plan Ex.PW5/1 was proved by Prakash Singh Draftsman who also deposed that the whole of the village Sultanpura was within the municipal limits of Fazilka. Village Salem Shah was situated within the distance of 3 KM from bus stand Fazilka and that there was no

college or senior secondary school or nationalized bank in the said village. PW8 Swarn Singh Court Clerk Nagar Council also clarified that the subject matter of DC letter dated 24.05.1996 fell within the municipal jurisdiction and out of the municipal limits, the later part of which was volunteered.

(30) Village Mauzam as per PW1 who deposed for the award dated 04.08.2007 was at a distance of 4 KM from Fazilka. The Indo-Pak border was only ½ KM as per PW3 Subhash Chander. The said witness deposed that there was no heavy industries like shellers, ice factories and there were only atta chakki. There was no branch of any nationalized bank and neither he could produce the sale deeds at the rate which had been awarded.

(31) PW1 Jasbir Singh r/o Kotha in support of the reference petition as per the deposition of the record of sixth award dated 11.10.2007 produced certified copies of the sale deeds Ex.P5 to P9 relating to village Sultanpura. As per the deposition the village was at a distance of 1½ km from city Fazilka. Ex.P10 site plan was proved by PW2 Harchand Singh retired Kanungo who admitted that it was not a scaled map. Subhash Arora, PW4, Registration Clerk deposed that the village Awa and Kotha fell within 5KM of the municipal limits of Fazilka and their registration charges were same as per the municipal limits as per Ex.P13 @ 6%. In cross-examination, he admitted that the names of villages Ex.P16 to P21 were mentioned with the pen whereas the others had been type-written. The Reference Court ignored the sale deeds Ex.P5 to P9 on account of the fact that they were ranging between 4 marlas to 8 marlas whereas Ex.P8 was of 18 marlas since they were of village Sultanpura. The site plan also did not as such show the location of the said sale deeds.

(32) The statement of PW1 Manphool Ram of village Karni Khera pertaining to award dated 13.11.2007 would show that the sale deeds dated 24.07.1998 and 06.09.2000 (Ex.P1&P2) were exhibited and in the cross-examination it had come forth that Ex.P2 pertained to a house in the village which was a plot which he had purchased and constructed for the purpose of residence. He also produced the record of valuation reports of the tubewells Ex.P4 to P7.

(33) Subhash Arora PW2 Registration Clerk also deposed that Karni Khera fell within 5Km of municipal area of Fazilka and the Registration rates were at the rate of 9% of the urban rate as per the order of the District Collector Ex.P12. The rate for the orchard land for stamp duty valuation was ₹ 4 lakhs and for the Kinow orchard the rate was ₹ 5 lakhs.

(34) PW3 Major Singh Agriculture Sub Inspector proved the installation of drip system in the land of Surinder Kumar, Baldev Krishan, Suman Lata, Inder Parkash sons/daughter of Nathu Ram and the total amount of the project was ₹ 3,88,690/- on which there was a subsidy of ₹ 1,94,345/- which was given to the landowners. The drip had been installed by Premium Irrigation Equipment Ltd and on account of the construction of drain, damage had been done on the main and sub-main lateral pipes.

(35) Prem Nath Babbar appeared as PW4 to depose as an expert on the horticulture side wherein averments were made that 464 trees had to be uprooted during the year 2002 in 38 Kanals 1 Marla. The drip system had been installed in 1995 which was totally disrupted and had to be re-installed at a heavy cost and that 482 malta plants had to be uprooted in 2005 due to the damage caused in 2002 in the area of 39 kanals 1 marla. In cross-examination it transpired that he was a Law Graduate but not a holder of any

degree or diploma in Horticulture and stated that he was charging ₹ 500 per visit from the landowners. He had never remained in the Govt. job in Horticulture Department.

(36) PW5 landowner Surinder Kumar deposed that he was a progressive farmer and that the land was under citrus (malta and kinow plantation in the year 1989-90) under the supervision of Sh. Prem Nath Babbar. Resultantly, he deposed about the uprooting of 464 plants in 2002 and 482 plants in 2005. The valuation of fruit trees issued by the Horticulture Department, Punjab, Chandigarh was brought on record as Ex.P18 and in cross-examination he admitted that he had not brought any sale deed in support of the market value. He admitted that the entire land of village Sultanpura fell within the municipal limits of Fazilka. He also admitted that the Rampura adjoined the municipal limits of Fazilka and was on National Highway 10. There were 3-4 rice mills on the national highway and even Radha Soami Satsang Bhawan was situated in the said village.

(37) PW6 Jangsher Bahadur prepared the site plan Ex.P29 and in cross-examination he admitted that Karni Khera was not situated on the national highway but was situated at border road which leads to Pakistan. Village Rampura was situated on the national highway which was Abohar-Fazilka main road.

(38) RW1 SDO Irrigation admitted that for the drip system compensation was given to the landowner and tree's compensation was also given to both the landowner and his son. He could not tell when the possession was taken and volunteered that it was taken after passing of the award. He further admitted that it was not possible to cross the drain without a bridge and that passages have been provided as per requirement of the

cultivators. He denied the suggestion that the orchard had been destroyed in the year 2005 to the extent of 482 fruit bearing trees and he could not tell the yield and the age of the trees. He could not depose the cost of installation of tubewell whether it was ₹ 70,000 or one lakh. He volunteered that the acquired land was at a distance of 6-7 KM from Fazilka city and it was at a distance of half KM from the BSF Headquarters and MR college etc.

(39) PW2 Balaki Ram for the award dated 07.12.2007 of village Odian in support of his case admitted that the village was 2 KM from Fazilka city and that there was no nationalized bank, heavy industries or senior secondary school. In cross-examination he admitted that he had installed tubewell in the other land for ₹ 40,000/- but could not produce the bills of the expenses. The bridge on the drain was at a distance of 2KM from each other and 3 acres out of 17 acres had been acquired and the same had been now spread into three chunks.

(40) Sohan Singh PW3 Court Clerk in cross-examination admitted that the land was situated at a distance of 2-3 KM leading from Fazilka to Abohar.

(41) RW1 Amarjit SDO in cross-examination admitted that bridges had been provided but the width of the bridges were around 7ft. and that neither combine nor cultivator tractor nor trolley could cross the said bridges.

(42) PW2 Harmesh r/o Alam Shah in support of reference petition which was decided vide award dated 10.01.2008 submitted that army mines had been installed in the fields of the village and that heavy loss had been caused in 1971 Indo-Pak war upto Fazilka. The village had also suffered

damage due to shelling. He admitted that the land near the Indo-Pak border is cheaper than the land situated away from the border.

Assessment of Market Value:

(43) From the above evidence, it would be clear that the land of the villages is in two different directions around Fazilka Town with village Awa straddling the drain in the centre being closest to the town of Fazilka. Though the Land Acquisition Collector has granted a uniform rate of compensation but it would be apparent that the distances as such from Fazilka town are different and therefore the land which is situated in the villages away from the town would not command the same amount of potential of market value. Similarly, because the acquisition is for the same purpose would not mean that the market value would also be identical. It is but natural that the land which is falling closer to the border would be cheaper in comparison to the land which is situated closer to the municipal limits of Fazilka and similarly, the land which is away from the municipal limits of Fazilka on the other side would also not command the same amount of premium. The determination of one flat market value for the acquired land therefore as such cannot be done on the basis of market value of one village in such circumstances especially when the land as such sprawled over the rural area cutting across the main road and railway line at one point of time between village Karni Khera and Awa and therefore going away from the urban sprawl.

(44) In such circumstances the observations of the Apex Court would be relevant in the case of **Surender Singh vs. State of Haryana (2018) 1 SCALE 551**. In the said case acquisition was for construction of Expressway Kundli-Manesar-Palwal Link and a uniform compensation had

been granted by this Court for 15 villages by enhancing the uniform compensation granted by the Land Acquisition Officer. Reliance had been placed upon the award passed for the land acquired of one village namely Kasan at one point of time and by granting 8% increase on the same. Resultantly, it was held that the actual distance amongst the 15 villages against one another's potentiality and the development was not kept into consideration. The market rate of each village and its proximity and the sale exemplar were to be taken into consideration and therefore the appeals were allowed and the matter was remanded to the Reference Court to decide afresh. The relevant observations reads as under:-

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

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

37. The High Court, in the absence of any evidence on any of these issues, could not have determined one flat market rate of the acquired land in question by applying one isolated rate of one land situated in one village Kasan and adding 8% annual increase from 1994 in such rate and made it applicable to the entire lands situated in 15 different villages.

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

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

(45) The said observations would have a direct bearing on the facts of the present case also. In such circumstances, this Court is of the opinion that for fixing the market rate the first instance which can be relied upon is of the sale deed Ex.P1 dated 24.07.1998 which is of 9 marlas for ₹ 20000/-

and the market value would work out to ₹ 3,55,520/- falling in village Karni Khera. As noticed Karni Khera is situated approximately at a distance of 2KM from Fazilka town and therefore the land falling in village Awa and Kotha would be more valuable. There is also a difference of two years between the sale deed and the notification dated 14.11.2000 and therefore even if the benefit of cumulative increase is given for the period of two years @ 5%. The market value would work out to ₹ 3,91,960/- per acre on which a cut would have to be applied for smallness also. The market value would come to ₹ 3,13,568/- after giving a 20% cut.

(46) Similarly, the Collector rate would show that for the land which is acquired for the purpose of slug carrier way back in the year 1996 for village Sultanpura would depict that the market value was fixed @ ₹ 5 lakhs per acre and for village Awa @ ₹ 3 lakhs per acre. The difference between two notifications is also for the period of 4 years for which cumulative increase is liable to be granted @ 5% being a rural area which would work out to the tune of ₹ 6,07,753/- and on ₹ 3 lakhs enhancement would be ₹ 3,64,651/-.

(47) In ***The General Manager, Oil and Natural Gas Corporation Ltd. vs. Rameshbhai Jivanbhai Patel & Anr. (2008) 14 SCC 745*** it was specifically held by the Apex Court that the potentiality and increase as such in rural area cannot be compared with the potential increase as in urban area. The relevant portion of the judgment 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."

(48) The Reference Court is also well justified in not placing reliance upon two awards of the year 04.01.1989 and 29.06.1990 which pertained to village Rampura on account of the reason that the said village was situated on a different road which was leading to Fazilka and which was the main highway therefore the value as such on the said road was much more than the land which was acquired and was in the interior. Another good reason which is made out for discarding the said awards in question is the period of the difference of acquisition which is of 10/11 years in the two proceedings as such. In ***Rameshbhai Jivanbhai Patel & Anr.*** case (supra), it has also been held that the method of determining the market value of the land by applying the annual increase method has many pitfalls and the same is not liable to be applied beyond 4/5 years. The relevant paragraph of the said judgment reads as under:-

> *"12. Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisition), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on-sale transactions/acquisitions precedes the subject acquisition by only a few years, that is upto four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land*

acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the `rate' of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase."

(49) Recently in **Manoj Kumar vs. State of Haryana & Ors. (2018) 2 RCR (Civil) 815**, the principle of relying upon the earlier awards blindly for assessing the market value was not appreciated by the Apex Court. It was held that as per the situation of a village, nature of land its value may differ from distance to distance and even two to three-kilometer distance may also make the material difference in value. The land abutting Highway may fetch higher value but not land situated in interior villages. It was further held that the acquisition which had been made 10/12 years earlier the same could not be taken as the basis to increase the price by giving a flat increase or cumulative increase without going into the factual scenario and without taking into consideration the sale deeds. The relevant portion of the said judgment reads as under:-

"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) The evidence has been discussed in detail to show that the land in question is situated in a border area and is in close proximity with the international border and was also affected by the war of 1971. The witness himself had admitted that the value of the land closer to the border is less in comparison to the land which is closer to the Fazilka town which was also affected at the time of conflict. In such circumstances the appreciation also cannot be granted at more than 5% on both sale exemplars Ex.P1 and the rate of the Collector. The benefit of market value of Sultanpura @ ₹ 5 lakhs per acre cannot be granted as asked for as admittedly the land of Sultanpura has fallen in the municipal limits of the Fazilka Town which is not the case of the land which is being acquired which is rural in nature. Therefore the claim of enhancement on the rates on the basis of the assessment of Sultanpura cannot be justified.

(51) It is accordingly held that for village Awa the market value would thus work out if the average median of ₹ 3,13,568/- + ₹ 3,64,651/- is taken the same would come to ₹ 3,39,109/- rounded off to ₹ 3,39,000/-. Resultantly, the average value is worked out to ₹ 3,39,000/- for village Awa and Kotha as they are adjoining villages and closest to Fazilka town.

Resultantly, this Court reduces the market value @ ₹ 20,000/- per acre for each village as it goes away from the centre from village Awa and Kotha as the potentiality decreases. The market value for the 9 villages is thus worked out as under:-

			In lakhs
1.	Sabuana	25.35 acre	₹ 2.79
2.	Odian/Qddian	51.01 acre	₹ 2.99
3.	Karni Khera	50.21 acre	₹ 3.19
4.	Awa	33.14 acre	₹ 3.39
5.	Kotha	15.76 acre	₹ 3.39
6.	Alamshah	31.88 acre	₹ 3.19
7.	Salem Shah	46.26 acre	₹ 2.99
8.	Mauzam	6.96 acre	₹ 2.79
9.	Dona Sikandari	13.2 acres	₹ 2.59
10.	Muhar Kheewa	52.83 acre	₹ 2.39
11.	Muhar Jamsher	17.72 acre	No enhancement

(51A). It is further clarified that over and above the said amount, the solatium at the statutory rate of 30% would be payable and not 50% as has been granted in certain set of cases by Reference Court in the relief clause as discussed above.

Issue of Severance

(52) As discussed above on account of acquisition of the land in question of building the Aspal Extension Drain/Ditch Channel from RD No.0 to 62500 falling in Satluj River, the severance had been granted for the said acquisition at different rates varying from 10, 20 & 50%. The evidence which has come on record is sufficient to show that the drain which has been carved out of the acquired land is of such a width whereby the cultivators landowners cannot get to the other side except by using the bridges which had been provided. The SDO's evidence who appeared as RW1 in the cases would show that the width of drain is 130 ft. and the sides of the banks are also between 15 to 30 ft. and the height was of 50ft average. Resultantly, the

landowners would but obviously feel difficulty in approaching the other side though it has come on record that bridges had also been provided which are also at a distance of 2 km apart. The bridges also are not of those capacity which would allow the heavy machinery to cross over as it has come on record that the bridge leading to village Odian was of 7 ft. width the capacity of 9 tonnes and combine harvester etc. could not cross the same.

(53) In **Tehal Singh** (supra) this Court while deciding the issue of acquisition pertaining to SYL canal noticed that it may not be economically viable to cultivate the land across the canal on account of non-availability of the bridge of the canal which may be quite distant from the village. The loss of irrigation facilities would also occur and the landowners would barter or sell small uneconomical holdings which are purchased by the adjoining landowners at less than the market value. The relevant portion of the said judgment reads as under:-

> *"10. The compensation for severance thus awarded does not appear to be based on sound reasoning. The loss which has been caused by severance includes loss on account of uneconomic agricultural holding, which has been left after acquisition, bifurcation of a big economical holding into two small holdings which may not be any longer viable for profitable cultivation, loss of access to the land where the canal intervenes between the village and the land or availability of a bridge over the canal in the course of time which may be quite distant from the village as also the land on the other side of the canal, loss of irrigation facilities in case the well or the canal watercourse which is the source of irrigation is located on the other side of the S.Y.L. Canal. It is well known that agricultural based habitations i.e. the villages, are located and in the course of time get established at a place where access to the agricultural land is easy; the agriculturists barter or sell small uneconomical holdings which are purchased by the adjoining landowners though the price fetched is*

comparatively less than its market value. Where land is canal irrigated the authorities of the Irrigation Department re-frame schemes for the watercourse to command the area for irrigation purposes taking due account of the obstruction caused by the construction for which the land has been acquired. Land measuring more than two acres normally makes a viable agricultural holding in the tehsil of Rajpura where the mode of cultivation and harvesting is by and large conventional and is yet to be machanised.

11. Taking all the above factors into account. I consider the following compensation to be appropriate for severance of land to the concerned land-owners:-

(1) Where the S.Y.L. Canal intervenes between the land served and the village abadi and it is two acres or less in area, compensation for severance shall be 60% of the market value of the land so acquired.
(2) Where the severed land is not the abadi side of the village and S.Y.L. Canal is being constructed beyond it and it is two acres or less in area, compensation for severance shall be 40% of the market value of the land so acquired.
(3) Where the severed land is more than two acres in area but is less than 5 acres, and is located on either side of the S.Y.L. Canal, compensation at the rate of 10% of the market value for its severance shall be payable."

12. The land-owners shall, however, be not entitled to solatium under Section 23(2) and the amount under Section 23(1-A) of the Act on the amount of compensation on account of severance, but they shall be entitled to interest as indicated in the following paragraph."

(54) The said view has been consistently followed by other Benches of this Court by granting 50% solatium in cases of water canals/channels being carved out. Reference can be made to the judgments in **Surjit Singh vs. State of Punjab Land Acquisition Collector 2008 (2) PLR 8763** and **State of Haryana vs. Kartar Singh, 2010 (4) RCR (Civil) 443**.

(55) Accordingly, keeping in view the above principles this Court is of the opinion that that the landowners in all the villages in question are entitled to severance @ 40% of the market value as from the site plans it would be clear that the drain as such is not close to the village abadis and is at a considerable distance and therefore the principles laid down in **Tehal Singh** case (supra) at Clause (2) would be applicable.

Compensation on account of fruit trees in case of Surinder Ahuja

(56) In the award dated 14.11.2007 as noticed above, Surinder Kumar and his son have been granted ₹ 9 lakhs for 946 fruit trees standing in the land acquired. Apart from the fact that a sum of ₹ 1.79 lakhs on account of the damage to the drip system of irrigation. The Reference Court relied upon the evaluation report (Ex.P18) to hold that the value of each tree would be ₹ 1922.50 however the number of trees for which the benefit has been granted was more than tripled without proper application of mind. The claim of the landowners as such in his petition under Section 18 was qua the damage to 280 trees which were uprooted for the construction of drain. Another oral claim of 482 malta trees which had been uprooted in the year 2005 due to damage of drip system of the petitioner was also taken into consideration to take the total number of trees at 946. It would work out to a sum total @ ₹ 17,84,080/- in contrast to the compensation which had been awarded ₹ 1,01,139/- (for orchard) as per award (Ex.R2) plus additional amount of ₹ 28,146/50 (for trees). However, a lumpsum ₹ 9 lakhs was granted. The claim in LA Case No.70 of 18.09.2001 instituted on 20.09.2002 by Surinder Ahuja and his son Vikramaditya under Section 18 of the Land Acquisition Act, 1894 was *qua* 37 kanals 10 marlas out of which it was alleged that there was orchard on 26 kanals of land and the petitioners

were entitled for amount from the State over and above the already existing plants. The number of trees were 246 malta plants and 34 guava (amrood plants) in the orchard being acquired by the State. Resultantly, the petitioners claimed themselves entitled to recover the cost on alternative plantation and also for the loss of income for next 8 years. Similarly in LA Case No.71 instituted on 20.9.2002 in respect of 41 kanals 12 marlas, the plea taken was regarding shifting of 3 tubewell bores and they claimed severance on account of the difficulty the landowner would face, but there was no claim of orchard on the land.

(57) The argument of Mr. Setia that full amount of ₹ 18 lakhs was payable on account of 946 trees standing on the land which had been destroyed is without any basis. It is apparent from the evidence on record that the landowners as such had enhanced the number of trees which is stated to be destroyed. Firstly, on account of the 464 trees standing in the land which had been acquired. The other claim of 482 malta trees which is stated to have been adjoining the land which has been acquired and had to be uprooted on account of damage done to the drip system. However, the landowner as such had never amended his claim petition to this effect and only improved his version while appearing in Court which would be clear from his statement when Surinder Kumar appeared as PW5. In his affidavit in affirmative he talked about uprooting of the 464 trees in the year 2002 from 5 acres of land and for further uprooting the 482 plants in the year 2005. It is settled principle that evidence cannot be led beyond pleadings and therefore the claim for additional 666 trees was without any basis.

(58) The effort had been made as such to examine an alleged expert, namely, one Prem Nath Babbar PW4 who in his affidavit stated that he was

a professional Horticulture Consultant giving consultancy to over 30 horticulturists. The said witness also in his affidavit deposed that there were two sets of trees which were uprooted in year 2002. In the subsequent years due to continuous use of tubewells which created alkalinity problem, 482 malta trees had been uprooted due to disruption of drip system in an area of 39 kanal 1 marla. The said fruit trees had 20 years more life. In cross-examination, it came around that though he claimed to have charged ₹ 500/- per visit from the landowners but he never remained in any govt. job in the Horticulture department and was a law graduate. He did not have any degree or diploma in horticulture though he had volunteered he had experience in the horticulture. Thus the reliance upon the statement of the said witness is also of no use to Mr. Setia who has submitted that expert evidence as such had been produced. Thus from the pleadings it would be apparent that 246 malta trees and 34 guava trees, total 280 plants were part of the orchard as per the pleadings. However, while appearing as PW5, the landowner increased the number of plants to 464 plants which were uprooted in the year 2002 and further 482 plants uprooted in the year 2005. Similarly, the statement of the alleged expert Prem Nath Babbar was also sought to be relied upon regarding the said aspect and the quantification is thus manifold as to the original claim which has wrongly been allowed by the Court below.

(59) In such circumstances, this Court is of the opinion that the maximum benefit which could not have been granted to the landowners was *qua* 280 trees only. The principle governing compensation which is to be granted to orchard fruit trees was examined by the Division Bench in **Ranjit Singh vs. UT of Chandigarh, 1983 AIR (Punjab) 308**. It was accordingly held that fruit trees could not be treated as timber and the judgment of the

Single Judge to that extent was overruled. It was held that there was a formula known to work out the market value of orchard lands under the capitalization principle and reliance was placed upon the publication by Sh. Harbans Singh the then Director of Horticulture Himachal Pradesh wherein the basic principle and evaluation of fruit trees had been scientifically analyzed. Ex.P18 as such which has been produced by the landowners also is to the same effect and a perusal of the same would also show that the benefit for 30 years is to be granted for the malta trees as such keeping in view the non-recurring and recurring expenditure. The same would work out to the tune of ₹ 1922.50 per tree. Resultantly, the benefit of 280 trees is to be given which would work out to ₹ 5,38,300/- whereas the Reference Court has granted ₹ 9 lakhs and therefore for the reasons given above the said amount is not justified and no further increase is called for at the instance of landowners, but the same is liable to be decreased.

(60) It is however, not disputed that the fruit trees as such were standing on the land acquired in question since the State has also granted a sum of ₹ 1,01,139.50 on that account. An effort has been made to fall back on Annexure A1 the site plan produced along with the appeal to show that 482 trees had been uprooted as such. It is however pertinent to notice that the said site plan was never subject matter before the Reference Court and neither any application for additional evidence was filed to explain that on what account the said site plan was not brought on record. Even otherwise also the said site plan does not give any details of khasra Nos. etc. which could help to identify whether the land in question is land which was subject matter of acquisition. Resultantly, no reliance as such on the site plan can be placed in appeal.

Compensation on account of tubewell/kotha:

(61) As discussed above Reference Courts have only granted ₹ 10,000/- per tubewell and the report of valuer has been rejected whereby the claim has been made for ₹ 70,000/-. Reference can be made to award dated 22.09.2006 pertaining to village Sabuana and Odian. However, regarding land for village Karni Khera vide award dated 13.11.2007 the Reference Court has granted compensation to the extent of ₹ 1 lakh on account of uprooting of tubewells of the landowners. It is to be noticed that the claim as such was on account of the alleged evaluation report produced by PW1 Manphool Ram Ex.P4 to P7. The said reports were never proved by producing the Engineer Vijay Shankar Sharma who had given the valuation certificate that the tubewells were worth ₹ 1 lakh vide Ex.P4 to P8. In the absence of such expert evidence coming on record, the blind reliance on the same was not warranted for by Reference Court. It is known fact that the private valuers as such would enhance the compensation for structures for the benefit of their clients and whereas the Government valuers normally do not give a complete market value and their estimate is always on the lower side. In such circumstances this Court is of the opinion that it would be appropriate that a sum of ₹ 50,000/- would be adequate compensation for uprooting of tubewells across the board in all cases wherever the landowners themselves have been held entitled to the same. Resultantly, the findings of the Reference Court is modified to that extent.

(62) It is made clear that landowners would not be entitled for benefits of Section 23(1A) and 23(2) on account of the amount awarded for severance, fruit trees, tubewells and structures in view of the judgment of the Apex Court in **State of Punjab vs. Amarjit Singh (2011) 4 SCC 734**. In the

same, it was held that Section 23(1) refers to the market value of the land on the date of publication of the notification which is the relevant factor. Additional amounts are payable only on the market value determined and not on the other amounts which are to be kept in mind while determining the compensation which pertained to the damage sustained to taking of any standing trees or crops on the land or severance etc. Resultantly, the second to the sixth factors were excluded as such for the above-said benefits. The relevant portion reads as under:-

> *"6. Section 23(1) refers to market value of the land on the date of publication of the notification under Section 4(1) of the Act as a relevant factor for determining the amount of compensation to be awarded for land acquired under the Act. Sub-section (2) provides that in addition to the market value of the land determined under Section 23(1), the Court shall, in every case, award a sum of 30% on such market value in consideration of the compulsory nature of acquisition. Sub-section (1A) of Section 23, inserted by Act 68 of 1984 provides that in addition to the market value of the land, as provided under Section 23(1), the Court shall, in every case, award an amount calculated at the rate of 12% per annum on such market value for the period commencing on or from the date of publication of the notification under Section 4(1) in respect of such land to the date of award of the collector or the date of taking possession of the land, whichever is earlier. The additional amount under Section 23(1A) and solatium under Section 23(2) are both payable only on the market value determined under Section 23(1) of the Act and not on any other amount. Solatium under Section 23(2) is not payable on the additional amount nor additional amount under Section 23(1A) payable on solatium. Solatium and additional amount are also not payable on the damages/expenses that may be awarded under second to sixth factors under Section 23(1) of the Act.*

7. Thus a person whose land is acquired is entitled to the following amounts under the Act.

(a) Compensation determined under Section 23(1) of the Act (comprising the market value of the land referred to as the first factor and any damages/expenses referred to as the second to sixth factors under the said sub-section).

(b) Solatium at 30% on the market value determined as the first factor under section 23(1) of the Act.

(c) Additional amount at 12% per annum of the market value of the land referred to as the first factor under Section 23(1) of the Act, for the period specified in Section 23(2).

(d) Interest on the aggregate of (a), (b) and (c) above for the period between the date of taking possession to date of payment/deposit at the rate of 9% per annum for the first year and 15% per annum for the remaining period.

Payments made are to be adjusted and accounted in the manner set out in Gurpreet Singh v. Union of India (2006) 8 SCC 457."

(63) Reference can also be made to the Division Bench judgment of the Patna High Court in case of **State of Bihar vs. Rameshwar AIR 1973 (Patna) 123** that the statutory compensation cannot be allowed on the damage to be paid whose land is acquired under 3rd and 4th clause of Section 23(1).

Relief:

(64) Keeping in view the above the appeals as well as cross-objections are disposed of to the extent that :-

(i) the market value for the notification dated 14.11.2000/24.11.2000 of the villages in question is fixed as under along with statutory benefits:-

			In lakhs
1.	Sabuana	25.35 acre	₹ 2.79
2.	Odian/Qddian	51.01 acre	₹ 2.99
3.	Karni Khera	50.21 acre	₹ 3.19
4.	Awa	33.14 acre	₹ 3.39
5.	Kotha	15.76 acre	₹ 3.39
6.	Alamshah	31.88 acre	₹ 3.19
7.	Salem Shah	46.26 acre	₹ 2.99
8.	Mauzam	6.96 acre	₹ 2.79
9.	Dona Sikandari	13.2 acres	₹ 2.59
10.	Muhar Kheewa	52.83 acre	₹ 2.39
11.	Muhar Jamsher	17.72 acre	No enhancement

(ii) Apart from above the severance charges @ 40%, would be payable but the benefits flowing under Section 23(1A) and 23(2) would not be payable, on the said amount.

(iii) For tubewells and kotha the landowners would be entitled to ₹ 50,000/- on account of displacement but the benefits flowing under Section 23(1A) and 23(2) would not be payable, on the said amount.

(iv) For fruit trees, Surinder Ahuja would be entitled for a sum of ₹ 5,38,300/-. However, he would not be entitled for the benefit of Section 23(1A) and 23(2) of the Act, on the said sum.

(v) It is clarified that on the market value of the land as such the solatium would be @ 30% as provided and not 50% as granted wrongly by the Reference Court under the heading solatium. The revision petitions also seeking challenge to the order of executing court are accordingly disposed of vide separate order of even date.

(65). All pending Misc. applications if any, also stand disposed of accordingly.

29.03.2019 **(G.S. Sandhawalia)**
vvishal **Judge**

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