IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.5978 of 2013 & other connected appeals
Reserved on: 22.01.2019
Pronounced on : 22.2.2019

Punjab State Agricultural Marketing Board (Mandi Board)

... Appellant

Versus

Ludhar Mal and others

... Respondents

Cases filed by the landowners	Cases filed by the PSAMB
RFA Nos.2157, 4733, 4743, 5811, 7136 to 7138, 7401, 7402, 7495 of 2012 & RFA Nos.3200 and 3201 of 2013	RFA Nos.1127 to 1137 and RFA Nos.5906 to 6042 of 2013

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

Present: None for the Punjab State Agricultural Marketing Board.

Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate,
Mr. Kanwal Goyal, Advocate,
Mr. J.K. Singla, Advocate,
Mr. K.B. Raheja, Advocate,
Mr. Sushil K. Sharma, Advocate for
Mr. M.L. Sharma, Advocate and
Mr. Karan Gupta, Advocate for
Mr Rakesh Gupta, Advocate for the landowners.

Ms. Simran Grewal, AAG, Punjab.

G.S. Sandhawalia, J.

The present judgment shall dispose of above mentioned 160 appeals filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') against the Award of the Reference Court, Bathinda dated 31.10.2011 both by the landowners and by the Punjab State Agricultural Marketing Board (Mandi Board). The Reference Court has held that the landowners are entitled for the compensation at the following rates, while resorting to the belting system:-

> *"(1) Rs.235/- per sq yard or Rs.11,17,400/- per acre of 8 kanals of the land and land is represented by khasra numbers 388//24 & 25, 396//4, 5, 6, 7, 14, 15, 16, 17, 24 & 25 and khasra numbers 403//3 & 5.*
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> *(2) Rs.225/- per sq yard or Rs.10,70,000/- per acre of 8 kanals of the land and the land comprised of khasra No.389//21 (3-9), 22 (2-18) and 395//1 (8-0), 2 (8-0), 9 (8-0), 10 (8-0), 11 (8-0), 12 (8-0), 19 (8-0), 20 (8-0).*
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> *(3) The remaining land Rs.100/- per sq yard or Rs.4,84,000/- per acre of 8 kanals.*
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> *The claimants are also entitled to the benefits of section 23 (1-A) and 23 (2) and section 34 of Land Acquisition Act, 1894 on the enhanced rate of compensation."*

2. The land was acquired vide notification dated 08.02.1990 issued under Section 4 of the Act for 49 acres 6 kanals 16 marals for establishment of New Grain Market at village Phul (Rampura). The Land Acquisition Collector (for short 'the LAC') vide Award dated 29.01.1993 had awarded following compensation:-

Type of land	Total Land	Rates per acre
Nehri	89 kanals 4 marlas	Rs.49,315/-
Chahi	174 kanals 6 marlas	Rs.38,874/-
Gair Mumkin	135 kanals 6 marlas	Rs.1,04,115/-

3. Apart from that compensation was also awarded for the construction, tubewell, fruit giving trees and for other trees.

4. On an earlier occasion vide Award dated 25.02.2003 the landowners were held entitled for the compensation to the tune of ₹225/- per square yard (₹10,70,000/- per acre) who were owners as per site plan Ex.A1, abutting the main road upto the depth of 60 karams by leaving 10

karams of the same towards the passage etc. upto the depth of 25 yards of the land shown in ABCD. The balance land which was Nehri/Chahi in nature compensation @ ₹90,000/- per acre was awarded and for the Gair Mumkin price remained the same, apart from the statutory benefits etc.

5. Thereafter, 264 appeals as such were filed, which were disposed of on 17.02.2009, lead case of which was **RFA No.317 of 2004 'Smt. Shanti Devi Vs. The Collector and others'** alongwith appeals filed by the Mandi Board, which had sought reduction of compensation. It was noticed that 72 persons were paid compensation for structures in addition to the value of the land which has not been disputed in the present set of appeals, but on account of variation of the value of the land, it was held that it would not be safe to rely upon the same for the purpose of determining the fair value. Accordingly, the formula which had been adopted by the Reference Court was not appreciated and the references were remitted for disposal in accordance with law while noticing that evidence had been closed by order, but no remedy has been taken against the said order. Resultantly, Mandi Board was permitted to cross-examine the witnesses produced by the landowners and lead evidence in defence. It was in such circumstances, the present award has been passed, which is subject matter of consideration.

6. It is pertinent to notice that the arguments were heard on 17.01.2019, 21.01.2019 and 22.01.2019, but no one appeared on behalf of the Mandi Board to assist this Court, though remand had also taken place at the first instance, on its asking.

7. The basis for enhancement of the market value as noticed above by the Reference Court is on account of taking into consideration three sale exemplars i.e. sale deeds Ex.A1, Ex.A80 and Ex.A81. It is pertinent to notice that sale deed Ex.A1 is dated 19.11.1981 for 1 marla of land, whereas sale deed dated 22.09.1989, Ex.A80 was for 2 marlas of land. The average rate of both the sale deeds was ₹200/- per square yard. Similarly, Ex.A81 was dated 01.08.1989 for 2 marlas of land. The average rate was also the same. Accordingly, by granting 12% enhancement on the sale deed dated 19.11.1981 for the difference of 8 years the amount was calculated to be ₹192/- per square yard and the market value was calculated @ ₹392/- per square yard and the average rate of the three sale deeds was, thus, worked out @ ₹264/- per square yard and a cut was put to fix the price at ₹235/-, ₹225/- and ₹100/- per square yard and the land was divided into three belts.

8. Eventually, by considering the smallness of plot ₹235/- per square yard was granted for the land abutting the main road upto the depth of 2 acres, as per the site plan Ex.R1 and the total land was bifurcated into three parcels to assess the market value.

9. Counsel for the landowners Mr. Kanwal Goyal, Advocate has submitted that a finding has been recorded that Ex.A1 is a sale deed and was part of the acquired land, which was purchased by the original owners and, therefore, is a valid sale exemplar and cumulative increase @ 12% should be granted on the same to assess the market value. It is, accordingly, submitted that if the benefit of cumulative enhancement as

such is given, the market value would come to ₹455/- per square yard and even if a cut is put on account of smallness and for the purpose of development, the market value would work out @ ₹300/- per square yard. It is further submitted that uniform compensation should be granted to all the landowners and the belting system which was resorted to is not justified.

10. Mr. Akshay Bhan, Senior Counsel, has further argued that the sale deed Ex.A83 dated 07.01.1988 was for 100 square yards and the average rate worked out @ ₹350/- per square yard, which was closer at point of time to the Section 4 notification and, therefore, the same was wrongly ignored by the Reference Court. It is submitted that the land falls in Khasra No.395//22/2 and can be easily located as per Ex.R1 and is part of the land which was notified Ex.R2/1 for acquisition and, therefore, would be a better sale exemplar to rely upon. It is, accordingly, submitted that even if a cut has to be put on account of smallness, thereafter, the market value still would work out more and claim is, accordingly, made @ ₹350/- per square yard. It is further submitted that the said land falls in portion 'C' as per the belting and the value of the said part had been fixed @ ₹100/- per square yard (₹4,84,000/- per acre) and which was at a distance of more than 2 acres from Phul Road and, therefore, the value of the land which was situated on the road itself would be much more as per settled principles. It is, accordingly, submitted that thus the landowners are entitled for enhancement and secondly belting system has been wrongly applied.

11. A faint argument is also sought to be made that pleaded case of the landowners was that the land was situated within the municipal limits and, therefore, it had immense value as it was situated between town of Rampura and Phul and had great potentiality, as there were industries in the form of rice shellers mills etc. and godowns around the acquired land and, therefore, the potentiality as such could not be disputed. Apart from this the arguments raised was that out of the land which was acquired of 49 acres 6 kanals 16 marals i.e 15 acres 124 kanals 15 marlas was already being used for the purpose of a Mandi, though which has not been formally notified. Persons had raised construction in the form of shops and booths and sale deed dated 22.05.1980 Ex.AW3/A had been executed in favour of 98 persons and, thus, the land was being used for commercial purpose as such and it was acquired for establishment of the New Grain Market. Once it was being used for commercial purpose, the benefits of enhancement would but actually flow.

12. A perusal of the application filed under Section 18 of the Act would go on to show that the Award of the LAC was not acceptable and it was claimed that the land was wrongly considered as agricultural land, whereas the area acquired was urban and commercial. Plots and shops were being purchased and sold in marlas instead of acres. The Grain Market was already in existence since 1980 in the acquired land and Commission Agents/owners of the shops were doing their business since then in the Grain Market. Resultantly, treating of the land as agricultural

land was claimed to be wrong and unfounded and applicants would suffer an irreparable financial as well as professional loss. There was stated to be 100 booths, shops and residential houses, apart from sale of grains, cotton and agriculture products which was taking place. The location of the land was stated to be privileged being situated on the metalled road from Rampura to Phul and there were one dozen Rice Mills, half a dozen godowns, half a dozen oil mills, half a dozen Cotton Ginning and Pressing Mills, a Degree College, Milk Chilling Centre in existence for last several years towards the land in question. There was a petrol pump and about 300 shops of the Rampura Phul town adjacent to the acquired land. The acquired land was stated to be within the municipal limits of Rampura Phul and the town was developing fastly towards the acquired land and prices of the property were rising by leaps and bounds.

13. In the reply filed by the Mandi Board it was denied that there were hundreds of shops and booths and residential houses in the acquired land or there were orchard or super structures. However, it was admitted that a small number of small booths/shops were constructed by some of the owners of the land after having learnt about the proposed acquisition solely with the aim of claiming more amount of compensation for their land. There were no Rice Mill, Oil Mill, Cotton Milk or Milk Chilling Plants etc. The establishments which came after the notification were also at a far off distance from the acquired land. It was further denied that the acquired land fell within the municipal limits of Rampura Phul, rather it was part and parcel of the revenue estate of village Phul, which

was at a distance of 4-5 Kms from Rampura. The land was being sold @ ₹40,000-45,000/- per acre for Nehri quality, ₹30,000-35,000/- per acre for Chahi and ₹70,000/-75,000/- per acre for Gair Mumkin before the issuance of the notification and there were no willing purchasers. The issue of severance was also denied.

14. Statement of Harinder Singh Brar, Draftsman who approved the site plan Ex.A1 showed the acquired land marked in letters ABCD with red boundary. He stated that number of rice factories and oil factories, cotton factories and ginning and cold storage were in the locality and had been duly shown in the site plan. As per his deposition all these factories were in existence for the last 15 years and only one factory namely Om Rice Mill had been established afterwards. As per his statement at the time of acquisition the land had considerable potentiality for commercial and industrial use. The Kachi (un-approved) Grain Market was already in existence prior to the acquisition and the State Government, therefore, acquired the said area. The factories were stated to be within the municipal limits and the whole area of acquired land was of urban character and the land was being shown in yards and marlas. One marla measured 30.25 square yards. He admitted that the site plan Ex.A1 was not to scale and was prepared by him. He also proved the Musavi showing that the entire land was acquired for setting up of grain market. Paramjit Sharma-photographer had accompanied him at the time of visit and he had taken photographs of various buildings marked by him in the site plan, which was in his hand and correct.

15. AW-Surinder Pal to substantiate the plea that the land was being used and was acquired for Mandi purpose for selling of produce etc., stated that about 78 shops were built in the acquired land, which belonged to the Addtiya Association. He stated that the suit land was purchased in the year 1978. He deposed that the width of the shops was 40 feet and length including Varandha was 80 feet. The boundary wall was raised in the year 1979 and 78 shops of 9x25' were raised on the Rampura Phul main road. The distance between Phul town and Rampura Mandi was about 5 Kms and Phul town was a Sub-Division, which had Courts of SDM and Tehsildar. He also deposed regarding the Rice Shellers, Ginning factories and College near the acquired land and that the land had been developed for commercial purpose. The acquisition was resulting in the livelihood and business being deprived off and the compensation awarded was very low. Compensation to the tune of ₹6,000/- per square yard was claimed on the ground that there were shops and electric connection and water connection were there and the Marketing Board had been functioning there since he had constructed the shop. The sale deed dated 19.11.1981 (Ex.A1) was referred, which was for land measuring 25x9' for a sum of ₹6,000/- which was part of the land of 124 kanals 15 marlas. In cross-examination he admitted that he had not brought any sale deed having sold land in bighas and volunteered that the property was commercial and, therefore, justified the small sale deed Ex.A1. It was put to him during the cross-examination that during the days of militancy in the year 1984 to 1991 many Hindu families had

migrated from Punjab to Haryana State, but he clarified that the matter had no connection with the point in question. On the back of the acquired land there was land belonging to the Forest Department and adjoining land was cultivated by farmers. At the time of acquisition there was no source of water for irrigation, apart from one side there was a tubewell and that Bathinda district was declared as a backward area at that point of time. The suggestion that most of the area was sandy was denied and the rice shellers were stated to be at a distance of 100-150 meters.

16. Similarly, AW-Naresh Kumar had also deposed regarding 78 shops running in the approximately 16 acres and business of Commission Agents was going on since 1980. In front of shops platforms were raised for keeping produce of farmers and proper roads had been built in this area. About 4 acres abutted on the main Rampura-Phul road and 78 booths measuring 25x9'were also there. The distance between two towns i.e Rampura Mandi and Phul town was 5 Kms and Municipal Council was the same. He admitted that on the backside of the boundary wall, wheat and paddy used to be sown. Sale deed dated 19.09.1989, which was for land measuring 25x9' (Ex.A2) was proved by AW-Karam Chand who was the attesting witness. Similarly Ex.A3 was also proved and he had stated the property was situated near the acquired land and claimed that whole of the acquired land was within the municipal limits at the time of acquisition. It was stated that number of factories surrounding the acquired land were in existence prior to 1990 and the land had

potential value and there was also a petrol pump near the acquired land and adjoining that, there was a Truck Union. The acquired land was within the municipal limits for the last 15-16 years.

17. AW-Harvinder Singh proved the site plan Ex.A2 dated 10.02.1991 and stated that acquired land belonged to Parkash Chand-claimant, which was shown in red colour. A three karams wide passage led to the acquired land from the main metalled road leading to Phul town. It was also stated that the grain mandi was already in operation in between the acquired land and the road leading to Phul town. Part of the acquired land fell in Khasra No.23/1 and there was a platform for loading or unloading of diesel engine. Two tubewell rooms were also constructed in the acquired land. Phul road was stated to be on the south side of the acquired land. When he was recalled for cross-examination he stated that he usually passed in front of the acquired land and denied that on the southern side of the acquired land the land was cultivated and volunteered that the land was commercial. On the northern side of the acquired land was forest area and there was also a forest office. He denied the suggestion that the land did not fall within the municipal limits.

18. AW-Paramjit Sharma, Photographer, stated that he had taken 38 photographs of various buildings pointed out to him and placed on record negatives of the same as Ex.A3 to A40 and photographs as Ex.A41 to A78. He stated that the factories were in existence prior to 1990. Some Commission Agents had their shops prior to the acquisition

in the acquired land and whole of the acquired land was of urban character prior to the acquisition. AW-Babu Ram Kohli, the attesting witness proved the sale deed dated 19.12.1989 (Ex.79), which was of 5 marlas plots and was sold for a sum of ₹57,000/-. He also admitted that vendor had received the consideration at home. Similarly, he deposed about the sale deed dated 22.09.1989 (Ex.A80) and 01.08.1989 (Ex.A81) with regard to the plots situated on the Phul road near the acquired land.

19. AW-Nihal Singh deposed that 118 Arhatias shops had been constructed in the land situated between the metalled road and the acquired land belonged to Parkash Chand. He knew Parkash Chand-claimant. Similar was the statement of Shami Kapur, Works Clerk, who had stated that the land shown in ABCD of the claimants falls within the Municipal Limits of Rampura and the acquired land was thickly populated area and commercial.

20. AW-Sohan Lal deposed about the cotton factories, shellers, cold stores surrounding the acquired land. Truck Union was adjoining the acquired land and there was a petrol pump. AW-Santokh Singh, Patwari, who had prepared the Aks Latha (Ex.A3) showed the situation of the road leading to Phul in red colour and the Kacha passage leading from main road to the acquired land. The whole land was acquired for the purpose of Anaj Mandi and had been shown in green colour. In cross-examination he stated that he did not show the tubewell motor and rooms in the acquired land and stated that the same were existing before the acquisition of the land. The land belonging to Parkash Chand-

claimant had been shown in purple colour and the Grain Market was not sanctioned. People had themselves set up the Grain Market shops with their own funds. He stated that the acquired land was situated at a distance of 150 karams from the Rampura Railway Station. He could not tell after seeing Aks Latha that how much area was covered with 'Beer' (forest).

21. AW-Jagjit Singh who was member of the Municipal Council, Phul for 4 terms stated in the same terms in support of the claimants regarding the potentiality, whereas AW-Baldev Krishan Aggarwal, mentioned about the sale deed dated 07.01.1988 (Ex.A83) on which he had claimed that it had 50 eucalyptus trees value of which was ₹5,000/-. He further stated that 15 feet wide passage was on the northern side of land and only one factory Om Rice Mills had been set up after the notification. In cross-examination he stated that the land was situated in village Phul bearing Hadbast No.39 as per Ex.A82 and could not tell which crops were sown in the acquired land at the time of notification and he did not know the land was within the *Lal Lakir* or not. Shiv Cotton Factory was stated to be at a distance of .750 KM and Malwa Degree College was at a distance of 2 Kms from the acquired land and Phul town was at a distance of 3 Kms.

22. AW-Balbir Singh, Draftsman deposed about Ex.P9 at the instance of claimant-Parkash Chand who had erected a platform in his land and he used to do the business of storing and selling engines. The land was stated to be at a distance of 300 yards from the main road.

AW-Naresh Kumar another Draftsman also deposed about the forest area towards the northern side of the acquired land and adjoining the forest area there were agricultural fields and Bus Stand of Rampura Phul was at a distance of half km from the acquired land. In cross-examination he could not tell if the acquired land did not fall within the municipal limits. He denied the fact that if the Government had issued a notification while fixing the municipal limits and, therefore, could not say that it fell within the municipal limits. AW-Satpal proved the factum of the land measuring 15 marlas was being used for the purpose of Mandi from the year 1980-1981 and was inclusive of 49 acres which was acquired. The balance land was behind the land which was being used.

23. RW-Darshan Singh, Patwari, Land Acquisition and Colonization, Sangrur produced site plan (Ex.R1) which was as per Aks Sajra. He stated that the acquired land had been shown in green colour and it was non-fertile and had no potential value and was adjoining the land of the Forest Department, which was also non-fertile. He produced on record copies of the sale deeds Ex.R2 to Ex.R7 and the average sale price calculated by him was Ex.R8. He further mentioned that the land which had been shown in yellow shade in Ex.R1, was closer to Phul town. He admitted that when he had gone to the spot, there were shops numbering 78 of the area of 40x70' in the acquired land measuring 124 kanals 15 marlas, which was bounded by a boundary wall. A part of the said area abutted on the main road and about 78 booths abutted on the main road in the acquired land. He further admitted that the Grain

Market was in operation since 1988 and could not say that whether it had started functioning since 1982. He also admitted that the total acquired land was 49 acres 6 kanals 16 marlas including the 124 kanals 15 marlas and the said portion did not abut the forest land. He admitted that there were electric connection, water connections etc. in the Grain Market at the time of acquisition and there was one Municipal Council of both Rampura and Phul towns. The Court complex and SDM Office, Tehsildar's office were in Phul Town and TP Malwa College was at a distance of 2 Kms. He did not know whether the municipal wards were near the acquired land.

24. Similarly, Santokh Singh, Patwari, Halqa Phul from Ex.R1 pointed out that the acquired land was shown in Mark A, B, C and D. The land shown at Mark E, F, G and H was of the Forest Department and was known as Beer (un-cultivable). The acquired land was on the northern side of the Gill Kalan and was stated to be non-fertile. The land marked as A to J, K, L was 16 acres and was being used as a Grain Market from the year 1986 onwards. About 4 ¼ killas of acquired land abutted on the main Rampura to Rampura Phul town road and the said portion was from point A to L. The portion from point L to C was acquired later on and was at the back of the Grain Market. The width of the road between two towns was 17 karams. T.P. Malwa College was at a distance of 3 Kms. The trees standing in the land measuring 2-3 killas were opposite the acquired land were uprooted for Veterinary College. He volunteered since that school had not been opened, the trees had been

planted in the said land by the department and it was correct that the distance from Rampura City and the acquired land was about half km.

25. RW-Navdeep Singh, Revenue Patwari, Halqa Phul, who was posted since 2008 had been examined after the remand, produced the Aks Latha, whereby the land had been demarcated in red line. He gave the details of the rectangle numbers which were being cultivated and crops being sown from the year 1985 till 1990. He deposed that on the eastern side of the acquired land, the land was still under cultivation and on the northern side there was land of Forest Department which comprised of 50 acres of land. On the southern side adjoining to the acquired land crops were still standing. In cross-examination he stated that he did not know if the acquired land was situated within the municipal limits or not. The road leading from Rampura to Phul town shown in black colour in Ex.R1 was 17 to 19 karams in width. Pahi (kacha road) leading from the main road towards the acquired land was also shown in black colour. He admitted that there were several rice shellers, oil mills, petrol pump and TDP Malwa College located on the road leading to Phul. He denied that they were in existence prior to 1990. He did not know whether the temporary Grain Market was already existing in the acquired land. As per record of Jamabandi for the year 1989-1990 (Ex.A5) the market/business were being run in Khasra No.388//24, 25, 389//21/22, 395//1, 2, 9, 10, 11, 12, 19/1, 20/1, 396//4, 5, 6, 7, 14, 27, 16/1, 17/1 and no cultivation was being done in the said khasra numbers, as they were being shown Gair Mumkin. He stated that he never visited the acquired land and belonged

to village Bhagta Bhaika, which was situated at 32 Kms from the acquired land. The acquired land had a frontage of 1439 karams approximately on the main road. He did not know if a platform was constructed in rectangle no.395 and there were two tubewells in existence prior to the acquisition. He deposed that no entry was made in the revenue register as to the inclusion of land within municipal limits and they continued maintaining the record even after inclusion of land within municipal limits. He admitted that there was one single municipal council of both Rampura and Phul towns.

Discussion

26. From the above evidence, one aspect would, thus, be clear that there is no dispute as to the fact that 124 kanals 15 marlas of land was already being put to the use for the purpose of Grain Market,which was formally acquired and, thus, was not of agricultural nature and had been used as un-approved Mandi by the Commission Agents. This particular chunk of land as such, therefore, could not be treated as agricultural land. The Reference Court was, accordingly, justified in holding that the land was also being used for the purpose of Grain Market. The purchase of 15 acres had been done way-back 10 years earlier on 22.05.1980 (Ex.AW3/A) and the evidence as such alongwith the site plans on record would go on to show that booths as such had been erected for the purpose of running the commission business. This particular chunk of land as such, therefore, is to be treated as having different potential. The value as such, therefore, can be calculated on the

basis of the sale deeds which had been produced for the smaller portions of land and Ex.A83 which was executed two years earlier on 07.01.1988 for 100 square yards would be a proper exemplar as such to fall back on to calculate the market value of the said portion. Reliance upon the sale deeds which are between 1 marla to 2 marlas of land could not also be safe exemplar as such to calculate the market value of these 15 acres of land.

27. It has been held by the Apex Court that where sale instances/sale exemplars relate to a small piece of land in comparison to the acquisition which relates to large tract of land, deduction is to be applied, apart from the deduction which is to be done for development activities. In **'Trishala Jain and another Vs. State of Uttaranchal and another' 2011 (6) SCC 47,** the land acquired was 12.85 acres for the purpose of Government Polytechnic Institute. The Reference Court had applied a 20% deduction on the sale instances and the High Court raised the deduction to 33.33%. Resultantly, the issue was discussed and it was held that deduction on account of expenses of development of the sites could vary from 10% to 86.33% depending on the nature of the land, its situation, the purpose and stage of development. Accordingly, 10% deduction on the market value on account of development charges was put while deciding issue No.3 by noticing that the land had potentiality for development of institutional purposes.

28. Similarly, in **'Valliyammal and another Vs. Special Tahsildar (Land Acquisition) and another' 2011 (10) SCR 293,** the

20% deduction which was made on account of the smallness of the sale exemplar was also set aside on account of the fact that the appellant had been deprived of their land holding and have waited for 14-20 years for getting compensation. The relevant portion reads as under:-

> *"25. We may have sustained 20% deduction keeping in view the smallness of the plots which were sold vide sale deeds dated 4.9.1990 and 8.2.1991, but, in the peculiar facts of the case, we think that it will be wholly unjust to allow such deduction. Majority of the appellants have been deprived of their entire landholding and they have waited for 14 to 20 years for getting the compensation. It appears that in compliance of the interim orders passed by the Court, some of the appellants did get 25% and one of them get 35% of the compensation, but majority of them have not received a single penny towards compensation and at this distant point of time, it will be wholly unjust to deprive them of their legitimate right by approving the 20% deduction made by the High Court. In such matters, the Court cannot be oblivious of the fact that the landowners have been deprived of the only source of livelihood, the cost of living has gone up manifold and the purchasing power of rupee has substantially declined."*

29. In **'Sachin Vs. State of Haryana' 2016 (5) Scale 598,** the 15% cut put for the one set of village was approved, whereas for the other two villages 40% cut had been put, the same was reduced to 30%. In **'Vithal Rao and another Vs. Special Land Acquisition Officer' (2017) 8 SCC 558,** wherein the acquisition was of 30 acres approximately and sale deeds pertained to small piece of land, the 40% deduction was made towards development charges reducing it from 50% as applied by the

High Court.

30. A perusal of the sale deed (Ex.A83) would also go on to show that it pertains to Khasra No.395//22/2 and can be located as such upon Ex.R1. The said land does not fall within the portion A, J, K, L which was being used as the Grain Market as per statement of Santokh Singh, Patwari. The said portion though falls in the larger chunk mark A, B, C, D as shown green and as per the deposition of Santokh Singh, Patwari would fall behind point 'L to C', which was acquired and was not part of the Grain Market. The value of the said sale deed which was executed two years prior to the notification works out ₹350/- per square yard and on account of smallness if a cut is also given of 30% (₹105/-), the value would work out @ ₹245/- per square yard. If 5% cumulative enhancement is granted for the difference of 2 years, the market value would work out @ ₹270.11 per square yard rounded off to ₹270/- per square yard. It is also to be noticed that the said Khasra Number is not situated on the main road and is approximately 4 acres away from the road. Therefore, the value on the road would be more and is assessed @ ₹300/- per square yard, keeping in mind the principle that land falling on the road is more valuable.

31. It is a settled principle that the best sale exemplar would be the land which is acquired. In the present case Khasra Nos.395//22/2 measuring 4 marlas is the subject matter of acquisition and Ex.A83 pertains to the said piece of land and, therefore, it would be the best sale exemplar, keeping in view the law laid down by the Apex Court in

'Special Land Acquisition, Vishakapatnam Vs. Smt. A. Mangala Gowri', AIR 1992 SC 666. The relevant portion of the said judgment reads as under:-

> *"This Court repeatedly laid the acid test that in determining the market value of the land, the price which a willing vendor might reasonably expect to obtain from a willing purchaser would form the basis to fix the market value. For ascertaining the market rate, the Court can rely upon such transactions which would offer a reasonable basis to fix the price. The price paid in sale or purchase of the land acquired within a reasonable time from the date of the acquisition of the land in question would be the best piece of evidence. In its absence the price paid for a land possessing similar advantages to the land in the neighbourhood of the land acquired in or about the time of the notification would supply the data to assess the market value. It is not necessary to cite all the decisions suffice to state that in a recent judgment in Periya & Pareekanni Rubbers Ltd. v. State of Kerala, [1990] Supp. 1 SCR 362 a bench of this Court, to which one of us K.R.S., J., was a member surveyed all the relevant precedents touching the points. In the light of the settled legal position let us consider whether the High Court and the Civil Court are justified in excluding the sale deeds completely and to place reliance on another judgment of the Division Bench of the High Court of A.P. Admittedly, the claimant is a vendee in Ex. B. 6 to B. 8 @ 0.42 paise. In a span of one year and four months, they sold @ Rs.5 per sq. yard; It is common knowledge that proposal for acquisition would be known to everyone in the neighbourhood, in particular, to the owners of the property and it is not uncommon that sale transactions would be brought into existence before the publication of Section 4(1) notification so as to form the basis to lay higher claim for compensation. We do assume that Ex. B10 is a genuine and bona fide sale transaction. In respect of one acre of the land in the self-same land when sold at Rs.5 per sq. yard, would it fetch in a short period of nine months, double the market value, namely. @ Rs. 10 per sq. yard. We have no*

doubt that it would not get that price for 5 acres and odd area. It is undoubted that in respect of a notification of 1961 in which another T.S. number in the locality, namely, T.S. No. 1008, ultimately, the High Court awarded @ Rs. 10 per sq. yard. Perhaps had there been no bona fide or genuine sale transaction relating to the self- same land, the reliance placed on that judgment may be justified but exclusion of bona fide and genuine sale trans- actions in respect of the same land under acquisition and to place reliance on the award of some other land is obviously illegal."

32. This Court in **'Gian Chand Vs. State of Haryana and another' 2009 (3) PLR 420** and **'Bur Singh and others Vs. State of Punjab and another' 2010 (5) RCR (Civil) 286** has also followed the said view.

33. The potentiality of the land as such and the level of development around as such would be clear from the site plan, which would go on to show that a large number of factories and rice mills had come up in the adjoining area. The Malwa Degree College also was at a distance of 2 Kms and there was a petrol pump in the near vicinity. The said fact would be clear from the photographs Ex.A41 to A78, which would go on to show the existence of various units and a petrol pump. However, there was a large chunk of area which belonged to the Forest Department and adjoining the acquired land and opposite the land as such there was a proposal of Veterinary College, which had not seen the light of the day.

34. Resultantly, this Court is of the opinion that for the consolidated block as such which was not being used for agricultural

purpose, the market value would come to ₹300/- per square yard, since the said block is a compact block, which was being used for identical purpose of running the un-approved Grain Market. Resultantly, the market value as such for this chunk of land would work out @ ₹300/- per square yard (₹14,52,000/- per acre) alongwith all statutory benefits.

35. Similarly, the land which is adjoining and parallel and is depicted as point 'C to L' would also command the same value being in front and, thus, the land falling in Khasra No.396//24, 25, 395//21, 22, 403// 4 & 5, 404//1 & 2 would also command the same value. However, for the land falling behind the said khasra numbers, the same would command lesser value as the same was situated away from the road and, therefore, not used for the same purpose and would have a lesser potential and the principle of belting in two categories can be applied.

36. Thus, the land falling beyond the block which was already being used for the purpose of un-approved Mandi and from Point 'C to L' as mentioned above would command the value @ ₹300/- per square yard, but the land behind the said block of the second belt would entail a 40% reduction on account of the size of the acquisition, which is of 49 acres 6 kanals 16 marlas (approximately 400 kanals) and, therefore, 40% reduction is liable to be granted for the land falling in the second belt being used for agricultural purpose and market value would work out ₹180 per square yard (₹8,71,200/- per acre).

37. This fact would be clear from the statement of Navdeep Singh, Revenue Patwari, Halqa Phul, who had deposed that Rectangle

No.395//6, 7, 8/1, 8/2, 13, 14/1, 14/2, 394//1, 10, 11, 20, 21, 395//3, 4 and 5 were being cultivated and crops were being sown from the year 1989-1990. Resultantly, the balance land which is falling beyond the portions A to J, K to L would have a market value of ₹180/- per square yard.

38. The sale deeds exhibited by the respondents from Ex.R2 to Ex.R7 and the total of which was exhibited as Ex.R8, whereby the averaging is taken out by the respondents depicting the market value ranging between ₹21,816/- to ₹40,000/- per acre, would merit no consideration, firstly on account of the fact that they have been shown in yellow shade in the site plan Ex.R1, which is not close to the acquired land, though might be nearer to the Phul town. The potentiality of the land has already been discussed as to the purpose for which it was being used and the development which was taking place around the said area and even otherwise the value of the said sale deeds is much below the amount which was awarded by the Land Acquisition Collector, who has chosen to award ₹1,04,115/- for Gair Mumkin land. As noticed the land was being used for the purpose of the Grain Market by the landowners having purchased the land way-back in the year 1980 and, therefore, the market value of the land in question on the date of Section 4 notification would be much more than the land which was being used for the purpose of agriculture, which was subject matter of Ex.R2 to Ex.R8.

39. The question whether the land have to be uniformly valued at the same rate or at the different rates, keeping in view the fact that a portion of it falls on the highway and has access to the main road has

been discussed in the judgment of **'Haridwar Development Authority, Haridwar Vs. Raghubir Singh and others' 2010 (11) SCC 581.** In the said case the acquisition was of 38.6.8 Bighas (8,45,174 square feet) which was notified for development of a housing colony. The Land Acquisition Collector had divided the land into three belts and awarded compensation and the Reference Court as such categorized the same into two categories that is lands falling within 500 metres from the National Highway and lands falling beyond 500 metres from the National Highway and the lands beyond that. The High Court had awarded a uniform rate for the acquired land and, thus, the question arose before the Apex Court that as to whether the belting method for awarding compensation was justified or not at the hands of the acquiring authorities.

40. Resultantly, it was held that it was a compact block of a contiguous land going to be used for a housing complex and, therefore, the issue of belting should not have been resorted to and the uniform rate adopted by the High Court was not interfered with. However, the said principles were laid down, wherein it was noticed that 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. Similarly, it was held that when a large tract of land on the outskirts of a town is acquired adjoining the town boundary, the other land cannot be given as such same

compensation as to the belt or strip adjacent to the town boundary. Therefore, reduction of rates can be done from the highest to the lowest. The relevant portion of the said judgment reads 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.

7. The acquisition with which we are concerned relates to a comparatively small extent of village land measuring about 38 bighas of compact contiguous land. The High Court was of the view that the size and situation did not warrant any belting and all lands deserved the same rate of compensation. The Authority has not placed any material to show that any area was less advantageously situated. Therefore the view of the High Court that compensation should be awarded at an uniform rate does not call for interference."

41. The argument which has been raised that the land falls within the municipal limits and a uniform rate should be given is not liable to be accepted. The evidence has been discussed above in detail. Though a claim was set up that the land falls within the municipal limits and falls within two towns Rampura and Phul, but the requisite notification as such which was issued under the Punjab Municipal Act was not got exhibited or proved in evidence that the land which was being acquired was within the municipal limits. In the absence of the same merely because two towns have a common Municipal Council, it cannot be said that the land falls within the municipal limits. Rather it is the stand of the respondent that the land was being shown within the revenue limits of Phul.

42. The onus as such was being upon the landowners to prove the fact that the land is falling within the municipal limits and that a uniform rate as such is liable to be granted is, thus, not liable to be accepted.

43. It is to be noticed that no argument as such has been also

raised on the issue of the structure, trees and tubewells standing on the land, which would come under issue No.2. The said fact had been noticed by this Court when the matter was remanded to the Reference Court on 17.02.2009. It had been observed in the judgment that the compensation which had been paid for super structure in addition to the market value of the land was not being disputed in that set of appeals. The said finding as such was never challenged and has become final *inter se* the parties. The said findings read as under:-

> *"Another submission was that the area of land beneath the shops/booths cannot be given any extra compensation on account of value of land as it is only the super structure, which was additionally existing thereon for which separate compensation has been paid and it is only to that amount, the land owners were entitled to and no separate valuation for the land. Even the sale deeds produced by the land owners show too much of variation in the value of land in the vicinity. These are all isolated transactions and it would not be safe to place reliance thereon for the purpose of determining the fair value of the acquired land. It is admitted that for super structure, 72 persons were paid compensation in addition to the value of land which is not being disputed in the present set of appeals."*

44. Accordingly, it was noticed by the Reference Court that the matter was remanded for disposal in accordance with law and the Mandi Board was permitted to cross-examine the witnesses produced by the landowners and lead evidence in defence and no opportunity as such had been granted for leading further evidence to the claimants. Resultantly, the said matter having become final *inter se* the parties, the Reference

Court was well justified in deciding the issue as such on the compensation and as noticed the said fact had not been argued before this Court.

Relief

45. Accordingly, the present appeals of the landowners are allowed, whereas those of the Mandi Board are dismissed. The market value is assessed @ ₹300/- per square yard (₹14,52,000/- per acre) alongwith all statutory benefits for the land falling in Khasra No.388//24, 25, 389//21, 22, 395//1, 2, 9, 10, 11, 12, 19, 20, 21, 22, 396//4, 5, 6, 7, 14, 15, 16, 17, 24, 25, 403//4 & 5, 404//1 & 2 and @ ₹180/- per square yard (₹8,71,200/- per acre) alongwith all statutory benefits for the land which was behind the above said land and not mentioned in the abovesaid numbers.

46. All the pending civil miscellaneous applications, if any, stand disposed of, accordingly.

(G.S. SANDHAWALIA)
JUDGE

22.02.2019
Naveen

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No