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

335

**RFA No.5579 of 2010 and other connected cases
Decided on : 11.07.2019**

Swaran Singh

... Appellant

Versus

State of Punjab and others

... Respondents

Appeals filed by landowners	Appeals filed by the UOI
RFA Nos.853, 854, 855, 856, 857, 858, 913, 914, 915, 916, 917, 918, 919, 920, 921, 2688, 2689, 2690, 2691, 2692, 2693, 2933, 2934, 2927, 2928, 2929, 2930, 2931, 2932, 2935, 2936, 2937, 2938, 2939, 2940, 2941, 2942, 2943, 2944, 2945, 2946, 2947, 4076, 4077, 4078, 4079, 4080, 4081, 5141, 5578, 5579 **of 2010** RFA No.389, 390, 391, 392, 393, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 1726, 1783, 5445 **of 2011** RFA Nos.4180, 4967 **of 2017**	RFA Nos.2809, 2810, 2811, 2812, 3403, 3404, 3405, 3406, 3407, 3408, 3409, 3410, 3411, 3412, 3413, 3414, 3415, 3416, 3417, 3418, 3419, 3420, 3421, 3422, 3423, 3424, 3425, 3426, 3427, 3428, 3429, 3430, 3431, 3432, 3433, 3434, 3435, 3436, 3437, 3438, 3439, 3440, 3441, 3442, 3443, 3444, 3445, 3446, 3447, 3448, 3449, 3450, 3451, 3452, 3453, 3454, 3455, 3456, 3457, 3458, 3459, 3460, 3461, 3462, 3463, 3465, 3466, 3467, 3468, 3469, 3470, 3471, 3472, 3473, 3474, 3799, 3800, 3801, 3802, 3803, 3804, 3805, 3806, 3807, 3808, 3809, 3810, 3811, 3812, 3813, 3814, 3815, 3816, 3817, 3818, 3819, 3820, 3821, 3822, 3857, 3858, 3859, 3860, 3861, 3862, 4126, 4127, 4128, 4129, 4130, 4131, 4132, 4133, 4134 **of 2010**

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

Present : Mr. G.S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate,
Mr. Kanwaljit Singh, Senior Advocate with
Mr. Ajaivir Singh, Advocate,
Mr. G.S. Jaswal, Advocate,
Mr. P.C. Dhiman, Advocate,
Mr. S.S. Swaich, Advocate and
Mr. Manoj Pundir, Advocate for the landowners.

Mr. Nitin Kumar, Advocate
for the UOI-railways.

Ms. Jasleen Kaur Sidhu, AAG, Punjab.

G.S. Sandhawalia, J. (Oral)

The present judgment shall dispose of above referred 200 appeals filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act'), out of which 86 appeals have been filed by the landowners and 114 appeals have been filed by Union of India through Ministry of Railways (for short 'UOI'), who are aggrieved against the amounts awarded vide Awards dated 30.09.2009 and 01.10.2009 by the Reference Court, Fatehgarh Sahib.

2. In principle the Reference Court has granted 10% as severance charges on account of the fact that the land was acquired for construction of a Broad Gauge Railway Line from Chandigarh to Ludhiana. However, apart from that on the issue of solatium an additional 30% has been granted alongwith other statutory benefits alongwith amounts of ₹6 lakhs and ₹8 lakhs per acre, which has been granted by the Land Acquisition Collector (for short 'the LAC'). Resultantly, the UOI is aggrieved against the grant of 30% additional solatium which has been prescribed under the statute.

3. The notification in question was issued on 19.09.2005 by invoking the urgency provisions under Section 4 read with Section 17 (1) of Act, whereby the land was sought to be acquired of five villages measuring 104 acres 3 kanals 14 marlas. The details of the land acquired of the said villages is as under:-

Sr. No.	Village Name	Area A-K-M	Market value fixed the LAC (Award dated 18.08.2006)

1.	Panjkoha	10-2-19	Rs.6 lakhs per acre
2.	Bhattian	0-2-6	Rs.6 lakhs per acre
3.	Panaichan	24-5-7	Rs.6 lakhs per acre
4.	Khant	29-5-4	Rs.8 lakhs per acre
5.	Sanghol	39-3-18	Rs.8 lakhs per acre
Total		**104-3-14**	

4. The public purpose for which the land was acquired was for construction of New Broad Gauge Railway Line from Chandigarh to Ludhiana. Vide Award dated 18.08.2006, as noticed above in the table, the LAC had awarded ₹8 lakhs per acre for village Khant and Sanghol, whereas for the other three villages ₹6 lakhs per acre was awarded alongwith all other statutory benefits.

5. The landowners being aggrieved by the compensation granted, filed petition under Section 18 of the Act, claiming ₹75 lakhs per acre. Apart from that they also sought additional amount on account of the bifurcation of the land on both sides of the railway line, due to which no source of irrigation was left on the southern side. It has been averred that there was no passage for use of the land on the other side of the railway line. The landowners of three villages, namely, Panjkoha, Bhattian and Panaichan sought compensation at the same amount, which was awarded to the landowners of village Sanghol and Khant, on the ground that they were similarly placed.

6. The Railways took the plea that adequate market value had been awarded and the District Collector had conducted a inquiry. There were provisions of pipeline alongwith the Railway Line, so that the

petitioners could get their land irrigated by that pipeline. The question that the land on the southern side of the railway line becoming barren does not arise. Sufficient arrangement had been made for ingress and egress to the land on both southern and northern side and the value of the land had not been diminished and there was no question of enhancement of the compensation.

7. For village Panaichan, while deciding 40 reference petitions, lead case of which was **LR Petition No.5 of 2006 'Major Singh Vs. State of Punjab and others'** decided on 30.09.2009, while the maintaining the compensation, it was noticed by the Reference Court, the land was at a distance of 11 to 12 Kms from Chandigarh-Ludhiana highway, as compared to the land of village Sanghol and Khant, which are just on the Chandigarh-Ludhiana highway and resultantly uniform compensation was declined. Sale deeds Ex.P1 to P8 were rejected on the ground that they were pertained to other villages namely Kalewal, Sanghol and Polomajra. Resultantly, sale deeds Ex.R22 to R29 pertaining to village in question and for the year 2004-2005 were kept into consideration to come to the conclusion that the market value was @ ₹3,51,000/- per acre approximately and, therefore, what had been awarded by the LAC was justifiable. However, as noticed above an amount of 10% extra over and above the market value was granted, on account of the bifurcation of the land. An additional amount of 30% on account of solatium had also been granted.

8. Similarly, for village Panjkoha, vide Award dated

01.10.2009, while deciding 8 reference petitions, lead case of which was **LR Petition No.77 of 2006 'Rachhpal Singh Vs. Union of India and others'**, it was noticed by the Reference Court that the land of village in question was situated at a distance of 200 meters from Chandigarh-Ludhiana Highway, as compared to the land of villages Sanghol and Khant, which were just on the highway and due to this reason, the higher rate of compensation @ ₹8 lakhs had been awarded to the said two villages. The sale deeds Ex.R19 to R21 were taken into consideration, whereby the market value was ranging around ₹3,50,000/- per acre, after considering Ex.P7 to P10.

9. Similarly, for village Khant, while deciding as many as 36 petitions on 01.10.2009, lead case of which was **LR No.1 of 2007 'Tej Kaur Vs. State of Punjab and others'**, it was noticed that there was a steep increase in the market value as such from the subsequent sale deeds and, therefore, the observations had come forth regarding the extra amount, which has been awarded.

10. The relevant sale deeds which were duly exhibited are as under:-

Sr. No.	**Sale deed dated**	**Ex.**	**Area**	**Sale consideration**	**Rate per acre**	**Village**
1.	09.08.2004	P7	1 K 5 M	Rs.4,50,000/-	Rs.28,80,000/-	Sanghol
2	02.11.2004	P8	1 K 5 M	Rs.4,50,000/-	Rs.28,80,000/-	Sanghol
3.	08.01.2005	P9	0 K 5 M	Rs.90,000/-	Rs.28,80,000/-	Sanghol
4.	02.01.2006	P10	0 K 12 M	Rs.1,80,000/-	Rs.24,00,000/-	Khant
5.	23.02.2006	P11	2 K 1 M	Rs.5,40,000/-	Rs.21,09,317/-	Sanghol
6.	22.03.2006	P12	15 K 13 M	Rs.29,34,375/-	Rs.1,50,00,000/-	Sanghol
7.	23.06.2006	P13	3 Acres	Rs.1,80,00,000/-	Rs.60,00,000/-	Sanghol

8.	17.10.2006	P14	24 B 3 ½ B	Rs.1,51,09,375/-	Rs.30,00,000/-	Polo Majra

11. A perusal of the same would go on to show that sale deeds Ex.P10 to P14 are post notification and, therefore, cannot be taken into consideration. Only two sale deeds which were relevant as such are Ex.P7 and P8 of village Sanghol, which are of 1 kanal 5 marlas of land, whereby land was sold for ₹4,50,000/-. The said sale deeds have been duly examined and it transpires that there was a common vendor and sale deeds are of an similar area, which is abutting the road and lands are in the shape of plots. One of the said sale deed Ex.P8 rather goes on to show that the boundaries are described and the adjoining area is of one Rattan Singh, who had constructed on his portion. Resultantly, it is apparent that the sale exemplars are closer to the abadi area where construction has been raised and, therefore, not equivalent to the land which had been acquired, which is totally agricultural in nature. The site plan has also not been attached to show their location to the acquired land. Even otherwise the area of the sale deeds is miniscule as to what had been acquired which is over 100 acres and, therefore, Ex.P9 cannot be taken into consideration, as it would not show the true market value, as the market value works out @ ₹28,80,000/- per acre. There is no separate sale deed produced of agricultural land, whereby large chunks of land were sold at the same rate and, therefore, Ex.P5, Ex.P7 & Ex.P8, are liable to be discarded and the argument raised by the counsel that cut should be applied on the same and the same should be taken into

consideration is not acceptable.

12. It is a settled principle that onus to prove the market value is always upon the landowners and in the absence of any sale deed of the said village or similarly situated land sold in close proximity to the Section 4 notification, which is the relevant date for assessing the market value, the same are not liable to be taken into consideration. Reliance can be placed upon the judgments of the Apex Court passed in **Civil Appeal Nos.16967-71 of 1996 'Manipur Tea Co. Pvt. Ltd. Vs. Collector of Hailakandi', 'Basant Kumar and others VS. Union of India and others', 1996 (11) SCC 542**, **'Gafar & others Vs. Moradabad Development Authority' 2007 (7) SCC 614** and in **'Special Land Acquisition Officer Vs. Karigowda and others' 2010 (5) SCC 708.**

13. Rather it has been noticed by the Reference Court that the sale deed produced pertaining to village Khant showed the market value @ ₹4,36,000/- per acre and, therefore, no enhancement had been granted, after keeping in mind Ex.R28 to R36, which were produced by the Union of India for the relevant period of 2004 to 2005. Nothing as such had been pointed out that the market value of village Khant was more and, therefore what was granted by the LAC was much more. Nothing as such brought to the notice of this Court by the counsel for the appellants that apart from the sale deeds, table of which reproduced above, out of which one sale deed pertained to village Khant, which is only of 12 marlas of

land and that was also post notification being executed on 02.01.2006.

14. Keeping in view the settled principle that the market value is to be determined on the date of Section 4 notification which is the relevant date, necessarily the sale deeds but had to be ignored, not only on account of the date of execution but also on account of miniscule pieces of land sold in comparison to the large scale of acquisition, which had been done for the Railways.

15. For village Sanghol, while deciding 33 reference petitions, lead case of which was **LR Petition No.2 of 2006 'Balwan Singh Vs. State of Punjab and others'**, the Reference Court vide Award dated 01.10.2009 came to the conclusion that the market value of the said village as per the sale deeds produced by the railways Ex.R29 to Ex.R51 showed the market value @ ₹4,50,000/- per acre, which was also low to what had been awarded by the LAC. Ex.P2, P4, P5 have been rejected on account of the fact that they were executed after the date of Section 4 notification. Similar is the position of Ex.P7 and P8, since they are pertaining to year 2006 and 2008. Ex.P3 is dated 09.08.2004, which is similar to Ex.P7, reproduced above and similarly Ex.P10 is also same as what is Ex.P8 dated 02.11.2004.

16. Thus, no such evidence in the form of sale deed could be pointed out to show the market price to support the claim for enhancement. In such circumstances, the Reference Court had noticed that the market value was much below than what had been awarded by

the LAC, but keeping in view the provisions of Section 25 of the Act, it could not decrease the amount as such and, thus, there is no case made out for enhancement in any manner.

17. The only three issues which, thus, arise for consideration are:

(i) Whether uniform market value to be awarded or not, since the land has been acquired for the same purpose;

(ii) The percentage of severance charge to be granted and

(iii) Whether the Reference Court could grant additional 30% on the point of solatium.

18. Reliance had rightly been placed upon the judgment of the Apex Court passed in **'Ali Mohammad Beigh and others VS. State of J&K' 2017 (4) SCC 717**, wherein land has been acquired for construction and development of housing colony for the resettlement of the dislocated families of the Dal Dwellers. The land had been acquired from three different villages and the landowners were aggrieved against the different rates of the compensation awarded and the fact that the villages were situated adjacent to each other and shared a common boundary, the argument was accepted. The distance between two villages being not much and keeping in view the site plan, the Apex Court had granted the same amount of compensation @ ₹4 lakhs per kanal. Reliance had been placed upon the judgment of the Apex Court passed in

Union of India v. Harinder Pal Singh and Others. (2005) 12 SCC 564, which was for the acquisition in similar circumstances for the purpose of a Cantonment and the land belonged to various villages. This Court had set aside the belting system and granted uniform compensation, which was upheld by the Apex Court by noticing that the High Court had taken a pragmatic view as such to grant the uniform rate of compensation.

19. Counsel for the Union of India has relied upon the observations of the Reference Court that the land as such was falling 10 to 11 Kms away from the highway as such and, therefore, the market value as such has been granted of a lesser rate for the land of three villages. The said argument is liable to be rejected.

20. More so site plan downloaded from the Google by the Railways themselves has been taken on record as Mark-A. A perusal of the same would go on to show that railway line as such was running parallel to the Chandigarh Ludhiana Highway, but never at a close distance. The closest distance which it had came to the highway was 730 meters from village Khant. Panjkoha falls on the other side of the railway line on the similar side and, thus, was contiguous and contributing land to the railways. Merely because the abadi of the village as such may be far away from the highway, but the land which had been acquired was adjoining the land of village Khant. Therefore, value of said land as such had to be granted and the same amount of compensation, as the land was situated closer to the road and would have the same market value.

21. Similarly, abadi of village Sanghol as such is below the

highway and the railway line is further below the abadi area and away from the highway. The land of Sanghol on top of the abadi is closer to the highway would thus command a higher premium. But the land below the abadi area and further from the Highway also has been given the benefit of ₹8 lakhs also, though it was at a further distance from the highway in comparison to what the land of village Panjkoha would be. The site plan Mark-A, thus, would go on to show that the railway line is cutting through the agricultural land of the five villages in question and the land is at a reasonable distance from the highway. Therefore, the market value should have been uniform, in the facts and circumstances. Rather the evidence is in favour of the landowners as such, since it is their specific case throughout that the quality of the land is the same.

22. Reference can be made to the statement of Paramjit Singh, Xen Construction II, who appeared as RW-1 in the case of Major Singh (supra). In his cross-examination he admitted that the acquired land of village Panaichan was far away from main Chandigarh-Ludhiana road. It was stated that the production of the land was also less and area was also low lying at some place and the distance of village Panaichan was 1 km from Chandigarh-Ludhiana road. The acquired land of village Khant was also stated to be at a distance of 1 Km from Chandigarh-Ludhiana road. The acquired land of village Sanghol was at a distance of 1 ½ Km from Chandigarh-Road and the acquired land of village Panjkoha was at a distance of 1 Km, whereas village Bhatian was at a distance of 1 ½ Km.

23. Apparently, it has come on record the land was situated

adjoining and, thus, would command the uniform rate which has not been granted by the Reference Court and the evidence as such had been ignored. An explanation was sought to be given in cross-examination for the *inter se* difference between the nature of the land of the above villages, which had been put to the witness. The witness stated that the acquired land of village Panaichan was far away from the main Chandigarh-Ludhiana road and the production of the land was also less and the area was also low lying at some place. However, he had not brought any document to show that the land was low lying at some places. He stated to have documentary evidence showing the levelling of low lying area and could produce it, if so desired, but the same was not done. Similarly, he did not have the possession of any documentary evidence to prove that the fertility of the land of village Panaichan was inferior to the land of other villages. Thus, it is apparent that the landowners are justified in claiming of a uniform compensation.

24. The Apex Court in the case of **Union of India Vs. Mangat (dead) by L.Rs, 2001 (1) PLJ 461,** disapproved of granting the uniform compensation, if the land is abutting highway. In the said case, the acquisition was for setting up of National Security Guard Camp at Manesar, Gurgaon and there was a frontage on the highway and it was, accordingly, held that the land abutting the National Highway would not be granted the same value.

25. In the present case, the land does not abut the highway and, therefore, the basic principle of uniform rate has to be followed, which

was also granted in the case of **'Haridwar Development Authority, Haridwar Vs. Raghubir Singh and others' 2010 (11) SCC 581.** The relevant observations of the said case read as under:-

> "6. The question whether the acquired lands have to be valued uniformly at the same rate, or whether different areas in the acquired lands have to be valued at different rates, depends upon the extent of the land acquired, the location, proximity to an access road/Main Road/Highway or to a City/Town/Village, and other relevant circumstances. We may illustrate :
>
> > (A) When a small and compact extent of land is acquired and the entire area is similarly situated, it will be appropriate to value the acquired land at a single uniform rate.
> >
> > (B) If a large tract of land is acquired with some lands facing a main road or a national highway and other lands being in the interior, the normal procedure is to value the lands adjacent to the main road at a higher rate and the interior lands which do not have road access, at a lesser rate.
> >
> > (C) Where a very large tract of land on the outskirts of a town is acquired, one end of the acquired lands adjoining the town boundary, the other end being two to three kilometres away, obviously, the rate that is adopted for the land nearest to the town cannot be adopted for the land which is farther away from the town. In such a situation, what is known as a belting method is adopted and the belt or strip adjacent to the town boundary will be given the highest price, the remotest belt will be awarded the lowest rate, the

belts/strips of lands falling in between, will be awarded gradually reducing rates from the highest to the lowest.

(D) Where a very large tract of land with a radius of one to two kilometres is acquired, but the entire land acquired is far away from any town or city limits, without any special Main road access, then it is logical to award the entire land, one uniform rate. The fact that the distance between one point to another point in the acquired lands, may be as much as two to three kilometres may not make any difference.

26. Illustration-D as such would be relevant in the facts and circumstances of the present case, as the land acquired was far away from any town or city limits and without any special main road access and it is logical to award the entire land, one uniform rate.

27. Accordingly, this Court is of the opinion that the three villages, namely, Panjkoha, Bhattia and Panaichan would be entitled for higher market value of ₹8 lakhs per acre.

28. Similarly, the issue of severance as such has to be addressed. The grouse of the appellants on account of severance @ 10% granted is also justified. The principle of severance as such is granted on the basis of Clause-3 of Section 23 of the Act, which is a factor to be taken into consideration, on account of the damage suffered by the person on account of the reason of severing such land from his other land by the Collector at the time of taking possession of the land. Section 23 (1), 23 (1A) and 23 (2) read as under:-

"**23. Matters to be considered on determining**

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

first, the market-value of the land at the date of the publication of the [notification under section 4, sub-section (1)];

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops trees which may be on the land at the time of the Collector's taking possession thereof;

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

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change, and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land

23 (IA) In addition to the market-value of the land, as above provided, the court shall in every case award an amount calculated at the rate of twelve per cent per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (I) in respect of such land to the date of the award of the Collector or the date of taking possession of the land whichever is earlier. Explanation: In computing the period

referred io in this sub-section. any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.

23 (2) In addition to the market-value of the land, as above provided, the court shall in every case award a sum of thirty per cent on such market-value. in consideration of the compulsory nature of the acquisition."

29. In the land reference of **Tej Kaur (supra),** RW-1 Paramjit Singh, in his affidavit on behalf of the department sought to cover up the amount of compensation which was to be awarded for severance by deposing that sufficient arrangements had existed for the landowners for their ingress and egress to the land on the other side of the railway track. The number of Road Under Bridges on Pucca road and also on Kacha path had also built at point A to B. Similarly, there were RCC Box bridges meant for its use as passage for crossing to one side to the other side of the railway track. Similarly, it was justified that there was adequate provisions made for the movement of agriculture appliances and implements i.e. Tractor, Trolloy, Harrow etc. by providing Kacha path on both sides of the railway track. In cross-examination, it has come forth that there was considerable distance between under passes as such and land which was falling on the other side of the track.

30. This Court in **'Tehal Singh Vs. State of Punjab through Collector Land Acquisition Drainage Circle Patiala, 1987 RRR 495, 'State of Punjab Vs. Gopal Singh', 2002 (2) PLR 843, 'Surjit Singh Vs. State of Punjab, Land Acquisition Collector, 2008 (2) PLR 8763,**

State of Haryana Vs. Kartar Singh 2010 (4) RCR (Civil) 443 and **'Smt. Maya Vs. State of Haryana', 2012 (4) PR 747** has consistently time and again granted 50% severance. In the case of **Tehal Singh (supra)** the land was acquired for the purpose of SYL Canal. The same was on the basis that the land which falls across and which is a small piece of land necessarily as such would be difficult to cultivate and landowners would not be able to get sufficient income from the same. The relevant observations read 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 mechanized."

31. In the present case, it is not a case of water channel, but is a case of acquisition for the purpose of railway line. Restricted access, thus, is provided at some distance by the railways themselves, which has come on record in the statement of the official witness. The landowners would face considerable difficulties in crossing the railway line as such and transporting agricultural implements across the railway line to the balance land which is on the other side. In such circumstances, the percentage of severance is liable to be enhanced. Accordingly, in the opinion of this Court the adequate percentage as such which would be sufficient to compensate the landowners would be to the tune of 30% on account of the severance of the land, only due to the acquisition for the purpose of railway line.

32. The amount of additional 30% solatium granted by the Reference Court is apparently an error on the face of the record and is liable to be set aside. The Reference Court did not examine the award of the LAC dated 18.08.2006, wherein the benefits of solatium were already granted which statutory in nature to the extent of 30%. The relevant part of the award of the LAC, whereby the market value was fixed @ ₹6 lakhs and ₹8 lakhs per acre + 30% solatium alongwith other benefits under

under Section 23 (1A), was in the LAC Award and paid also is reproduced as under:-

"The above mentioned rates proposed vide letter no:712/peshi, dated 30.12.05 of this office to Village Sanghol and Khant i.e. Rs 8,00,000/- per acre and to Village Bhatiyan, Panjkoha and Panaichan i.e. Rs 6,00,000/- per acre and sent to the Secretary, Public Works Department, B & R, Punjab, Chandigarh for approval, which were approved vide Memo no:7/26/05-1IS3/817 dated 15-02-06. On the basis of these rates the compensation of whole Chahi cultivable land comes as under:-

Sr. No.	Name of the village	Hadbast No.	Area A K M	Amount	30% solatium	interest 12% from dated 19.09.05	Total amount
1.	Panjkoha	267	10-2-19	Rs.62,21,250/-	Rs.18,66,375	Rs.6,46,328/-	Rs.87,33,953/-
2.	Sanghol	310	35-3-19	Rs.2,83,95,000/-	RS.85,18,500/-	Rs.29,49,968/-	Rs.3,98,63,468/-
3.	Bhattian	270	0-2-6	Rs.1,72,500/-	Rs.51,750-	Rs.17,921/-	Rs.2,42,171/-
4.	Khant	271	29-5-4	Rs.2,37,20,000/-	Rs.71,16,000-	Rs.24,64,275/-	Rs.3,33,00,275/-
5.	Panaichan	309	24-5-7	Rs.1,48,01,250/-	Rs.44,40,375-	Rs.15,37,708/-	Rs.2,07,79,334/-
Total		-	-	Rs.7,33,10,000/-	Rs.2,19,93,000/-	Rs.76,16,200/-	Rs.10,29,19,200/-

Approval has been received for issuing NOC for acquiring land as per serial no.4 of State level meeting of Land Acquisition Board held on 14-06-06 under Chairmanship of Finance Commissioner(Revenue) Punjab, Chandigarh regarding land to be acquired for New BG Chandigarh-Ludhiana Railway Link Project.

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Acquisition of land

The compensation in respect of the land of villages namely Khant, Panechan, Bhattian, Panjkoha and Sanghol is rupees 10,29,19,200/-. The absolute possession of the land has been obtained after paying a sum of rupees 3,13,01,519/- to 99% land owners out of 80% amount of the compensation i.e. rupees 8,23,35,359/-. The land free from all encumbrances will vest in the name of Railway Department. The outstanding amount will be paid to land owners as per share on the basis of entries made in the record of Revenue Department.

Date of announcement of Award:- 18/08/2006."

33. The provision of Section 23 (2) has already been reproduced above. Solatium is granted on the basis of principle of eminent domain, since the land is acquired by the State for the public purpose against the wish of the landowners and percentage of solatium to be granted is provided itself in the statute. The Reference Court could not have, thus, granted the additional amount of 30%, which the Railways are rightly aggrieved against.

34. Solatium as defined in Black's Law Dictionary is *'Compensation in the form of damages allowed for hurt feelings or grief, as distinguished from damages for physical injury'*. **In 'Narain Das Jain (since deceased) by his legal representatives Vs. Agra Nagar Mahapalika, Agra' 1991 (4) SCC 212**, the Apex Court had noticed that the solatium is a money comfort quantified by the statue and given as a conciliatory measure for the compulsory acquisition of the land of the citizen by the welfare State. Thus, it was held that it follows automatically the market value of the land. The relevant portion of the said judgment reads as under:-

> "7. The importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontaneously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of

course without any impediment. That it falls to be awarded by the Court "in every case" leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the Court gets occasion to amend or rectify. This is the spirit of the provision, wherever made.”

35. It is, thus, apparent that the landowner does not have to claim the solatium and the Court under the statutory obligation has to give him and similar would be applicable to the Collector. Similar observations came in the judgment of the Full Bench of the Karnataka High Court in the case of **'D.M Jawarilal and others Vs. Spl. L.A.O. CITB, Banglore' 1975 AIR (Karnataka) 129**. Thus, the issue No.3 regarding additional amount of 30% solatium, which has been granted by the Reference Court, was not sustainable and could not have been over and above the statutory amount provided.

36. Thus, the appeals of the Railways are liable to be allowed to this extent and the solatium is restricted to 30% on the uniform compensation of ₹8 lakhs to the landowners.

37. Resultantly, the appeals are allowed to the extent:

(i) the landowners of all five villages shall get uniform rate of compensation @ ₹8 lakhs per acre alongwith all statutory benefits;

(ii) the percentage of severance would be enhanced from 10% to 30% of the market value where granted.

However, it is made clear that on the amount of severance the landowners would not be entitled for the benefits of Section 23 (1A) and Section 23 (2) as it is not the market value as such and in view of the law laid down by the Apex Court passed in **'State of Punjab Vs. Amarjit Singh', 2011 (4) SCC 734.**

(iii) Appeals of the railways are allowed to the extent that 30% additional amount on account of the solatium, which has been granted is set aside. It is clarified that the solatium will be @ 30% only as per the statutory provisions of Section 23 (2) of the Act.

38. Resultantly, the appeals are disposed of in the above terms. All the pending civil miscellaneous applications also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

JULY 11, 2019
Naveen

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No