IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA-7876-2011 (O&M)
and connected appeals
Reserved on : 26.03.2019
Pronounced on: 26.04.2019

Basant Singh ....Appellant

Versus

State of Haryana & another ...Respondents

First set of appeals filed by the landowners	RFA No.7876 of 2011 (O&M) RFA Nos.12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 60, 61, 62, 63, 64, 65, 66, 67, 90, 91, 92, 250, 276, 385, 386, 387, 388, 389, 403, 404, 405, 406, 407, 1068, 1069, 1070, 1071 and 1072 of 2012 (O&M) RFA Nos.6911, 6912, 6913, 6914, 6915, 6916, 6917, 6918, 6919, 6920, 6921, 6922, 6923, 6924, 6925, 6926 of 2013 (O&M) RFA Nos.3355, 3356, 3361, 3699, 4231, 5999, 6000, 6001, 6002, 6003, 6004 & 6698 of 2014 (O&M) RFA Nos.56, 322, 347, 348, 443, 527, 814, 871, 872, 873, 922, 939, 1064, 1065, 1066, 1067, 1068, 1575, 4607, 4718 and 4719 of 2015 (O&M) RFA Nos.2505, 2506, 2662, 2663 and 2664 of 2016 (O&M) RFA Nos.1204, 1764, 8440 and 8441 of 2018 (O&M)
Second set of appeals filed by the landowners	RFA Nos.797, 798, 799, 800 and 801 of 2014 (O&M)

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

Present: Mr.Deepak Sharma, Advocate
Mr.Sanjay Jain, Advocate
Mr.Jasmer Chand, Advocate
Mr.Bhag Singh, Advocate
Mr.Upender Prashar, Advocate

Mr.A.K.Jain, Advocate
Mr.Mohit Aneja, Advocate
Mr.Gopal Krishan Gupta, Advocate
Mr.U.K.Agnihotri, Advocate
Mr.Himanshu Sharma, Advocate for the landowners.

Mr.Sudeep Mahajan, Addl.A.G., Haryana.
Ms.Vibha Tewari, AAG, Haryana.

Mr.Deepak Sabharwal, Advocate, for Marketing Board.

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G.S. SANDHAWALIA, J.

The present judgment shall dispose of 109 appeals (hereinafter referred to as 'First set of appeals), under Section 54 of the Land Acquisition Act, 1894 (for short, the 'Act') arising out of the awards dated 21.09.2011, 10.04.2013, 01.10.2013 and 11.12.2013, pertaining to the notification dated 10.07.2007, filed by the landowners. The judgment shall also deal with the notification dated 26.03.2008 of another batch of 5 appeals, arising out of the award dated 20.04.2013 (hereinafter referred to as 'Second set of appeals), filed by the landowners, since there is only a difference of 8 months apart and the land is situated on the same Highway and just a kilometer apart and a common village namely Patti Jattan, is also concerned.

Facts/evidence of the first batch of appeals pertaining to the notification dated 10.07.2007

2. Vide the first notification, pertaining to the acquisition of 25 acres 3 kanals 13 marlas of land, falling in Village Patti Jattan Hadbast No.38 Tehsil & District Ambala, was sought to be acquired vide notification under Section 4 dated 10.07.2007 and the Section 6 notification was issued on 21.01.2008. The public purpose for

acquisition was for the New Fruit & Vegetable Market. The award was passed on 11.03.2008, by the Land Acquisition Collector, for the land, out of which, 3 acres fell within the Municipal limits. The compensation awarded by the LAC was Rs.12,00,000/- per acre upto 2 acre depth from GT Road and @ Rs.8,00,000/- per acre beyond that. For the acquired land, compensation was claimed @ Rs.9,68,00,000/- per acre.

3. The Reference Court, Ambala enhanced the compensation vide the principal award dated 21.09.2011, to Rs.19,20,000/- per acre upto the depth of 2 acres and Rs.16,00,000/- per acre for the land falling beyond the said depth. As many as 11 sale deeds were exhibited by the landowners and the Reference Court, keeping in mind the smallness of the sale deeds, discarded some of them on that ground and keeping in view the largeness of the acquisition. The other sale deeds were being discarded on account of being post notification. Some of the larger chunks of land were discarded on account of the fact that they were post notification and of Village Patti Sekhan, which was at a considerable distance from the acquired land. The ones executed prior were pertaining to Patti Khurrampur Majri and Patti Sekhan also and were not taken into consideration for assessing the market value. Ex.P-4 which was of Patti Jattan measuring 29 kanals 11 marlas, the market value of which would work @ Rs.63,00,000/- per acre and which was 800 sq.yards away from the acquired land and on the other side of the road, across the Highway, had been purchased by Harshil Builders Pvt. Ltd. and was discarded on the ground that the builders projected the higher sale price for obtaining

loans for raising residential areas and flats.

4. Another reason which weighed was that the land across the road and on the right side of the Highway was sandwiched between the two roads, National Highway No.1, from Ambala to Rajpura and another, the Ambala-Chandigarh road and therefore, it was held that the sale deeds were speculative, as such. In the absence of any other sale deeds of comparable area, on the other side of the road, the same was, accordingly, discarded. It was noticed that Tehsildar, Ambala had supplied the rates on the basis of the average sale deeds of Patti Jattan, @ Rs.61,44,680/- per acre for Chahi land, Rs.56,16,000/- per acre for Banjar Qadim and Rs.55,38,211/- per acre for Gair Mumkin land. However, it was held that the rates supplied could not be given and the rate and report of the Tehsildar was held not to be acceptable as the reasons for giving such high rates was not placed before the Court.

5. The site-plan (Ex.PW-5/A) was kept in mind to notice that the land was just in the vicinity of the area where residential colonies were coming up and on the inner side of the acquired area, towards Ambala City and the area beyond the acquired land was still not developed commercially and residentially but had the potential to develop into a residential area in coming future with upcoming of urbanization being in proximity of the other developed or developing areas. Shivalik Colony, Godhan Enclave, Maharaja Palace were at a short distance from the acquired land, located towards the inner side and it was also noticed that at the back of the land there was Kabir Nagar, Nirmal Vihar, Jain

College Road, S.A.Jain College, Hira Nagar Colony and Shalimar Colony and the Manji Sahib Gurudwara was at a distance of 875 sq.yards from the acquired land, towards Ambala City. The dairy factory was at a distance of only 448 yards and Electric Pipe Factory was at 219 yards distance. The H.P. Petrol Pump was located at a distance of 219 yards from the acquired land. Site-plan (Ex.PW-5/A) was also referred to, which showed the location of the land and it was held that it has not come on record as to what was the position on the date of acquisition of the land and there was no evidence to show that the acquired land had high potential at the time of acquisition. The compensation, thus, awarded by the LAC was increased, while noticing that the land was situated outside the Municipal limits at the time of acquisition to Rs.16,00,000/- per acre and 20% further enhancement was given to the land falling next to the highway, to the extent of 2 acres @ Rs.19,20,000/-.

6. The petition, filed under Section 18 of the Act, titled *Jasmer Singh Vs. State of Haryana,* which is the lead case, would go on to show that plea taken was that the land abutted the Grand Trunk Road and was within the abadi of Municipal area of Ambala City, which was a District Headquarter. All amenities and facilities of modern life were available at the door-steps. The New Anaj Mandi, Ambala-Hisar National Highway, Ambala-Naraingarh National Highway, Baldev Nagar, Housing Board Colony, Manji Sahib Gurudwara, were in the near vicinity. The biggest wholesale fruit market of North India and number of scientific factories were situated at the Ambala Cantt. The Ambala Cantonment Area, Air

Force Station, Military Dairy Farm, various recreation centres, the bus-stands and the Railway Stations along with commercial activities by way of Scheduled Banks, Petrol Pumps, car agencies and educational institutions, were also in the close vicinity. Vatika Pvt.Housing Company had been carved out of Sector 23 on agriculture land measuring about 250 acres, which was far off from the acquired land and extreme south of Ambala City and the location was much inferior in comparison to the land acquired and was being sold @ Rs.7,500 to Rs.10,000/- per sq.yard. The market value, thus, was submitted to be inadequate in comparison.

7. The factum of the location of the land was admitted by the respondents in the reply but it was held out that the places mentioned were far-away and not abutting the acquired land. Assessment had been properly made and there was no ground, as such, for enhancement.

8. PW-1, Ram Niwas, Registry Clerk from the office of the Tehsildar, Ambala, produced the sale deeds (Exs.P-1 to P-8 whereas the Aks Sijra (Ex.P-9) was proved by Ram Kumar, Patwari, who appeared as PW-2. PW-3, Balbir Singh, Clerk, Municipal Council, Ambala City produced the notification of the Government showing the Municipal boundary (Exs.PW-3/A & PW-3/B). He stated that the existing Municipal boundary was shown in green colour and extended boundary was shown in red colour in the site-plan (Ex.PW-3). In cross-examination, he admitted that same was not in his hand nor it was issued by the Government and nor it was true copy of the map on file, but it was correct as per the record. Ex.PW-4/A, minutes of meeting chaired by the

Commissioner, whereby the price had been recommended @ Rs.61,44,680/- for Chahi land, was produced by Rajinder Sabharwal, Patwari, who denied any personal knowledge regarding the contents of the document.

9. PW-5, Surinder Mohan Mittal proved the site-plan, Ex.PW5/A with the correct marginal notes which were stated to be true as per the spot. He deposed regarding his experience in preparing the site-plans and the valuation reports being prepared by him on the instructions of the 7 claimants. The acquired land had been shown in red colour and the sale instances had been shown in green colour. In cross-examination, he deposed that the site-plan was prepared with the Aks Sijra supplied by the Halqa Patwari, which was already on record. Sant Singh appeared as PW-6 and in cross-examination, deposed that part of the land was self-acquired and remaining was ancestral. The purchase had taken place in the year 1982 @ Rs.20,000/- per acre.

10. RW-1 Fakir Chand brought the record pertaining to the rates of the land which were exhibited as Ex.R-1. Nirmal Singh, Patwari produced the record as Exs.R-2 to R-5. In cross-examination, he admitted that the proposal given by the Tehsildar to fix the value of the land @ Rs.61,44,680/- per acre for Chahi, Rs.56,16,000/- per acre for Banjar Qadim and Rs.55,38,211/- per acre for Gair Mumkin land, had not been accepted by the Divisional Evaluation Committee. The report (Ex.PW-4/1) also did not show any justification for not accepting the proposals of the Tehsildar.

Arguments addressed by counsels

11. Counsel for the landowners have, accordingly, primarily argued that the Reference Court was not justified in rejecting the sale exemplars only on account of the fact that they have been executed in favour of the builders. It was, accordingly, submitted that the principle of adjoining villages had totally been ignored and the land was situated at prime position, closer to Ambala town and abutting the National Highway road leading to Rajpura and Amritsar. Rather than appreciating the fact that it was closer to Ambala town, the Reference Court had wrongly come to the conclusion that the land across the Highway was more valuable as it is submitted that a railway line was going through parallel to the Chandigarh Highway and the access to the Chandigarh Highway was limited and the reasoning was perverse. Three acres of land was already within the Municipal limits at the time of acquisition and the balance had also come within the Municipal limits when the same were extended on 22.09.2008 (Ex.PW-3/A) a year later and therefore, the potentiality, as such, of using as residential colony could not be denied. It was submitted that even cut was not applicable on account of the fact that the land was being acquired for the purposes of infrastructure for setting of a fruit mandi and there would be minimum lossage of land, as such. Therefore, they prayed for modifying the awards passed by the Reference Court and asked for awarding of suitable market value. Reliance was placed upon the judgment passed by the Apex Court in **Bhagwathulla Samana & others Vs. Special Tehsildar and Land**

Acquisition Officer, Visakhapatnam 1991 SCC (4) 506 and **Atma Singh (died) through LRs & others Vs. State of Haryana & another 2008 (2) SCC 568**.

<u>Facts and evidence of second set of cases, pertaining to the notification dated 26.03.2008</u>

12. Similar is the evidence of the second batch of cases, pertaining to award dated 23.12.2008, whereby 43 kanals and 9 marlas of land was sought to be acquired, out of which 19 kanals 10 marlas was situated in Devi Nagar, Hadbast No.37 and 23 kanals 19 marlas fell in Patti Jattan, Hadbast No.38, the common village and adjoined each other.

13. The evidence of the lead case being *Narpinder Singh Vs. State of Haryana*, would go on to show that it was pleaded that the land was situated on the National Highway No.1 at Ambala City and was being used for residential and commercial purposes. The commercial area continued to Devi Nagar and there were residential colonies, motor market, petrol pumps, industrial areas, godowns, hotels, abadi of Devi Nagar, Patti Jattan, schools, post offices, banks, Dhulkot Railway Station, Manji Sahib Gurudwara, the Fruit and Vegetable Mandi and other facilities were available. The whole land had potential to be used for development of commercial and residential areas and classification in agriculture land, as such, had wrongly been done.

14. In the response filed by the State, the factum of the property adjoining the National Highway was admitted but it was denied that the land was being used for residential and commercial purposes. Regarding

the residential areas, as averred, it was stated that the land was being used for agricultural purposes and the same had no potential for development as residential, commercial and industrial purposes.

15. Kasturi Lal, being the Registration Clerk in the office of the Sub-Registrar appeared as PW-1 and had produced the sale deeds and Jagmohan Lal, who appeared as PW-2, was the Lambardar, whose signatures were on the sale deeds. Amarjit Singh, PW-3 deposed regarding the potentiality of the land, as such and in cross-examination, stated that Village Devi Nagar was at a distance of 2 ½ kms from Ambala City. The same was being used for purpose of agriculture at the time of acquisition and there was no construction on the land. He could not depose as to whether the value shown in the sale deeds (Exs.P-1 to P-6) were exorbitant and excessive and to take the benefit, as he was neither seller or purchaser nor a witness. He denied the suggestion that the said sale deeds were with any *mala fide* intention and were just public transactions. He also admitted that the land in question was outside the Municipal limits at the time of the acquisition. Narpinder Singh appeared as PW-4 whereas Ajit Singh, who appeared as PW-5, produced the notification (PW-5/1) and the drawing as PW-5/2, which referred to the limits of the controlled area. PW-6, Balvir Singh brought the summoned record, being the Clerk of the Municipal Corporation, Ambala and produced the notification (PW-6/1).

16. Surinder Mohan Mittal, PW-7, qualified Civil Engineer and Architect, produced the site-plan (Ex.PW-7/A), which showed the

measurements which were stated to be taken with the help of a tape, odometer of motorcycle and car. He stated that the land was situated on the National Highway and surrounded by residential colonies, commercial establishments and educational institutions. Ichhapurak Gurudwara was just opposite the acquired land, on the left side of the GT Road, if one would be proceeding from Ambala City to Rajpura, by the road. Near the acquired land, Unique Builders were constructing their commercial and residential colonies and the site-plan was correct as per the spot. Exs.P-1 & P-6 were duly shown in green colour in the site-plan and the same were stated to be on the basis of the Aks Sijra (Exs.P-7 & P-8). He denied the suggestion that he had not visited the location and he had prepared the site-plan in the office and after consulting the revenue record. He stated that the measurement had been taken on the motorcycle and the car belonged to the claimants. Subhash Kumar Grover, RW-1, the Sub-Divisional Engineer, Public Health Engineering Department, produced the sale deeds dated 10.01.2008, 10.06.2008 and 22.01.2009 (Exs.R-1 to R-3). In cross-examination, he admitted the location of the land and Ichhapurak Gurudwara was situated just opposite the acquired land. He also admitted that Village Devi Nagar was behind the Gurudwara. He denied the suggestion that Unique Housing Colony and other residential and commercial buildings were existing near the acquired land. He did not know about the vendees of Exs.R-1 to R-3 and he did not know their location. He also did not know about the distance of these pieces of land from the acquired land and how far they were from the GT Road. He stated that at the time of acquisition, there were no such building in existence and denied that the institutions mentioned in the map (Ex. PW-7/A) existed.

17. Similarly, in the second set of cases, pertaining to setting up of Sewerage Treatment Plant, it was submitted that the land was on the Highway. Residential colonies and other commercial units were in the close vicinity and there was no such stand taken by the State that the sale transactions in favour of the builders were not *bona fide* transactions and payments had been made by cheque and some part payments had been made prior to the acquisition process also. It was thus argued that the Reference Court erred in not granting enhancement.

Reasoning for enhancement of compensation

18. A perusal of the above discussion would go on to show that the location of the land, as such, was prime, which has wrongly been not appreciated in its full perspective by the Reference Court while dealing with the first set of appeals and totally lost sight of by it, while dealing with the second set of appeals pertaining to the acquisition of land for the Sewerage Treatment Plant. The fact that 3 acres of land fell within the Municipal boundary, which was shown in green colour in the site-plan (Ex.PW-3) and therefore, as per settled principles, it had great potential, as such, for development for both residential and commercial purposes. The relevant findings, as such, of the Reference Court, which have become final on account of the State appeals being dismissed earlier, read as under:

"35. Now adverting to the other aspects of the matter if the land has great commercial or residential complex, it is observed that acquired land is on G.T.Road. Vide Government notifications Ex.PW3/A and Ex.PW3/B, Municipal boundary of Ambala City has been extended. Site plan Ex.PW3/C also indicates the extended boundary of the Municipal area. The land has been acquired for utilization and construction of fruit and vegetable market evidently due to its potentiality as setting up of fruit market in the vicinity of the city area is required rather its location at a far away place from the City area would have been counter productive. Such a market is required to be set up in the vicinity of the city area. Perusal of site plan Ex.PW5/A would indicate that the acquired land is just in the vicinity of the area where residential colonies are coming up, on the inner side of the acquired area towards Ambala City. The area of acquired land and the area beyond the acquired land away from the City area is still not developed commercially and residentially. However, the acquired land has potential of being developed into a residential area in coming future with upcoming of urbanization being in proximity of the other developed or developing area. Shivalik Colony, Godhan Enclave, Maharaja Palace are at a short distance from the acquired land, located towards the inner side of the acquired land towards Ambala City. Gobind Vihar and Charkhi Mohalla and abadi area and circular road is also no far away from the acquired land. On the backside of acquired land, there is Kabir Nagar, Nirmal Vihar, Jain College Road, S.A.Jain College, Hira Nagar Colony and Shalimar Colony. Manji Sahib Gurudwara is at a distance of 875 square yards towards Ambala City from the acquired land. A dairy factory is also located at a distance of 448 yards and Electric Pipe Factory is situated at a distance of 219 yards. An HP petrol pump is also located at a distance of 219 yards from the acquired land. In Khan Chand Vs. State of Haryana 2008 (2)

RCR Civil 286, it was held by our own Hon'ble High Court regarding land situated tow furlong from the City and adjacent to the developed colonies, office of S.P., a school and a factories that such land can certainly be held to have acquired huge potentiality. To assess the market value of the acquired land purely as agricultural land only, would be improper in view of the potentiality of the acquired land as it has potential to be developed into residential area as well. It is also to be borne in mind that for developing a big chunk of land into residential area much efforts are required for carving out of roads and streets, for leaving open spaces and a lot of money is blocked till the area is sold to prospective buyers. Electrical, sewerage and water facilities come up with considerable passage of time and only thereafter prospective buyers are attached to that area. In this manner, it would not be appropriate to assess market value by considering the acquired land as agricultural only on the date of notification nor it would be appropriate to assess compensation by assessing market value as that of developed residential area. The acquired land now falls in the municipal area. Collector rate of the area of acquired land at the time of notification, for agricultural land was Rs.8,00,000/- only which was awarded by the land acquisition collector but the same is on the lessor side as discussed above. The collector rates for residential area, in acquired land of Patti Jattan are Rs.700/- per square yard which would be on the higher side as area for carving out roads, open spaces remain un-utilized for sale able plots. Market value of acquired land is more than agricultural land in view of the potentiality of the acquired land."

19. The land might be away from the Highway, to some extent, but was situated closer to the main Ambala City and therefore, had a better potential than the land across the Highway, which has been sold at a much higher price, the sale deeds of which will be discussed ahead.

Rather, Ex.X-2, though post notification and which was just close to the Highway and executed only a month later, whereby the land measuring 22 kanals 18 marlas, though falling in adjoining Village Patti Shekon, was sold for Rs.4,49,60,000/- and the per acre value work out to Rs.1,57,06,550/-.

20. Similarly, land purchased at Village Patti Jattan, vide Ex.P-4 on 10.05.2007, was further away from the Highway, measuring 29 kanals 11 marlas, was sold for Rs.2,32,70,625/- and the value comes to @ Rs.63,00,000/- per acre. On the same date, the same vendor had also purchased land measuring 16 kanals 12 marlas for Rs.1,30,72,500/- (Ex.P-5) falling in Village Patti Shekhon, which was adjoining village and which was further away but at the same road. All the said sale deeds have been depicted in Ex.PW5/A, which were not even examined by the Reference Court in its proper earnestness. The sale deeds, Exs.P-1 & P-2 which are only of 9 marlas and 22 sq.yards respectively, are not being considered by this Court due to the size of the acquisition and the sale exemplars being too small in nature. Similarly, vide Ex.P-3, executed on 11.04.2007, i.e., 3 months prior to the date of notification, 31 kanals 11 marlas of land was sold for Rs.2,48,45,625/- and the value per acre come to Rs.63,00,000/-, which is, admittedly, just outside the Municipal limits. Similarly, Ex.P-7, though within the Municipal limits but being a small piece of land of 513 sq.yards can be ignored wherein the land was sold at a much higher rate, i.e., Rs.2,61,38,613/- and also on account of being post dated. Similarly, Ex.X-1 which is land measuring 18 kanals 16

marlas, was sold @ Rs.60,00,000/- per acre on 02.01.2007, just 6 months prior to the Section 4 notification, though situated at Village Patti Khurrampur Majri, but was just on the boundary of the land of Patti Shekon, which is not very far from the boundary of Patti Jattan, which also abuts the boundary of Khurrampur Majri.

21. Similarly, Ex.X-3, which was sold on 19.01.2007, is also falling in Village Patti Shekon, measuring 16 kanals 14 marlas and the distance of the acquired land is also stated to be only 440 yards from the land acquired and was sold @ Rs.63,50,000/- per acre and also 6 months prior to the notification in question. The chart showing the sale instances is reproduced as under:

Sr. No.	**Sale instance**	**Date**	**Location**	**Distance from acquired land**	**Area**	**Total price (Rs.)**	**Price per square yard**
1.	Ex.P1	28.03.2006	Patti Jattan (within Municipal Limits)	403 yards	09 marlas (261/- per square yard)	15,39,900/-	Rs.5900/- per square yard/ Rs.2,85,56,000/- per acre
2.	Ex.P2	16.11.2006	Patti Jattan (within Municipal Limits)	513 yards	22 square yards	90,000/-	Rs.4090.90 Ps. Per square yard/ Rs.1,98,00,000/- per acre
3.	Ex.X-1	2.01.2007	Patti Khurram pur Majri (out of Municipal limits)	1467 yards and 1906 yards	18 kanals 16 marlas	1,41,00,000/-	Rs.1239.67 Ps. Per square yard/ Rs.60,00,000/- per acre
4.	Ex.X-3	19.01.2007	Patti Sekhan (out of Municipal Limits	440 yards	16 kanals 14 marlas	1,32,55,625/-	Rs.1311.98 Ps. Per square yard/ Rs.63,50,000/- per acre.

Sr. No.	Sale instance	Date	Location	Distance from acquired land	Area	Total price (Rs.)	Price per square yard
5.	Ex.P3	11.04.2007	Patti Sekhan (out of Municipal Limits)	1173 yards	31 kanals 11 marlas	2,48,45,625/-	Rs.1301.96 Ps. Per square yard/ Rs.63,00,000/- per acre.
6.	Ex.P4	10.05.2007	Patti Jattan (out of Municipal Limits)	807 yards and 821 yards	29 kanals 11 marlas	2,32,70,625/-	Rs.1301.65 Ps. Per square yard/ Rs.63,00,000/- per acre
7.	Ex.P5	10.05.2007	Patti Sekhan (out of Municipal Limits)	1613 yards 880 yards	16 kanals 12 marlas	1,30,72,500/-	Rs.1301.65 Ps. Per square yard/ Rs.63,00,000/- per acre
8.	Ex.X-2	23.08.2007	Patti Sekhan (out of Municipal Limits)	1613 yards and 880 yards	22 kanals 18 marlas	4,49,60,000/-	Rs.3245.15 Ps. Per square yard/ Rs.1,57,06,550.21 per acre
9.	Ex.P6	23.06.2008	Patti Jattan (within Municipal Limits)	513 yards	22.22 square yards	1,12,000/-	Rs.5040.40 Ps. Per square yard/ Rs.2,43,96,039/- per acre
10.	Ex.P7	17.11.2008	Patti Jattan (within Municipal Limits)	513 yards	22.22 square yards	1,20,000/-	Rs.5040.40 Ps. Per square yard/ Rs.2,61,38,613/- per acre
11.	Ex.P8	2.12.2008	Patti Jattan (within Municipal Limits)	660 yards	44.44 square yards	4,45,000/-	Rs.10013.50 Ps. Per square yard/ Rs.4,84,65,346/- per acre

22. The sale deeds depicted in the above table show that there was an increasing trend of price rise in the area and merely because certain builders had purchased the property would not be a valid ground, as such, to discard the said sale deeds. The principle which has been laid down that the sale deeds of the adjoining villages can also be taken into consideration to assess the market value, was also totally lost sight of.

Reference can also be made to the judgment of the Apex Court in **Union of India Vs. Harinderpal Singh (2005) 12 SCC 564** and **Charan Dass (dead) by LRs Vs. Himachal Pradesh Housing Board Authority & others 2010 (13) SCC 398**. The relevant portion reads as under:

> "As already noted, the first step being the determination of the market value of the land on the date of publication of Notification under sub-Section (1) of Section 4 of the Act. One of the principles for determination of the market value of the acquired land would be the price that a willing purchaser would be willing to pay if it is sold in the open market at the time of issue of Notification under Section 4 of the Act. But finding direct evidence in this behalf is not an easy task and, therefore, the Court has to take recourse to other known methods for arriving at the market value of the land acquired. One of the preferred and well accepted methods adopted for ascertaining the market value of the land in acquisition cases is the sale transactions on or about the date of issue of Notification under Section 4 of the Act. But here again finding a transaction of sale on or a few days before the said Notification is not an easy exercise. In the absence of such evidence contemporaneous transactions in respect of the lands, which have similar advantages and disadvantages is considered as a good piece of evidence for determining the market value of the acquired land. It needs little emphasis that the contemporaneous transactions or the comparable sales have to be in respect of lands which are contiguous to the acquired land and are similar in nature and potentiality. Again, in the absence of sale deeds, the judgments and awards passed in respect of acquisition of lands, made in the same village and/or neighbouring villages can be accepted as valid piece of evidence and provide a sound basis to work out the market value of the land after suitable adjustments with regard to positive and negative factors enumerated in Sections

> 23 and 24 of the Act. Undoubtedly, an element of some guess work is involved in the entire exercise, yet the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard."

23. The basic criteria which is to be kept in mind is that the market value is to be assessed on the strength of what a willing purchaser would pay to a willing vendor. If the parties can get the best evidence of the value of the property and the sale is of the recent date, the Court would examine the recent sale deeds, to assess the current land value. As long the said sales are *bona fide* in nature and there is nothing to show, as such, that they were only for the purpose of pushing up the market value, the determination has to be made on the dead-line of the evaluation by taking into account the general instances. The location of the land has already been discussed that part of it, as much as 3 acres out of the 25 acres 3 kanals 13 marlas of land was falling within the Municipal limits and it is settled principle that if the land falls within the Municipal limits, market value is not to be assessed as treating it as agricultural land as the same would have building potential. It is also to be noticed that within a year the balance land came within the Municipal limits. The Reference Court, thus, failed to sit in the arm-chair of a prudent purchaser and consider whether the prudent purchaser was willing to purchase the land and at what price, as has been held by the Apex Court in **M/s Hasanali Khanbhai & Sons and others Vs. State of Gujarat 1995 (5) SCC 422**.

24. It is also pertinent to notice that the judgment, as relied upon by the landowners that no cut should be imposed in **Bhagwathulla**

Samana (supra) was also discussed and it was held that the principle that there was no deduction towards development charges, was only where the land was situated within a developed area. The argument, thus, was repelled that once the entire land was to be used for building purposes, carving out roads, open spaces and other civic amenities, have to be done and deduction of 1/3rd has to be done, as held in the catena of judgments by the Apex Court, as in **Lal Chand Vs. Union of India & another 2009 (15) SCC 769**, **A.P.Housing Board Vs. K.Manohar Reddy 2010 (11) SCR 1107**, **Valliyammal & another Vs. Special Tahsildar (Land Acquisition) & another 2011 (10) SCR 293** and **Maj. Gen. Kapil Mehra & others Vs. Union of India & another 2015 (2) SCC 262**.

25. Resultantly, the argument raised by the landowners, as such that no cut should be applied, is without any basis, as the land is situated on the fringe of the developed portion as would be clear from the site-plan (Ex.PW-5/A).

26. The judgment in **Atma Singh** (supra) would be of no help, as such, as relied upon by Mr.Jasmer Chand, since that was a case where the land had been acquired for the construction of Cooperative Sugar Mill. Resultantly, it was held that having not being acquired for any housing colony or Government office or institution but would produce goods worth many crores in a year. A sugar factory, apart from producing sugar, also produces many by-products including molasses, for production of alcohol and therefore, being an industry which would earn money and make profit. Resultantly, it was held that it was not proper to

make deduction in the price of land, showing exemplars of small plots and only 10% deduction from the market value which had been applied by the High Court was upheld. In the present case, an analogy has been sought to be made on the ground that the land was being acquired for the purposes of fruit and vegetable market and therefore, the Market Committee would be, as such, charging fees and therefore, it could be placed at the same pedestal as **Atma Singh's case** (supra).

27. However, the said argument is not liable to be accepted. The facts have already been noticed above. The acquisition is for the purpose of providing infrastructure to the area and not for making profit, as such. The Market Committee is set up under the Punjab Agriculture Produce Market Act, 1961 and the purpose behind the Statute, as such, is to ensure that there is a regular opportunity of purchase and storage of goods of the agriculture produce. The same cannot be compared with the commercial purposes of setting up of a sugar mill, which, as noticed, would earn huge amount of profits. In such circumstances, the deduction, as such, is but to be made on the sale deeds which have been produced by the landowners, keeping in view the settled principle that there would be lossage of land for the purpose of laying out lights, carving passages and drainage in the village market.

28. Reliance can also be placed upon the observations of the Apex Court in **Chandershekhar (D) by LRs & others Vs. Land Acquisition Officer & another 2012 (1) SCC 390**, whereby principle of deduction has been discussed to hold that the moment the acquired land is

a large chunk of land, deduction has to be made towards infrastructure space. The same could vary from 25% to 75%, for open spaces, laying of sewers, rain/flood water drains, overhead water tanks and water lines, water and effluent treatment plants, electricity sub-stations, which are the costs which have to be incurred for development.

29. In **P. Ram Reddy Vs. Land Acquisition Officer, Hydrabad Urban Development Authority, Hydrabad 1995 (2) SCC 305**, it was held that while assessing the market value of the land, the building potentials of the acquired land is to be taken into consideration and the possibilities of the same becoming available in the immediate or near future, for determining the correct market price. The situation of land because of its commercial and industrial potential, suitability for putting up the buildings, the possibility of obtaining the water and electricity supply, the existence of Highways and public roads, benefits or advantages of educational institutions, health care centres, were factors which had to be kept in mind. The hypothetical lay out of the building plots in the lay-out actual made should form the basis for fixing the total price of the acquired land are the plus factors to be taken into account. Relevant paras of the judgment read as under:

> "10. An acquired land could be regarded as that which has a building potentiality, if such land although was used on the relevant date envisaged under section 4(1) of the LA Act for agricultural or horticultural or other like purposes or was on that date even barren or waste, had the possibility of being used immediately or in the near future as land for putting up residential, commercial, industrial or other buildings.

However, the fact that the acquired land had been acquired for building purposes, cannot be sufficient circumstance to regard it as a land with building poten- tiality, in that, under clause (4) of section 24 of the LA Act that any increase to the value of land likely to accrue from the use to which it will be put when acquired, is required to be excluded. Therefore, wherever, there is a possibility of the acquired land not used for building purposes on the relevant date envisaged under Section 4(1) of the LA Act, of being used for putting up buildings either immediately or in the near future but not in the distant future, then such acquired land would be regarded as that which has a building potentiality. Even so, when can it be said that there is the possibility of the acquired land being used in the immediate or near future for putting up buildings, would be the real question. Such possibility of user of the acquired land for building purposes can never be wholly a matter of conjecture or surmise or guess. On the other hand, it should be a matter of inference to be drawn based on appreciation of material placed on record to establish such possibility. Material so placed on record or made available must necessarily relate to the matters such as :

(i) the situation of the acquired land vis-a-vis, the city of the town or village which had been growing in size because of its commercial, industrial, educational, religious or any other kind of importance or because of its explosive population;

(ii) the suitability of the acquired land for putting up the buildings, be they residential, commercial or industrial, as the case may be;

(iii) possibility of obtaining water and elec- tric supply for occupants of buildings to be put up on that land;

(iv) absence of statutory impediments or the like for using the acquired land for building purposes;

(v) existence of highways, public roads, layouts of building plots or developed resi- dential extensions in the vicinity or close proximity of the acquired land;

(vi) benefits or advantages of educational institutions, health care centres, or the like in the surrounding areas of the acquired land which may become available to the occupiers of buildings, if built on the acquired land; and

(vii) lands around the acquired land or the acquired land itself being in demand for building purposes, to specify a few.

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

12. Then, comes the question of determining the market value of the acquired land with building potentiality. Undoubt- edly such market value of the acquired land with building potentiality comprises of the market value of the land having regard to the use to which it was put on the relevant date envisaged under Section 4(1) of the LA Act plus the increase in that market value because of the possibility of the acquired land being used for putting up buildings, in the immediate or near future. If there is any other land with building potentiality similar to the acquired land which had been sold for a price obtained by a willing seller from a willing

purchaser, such price could be taken to be the market value of the acquired land, in that, it would have comprised of the market value of the land as was being actually used plus increase in price attributable to its building potentiality. If the prices fetched by sale of similar land with building potentiality in the neighbourhood or vicinity of the acquired lands with building potentiality, as on the relevant date envisaged under Section 4(1) of the LA Act, are unavailable, it becomes necessary to find out whether any building plots laid out in a land similar to the acquired land had been sold by a willing seller to a willing buyer on or near about the relevant date under Section 4(1) when the acquired land had been proposed for acquisition and then to find out what would be the price which the acquired land would have fetched if had been sold by making it into building plots similar to those sold. In other words, an hypothetical lay- out of building plots in the acquired land similar to that of the layout of building plots actually made in the other similar land, has to be prepared, and the price fetched by sale of building plots in the lay-out actually made should form the basis for fixing the total price of the acquired land with building potentiality, to be got if plots similar to other plots had been made in the latter land and sold by taking into account plus factors and minus factors involved in the process."

30. The fact that the land was abutting the Highway and falling behind a abadi called the Lyyalpuria abadi and had the access to the Highway, is another factor which is to be considered. The land abutting the Highway which might be away from the Highway but the added advantage it has as of being on the Highway and would get additional premium, is also to be kept in mind. The principles have been laid down by the Apex Court regarding this aspect in several landmark judgments wherein it has been held that a piece of land which is away from the

Highway cannot get the same market value. Reliance can be made to the judgment in **Union of India Vs. Mangat 2001 (1) PLJ 461**, **V.Hanumantha Reddy Vs. Land Acquisition Officer and Mandal R. Officer 2003 (12) SCC 642**, **Nelson Fernandes Vs. Special Land Acquisition Officer, South Goa & others 2007 (9) SCC 447**, **C.R.Nagaraja Shetty & others Vs. Special Land Acquisition Officer & Estate Officer 2009 (11) SCC 75**, **Haridwar Development Authority, Haridwar Vs. Raghubir Singh 2010 (11) SCC 581**, **Ashok Kumar & others Vs. State of Haryana 2016 (4) SCC 544**.

31. In **Bijender & others Vs. State of Haryana & another 2017 (13) Scale 1**, belting system, as such, was upheld and the Collector, having granted more value to the land which was falling on the Highway, was held to be justified and rightly applied. The potentiality and the value of the land falling on the Highway was discussed as under:

> "35) The acquired land having a frontage abutting the highway/main road always has a better value as compared to the land, which is away from the highway/main road. Indeed, farther the land from the highway/main road, lesser the value of such land. In such a situation, where large pieces of land having different locations are acquired, Belting System is considered apposite for determining the market value of the lands. (see – Union of India & Ors. vs. Mangatu Ram & Ors. 1997 (6) SCC 59 and Andhra Pradesh Industrial Infrastructure Corporation Limited vs. G. Mohan Reddy & Ors. 2010 (15) SCC 412).
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> xxxx xxxx xxxx
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> 49) It is held that potentiality means capacity or possibility for changing or developing into state of actuality. The question as

> to whether the land has a potential value or not is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and whether it has any proximity to residential, commercial or industrial areas or institutions. The existing amenities such as water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development need to be taken into consideration."

32. In the present case, because of the peculiar nature, as noticed above, the part of land falls within the Municipal limits and the balance part is closer to the Highway and therefore, this Court is of the opinion that a uniform compensation, as such, is liable to be granted.

33. The land in question, thus, had all the positive benefits which a development agency could dream of as it was abutting the National Highway No.1 road leading from Ambala to Rajpura and onwards to Amritsar which is better known as the Grand Trunk Road which is also known as the Old Sher Shah Suri Marg and the value of the said road cannot be compared with the values of the land falling on the other National Highways. In such circumstances, the findings recorded by the Reference Court that land falling across the Highway, as such, would have higher value, would be without any basis. The site-plan (Ex. PW-5/A) rather would also go on to show that a Railway line runs parallel to the Highway to Chandigarh and therefore, there was no easy access to the said Highway also for the land which is subject matter of the sale deeds in question falling in Patti Jattan, Patti Sekhan and Patti Khurrampur Majri. The general public would only be able to cross the Railway line from the level crossing and therefore, the denial on this account, was

without any basis.

34. A perusal of Ex.P-3 dated 11.04.2007, which is the sale deed, would go on to show that it was situated outside the Municipal limits in Village Mauja Patti Sekhon and land measuring 31 kanals 11 marlas had been sold by Gurmail Kaur to Harshil Builders. Similarly, Smt.Nasib Kaur had sold land measuring 29 kanals 11 marlas, vide Ex.P-4 dated 10.05.2007 and which fell in the same revenue estate of Patti Jattan and was also sold to the same developer. As noticed, both sale deeds were executed within a period of one month from each other and the sale consideration also works out to Rs.63,00,000/- per acre. Vide Ex.P-5, 16 kanals 12 marlas of land was sold by Tejwant Singh etc. through his mother, Baljeet Kaur, which was of Patti Sekhon, the adjoining village, the location of which has already been discussed and which was of the same date i.e. 10.05.2007 of Ex.P-4 and for the same value. Similarly, Ex.X-3 was sold 6 months earlier on 19.01.2007 by Harbans Kaur for Rs.1,32,55,625/- @ Rs.63,50,000/- per acre which was only 440 yards away. The vendor had received cheque dated 22.12.2006 for a sum of Rs.8,00,000/- prior to the sale which was also in favour of Harshil Builders. Merely because the sales were in favour of a builder would not be, as such, a ground to discard the same, especially keeping in view the fact that the State has chosen not to produce any sale deed in rebuttal in the first set of cases.

35. It is also pertinent to notice that the State appeals against the said award have already been dismissed by this Court on an earlier

occasion in RFA-6212-2013 titled *State of Haryana & others Vs. Jasmer Singh & another,* on 25.09.2013, on the ground of limitation. While touching the merits briefly, this Court had also noticed that the land was falling on the Grand Trunk Road, National Highway No.1, touching the city population and various sale deeds had been produced.

36. Resultantly, this Court is of the opinion that the market value, as such, can be kept in mind, while considering the sale exemplars, not only of the village concerned but also of the adjoining villages, especially the ones which are of reasonable chunk of land and which were pre-notification. Thus, if one considers Exs.P-3, P-4, P-5, X-1 & X-3, the price is ranging between Rs.60,00,000/- to Rs.63,50,000/- per acre. Accordingly, this Court is of the opinion that an appropriate cut, as such, on the price of Rs.63,00,000/- can be put, to assess the market value. In normal circumstances, to discount what the builder might have paid over and above, a 50% cut can be applied to offset the extra interest the vendor might have received on account of the builder picking up large chunks of lands for purpose of development on account of its potentiality. Resultantly, if the 50% cut is applied, the market value would come to Rs.31,50,000/- per acre. However, keeping in view the fact that an additional ground, as such, would have to be granted to the landowners on account of the two factors that the land was falling on the Highway and another patch of 3 acres was within the Municipal limits, this Court is of the opinion that it would be more just and equitable if a cut of 40% is imposed. Resultantly, Rs.25,20,000/- would have to be necessarily

deducted whereby the market value would, thus, work out @ Rs.37,80,000/- pre acre. Accordingly, for the notification dated 10.07.2007, the market value is assessed at the said rate along with all statutory benefits.

Assessment of Market Value of second set of cases, pertaining to the notification dated 26.03.2008

37. Similarly, while coming to the second notification and examining the site-plan (Ex.PW-7/A) would go on to show that the land is situated in close vicinity and was acquired 8 months later. The enhancement, as such, would but be natural in the area, during the intervening period also, keeping in view the evidence on the record, already discussed above. The sale exemplars are also similar in nature. The only difference being that after 10.07.2007, another portion of land was sold on 23.08.2007, prior to the present notification, in Patti Sekhon, which has been exhibited as Ex.P-5 and in the earlier set of litigation, as Ex.X-2, the value of which also works out to Rs.1,57,06,550/- per acre. The land was sold by Baldev Singh to one Samay Properties Pvt. Ltd., a builder at Delhi. Similarly, on 23.08.2007, 4 kanals of land was sold in Patti Jattan vide Ex.P-1 @ Rs.64,00,000/- per acre. A detailed site-plan has also been produced on record which also shows the distance from the acquired land of the said sale exemplars which have not only been relied upon in this case but also in the first set of acquisition. The site-plan would go on to show that apart from the fact that the land was situated opposite to the Gurudwara Icchapurak and there was a road going

towards Village Devi Nagar on the other side. There was also a petrol pump in the close vicinity which was only 347 yards away and another Hindustan Petrol pump closer towards the town and towards the earlier land which was being acquired and was only 219 yards away. The Toll Tax Barrier was further down the road away at 3062 yards and the sale deeds which have been noticed above were ranging from 1300 yards to 1613 yards, which was of Patti Sekhon whereas the land of Patti Jattan was only 1320 yards away. There were developed colonies similarly situated at Kabir Nagar Colony, Nirmal Vihar at a considerable distance from the acquired land. The sale deeds which have been reproduced above would show that there was a rising trend in the market value and the benefit has also to be granted to the landowners for the difference of 8 months in the acquisition.

38. It is, however, to be noticed that in the second set of litigation, the State has produced various sale deeds but have not been referred to by the Reference Court and neither discussed. However, a perusal of the said sale deeds would also go on to show that they were of patches of land varying between 1 ½ kanals to 7 kanals 14 marlas. Ex. R-1 which was executed on 10.01.2008, for 1 kanal 11 marlas of land in Devi Nagar was sold for Rs.1,70,000/-, the market value of which would come to Rs.8,77,419/- per acre. It is also to be kept in mind that as noticed above, the Collector's rate also, the same would be clear from Ex.PW-4/A, the market rate was Rs.7,00,000/- for Chahi land and thus, the sale deeds were executed just over the prescribed market rate.

Similarly, the sale deed dated 10.06.2008, though post-notification, is of 14 marlas of land and has only been sold for Rs.2,00,000/- and the value per acre would come to Rs.2,85,714/- but the sale deeds show that the Collector's rate is of Rs.8,00,000/-. Nothing has been shown, as such, as to the location of the land, as to which part of it was in Village Devi Nagar. The State witness did not know the vendor and vendees neither did they know the location of the land and what is the distance of the pieces of land where they were situated. In the cross-examination also, it has not come forth as to how far the distance of the acquired land was and its location from Exs.R-1 & R-2, from the GT Road. Similar is the position of Ex.R-3 which was post-notification, of 7 kanals 14 marlas of land and executed on 22.01.2009, whereby the market value would work out @ Rs.8,31,168/-, just above the Collector rate. The sale deeds (Exs.R-1 to R-3) would also go on to show that the entire consideration had been received at the house and the land fell in the Village Devi Nagar but the witness, as noticed, could not depose as to the location of the land. It is settled principle that the benefit of the best sale deeds, as such, has to go to the landowners, in view of the judgment in **Mehrawal Khewaji Trust, Faridkot Vs. State of Punjab 2012 (5) SCC 527** and in view of the above referred table, showing the sale transactions, the benefit has to go to the land-losers.

39. Accordingly, this Court is of the opinion that the market value for the second notification in question, which is further away from the land acquired for the first acquisition and was not within the

Municipal limits at the time of acquisition and would necessarily entail a 50% cut on Rs.63,00,000/- per acre, on account of the distance from the earlier land which was acquired which is, admittedly, 1093 yards away. It is settled principle that if one goes away form the central point of the town, the market value keeps on decreasing. In such circumstances, the land cannot be compared with the earlier patch of land which was acquired and therefore, it would be appropriate to assess the market value @ Rs.31,50,000/-.

40. It is to be noticed that no arguments have been raised on account of the amount of compensation on account of structures etc. in the present set of appeals by any of the counsels and therefore, the market value, as fixed, is not being disturbed.

Relief:

Resultantly, in view of the above discussion, the present appeals are allowed and the market value is fixed as under:

(1) For the first notification dated 10.07.2007, the market value is assessed @ Rs.37,87,000/- per acre along with all statutory benefits.

(2) For the second notification dated 26.03.2008, the market value is assessed @ Rs.31,50,000/- per acre along with all statutory benefits.

All CM applications in which no separate orders have been passed, also stand disposed of, accordingly.

26.04.2019 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No