HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RFA No.6232 of 2015 (O&M)
Reserved on: 02.09.2019
Date of Pronouncement: 18.09.2019

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Diljit Singh (II) & Ors. ... Appellants

VS.

State of Haryana & Ors. ... Respondents

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

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Present: Mr. M.L.Sarin, Senior Advocate with
Mr. Nitin Sarin, Advocate and
Mr. Ritesh Aggarwal, Advocate
Mr. Munish Mittal, Advocate,
Mr. Avnish Mittal, Advocate,
Ms. Aparna Singhal, Advocate,
Mr. S.S.Dinarpur, Advocate,
Mr. Anil Kumar Bhardwaj, Advocate,
Ms. Lipika Dahiya Mamli, Advocate for
Mr. R.S.Mamli, Advocate,
Mr. Robin Dutt, Advocate,
Mr. Ravindra Jain, Advocate,
Mr. Navmohit Singh, Advocate,
Mr. Manoj Pundir, Advocate,
Mr. Sanjay Mittal, Advocate,
Mr. Deepak Basatia, Advocate,
Mr. Inderjit Singh, Advocate,
Mr. J.S.Chahal, Advocate,
Mr. G.C.Shahpuri, Advocate,
Mr.Nitin Singhal, Advocate, for the landlords.

Mr. Abhinash Jain, AAG, Haryana.
Mr. Shivendra Swaroop, AAG, Haryana.

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Regular case No.	Appeal filed by landowners	Appeal filed by State
Date of notification: 03.10.2006		
	RFA No.6232, 6233, 6234, 6235, 6236, 6237, 6442, 6470, 6475, 6476, 6477, 6478, 6479, 6480, 6481, 6482, 6999, 7000, 7001, 7002, 7003, 7068, 7243, 7244, 7245, 7246, 7247, 7248, 7249, 7250, 7251, 7252, 7253, 7254, 7255, 7256, 7257, 7258, 7340, 7367, 7377, 7378, 7379, 7380, 7381, 7382, 7383, 7384, 7385, 7386, 7387, 7388, 7389, 7428, 7430, 7449 **of 2015** RFA No.42, 108, 109, 110, 111, 112,	

	113, 114, 115, 116, 117, 118, 268, 314, 315, 316, 326, 327, 328, 329, 330, 331, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 346, 347, 348, 349, 350, 357, 358, 379, 380, 381, 382, 383, 384, 385, 386, 452, 482, 484, 560, 666, 715, 716, 717, 1858, 1977, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2078, 2079, 2080, 2081, 2106, 2107, 2108, 2109, 2110, 2126, 2680, 2687, 2688, 2937, 3105, 3162, 3257, 3423, 4100, 4101, 4170 **of 2016** RFA No.516, 517, 825, 911, 1456, 1457, 1484, 1485, 1652, 1687, 1690, 1692, 1811, 1812, 1814, 1866, 2254, 3515 **of 2017** RFA No.334, 1965 **of 2018**	

G.S. SANDHAWALIA, J.

(1) The present set of 167 appeals filed under Section 54 of the Land Acquisition Act, 1894 are against the award of the Reference Court, Yamuna Nagar at Jagadhari dated 30.07.2015 whereby Rs.1560/- per square meter (Rs.63,13,101/- per acre) has been granted. The notification in question under Section 4 is dated 03.10.2006 whereby the land measuring 507.41 acres was sought to be acquired for the purposes of development and utilization of land for residential and commercial area for Sector 13, Jagadhari. The notification under Section 6 was issued on 01.10.2007 and eventually vide award dated 23.05.2011 only 497.48 acres was utilized falling in 5 villages market value of which was annexed as under:-

Village	**Rupees**	**Acres**
Ratauli *HB No.422*	Rs.30 lacs per acre	329.87 acres
Sudhail *HB No.425*	Rs.20 lacs per acre	3.53 acres
Kheri Rangran *HB No.427*	Rs.20 lacs per acre	17.7 acres
Kansapur *HB No.421*	Rs.35 lacs per acre	52.56 acre
Khera *HB No.423*	Rs.25 lacs per acre	103.74 acre

(2) The Reference Court vide impugned award while deciding 195 references came to the conclusion that all the villages fall within the boundary of the controlled area and were adjoining each other as per site plan (Ex.P41). Keeping in view the statements of the witnesses including the official witnesses it was held that the land of the villages was contiguous, continuous and adjoining to each other and therefore there was no justification for awarding different amount of compensation to the petitioners in respect of the different villages. It was thus held that Collector should have fixed uniform rate for the land acquired in all these villages.

(3) On the issue of fixing the market value the potentiality of the land was noticed that it was surrounded by Sector 18, HUDA on its eastern side, proposed highway bye-pass towards western side, police line and National Highway-73 on its northern side, private developed Sushant City at Sector 12 on its southern side whereas Sector 18, Sector 17, Grain Market, Mini Secretariat, Judicial Complex, Highway No.73 and Spring Field School etc. were just adjacent to the acquired land. The above-said market value as such was granted by placing reliance upon the earlier notifications whereby the land had been acquired for the purposes of police line and quarters vide notification dated 28.04.1999 in case of **RFA No.1955 of 2005 Swaran Singh vs. State of Haryana** (Ex.P42) wherein the market value @ Rs.1560/- per sq.yard for village Bhatauli and Khera had been assessed by this Court. Similarly, it was noticed that in **RFA No.5083 of 2009 Zora Singh vs. State of Haryana** decided on 05.03.2014 (Ex.P43), the market value for village Garhi Mundo had been increased to Rs.2402.40 per square meter by this Court for the notification dated 28.01.2002 keeping in view the gap between the two notifications. Resultantly, the same amount of

compensation was granted as what has been granted in **Swaran Singh's** case by observing that the sale deeds relied upon by the petitioners either pertained to small portions of the land or of the period after the acquisition. Since more than 400 acres of land had been acquired, the Court did not find it safe to rely upon the small sale instances while determining the market value. The Court thus fell back on the awards which had attained finality upto the Apex Court for the earlier notifications.

(4) The matter was initially decided by a Co-ordinate Bench of this Court on 02.03.2017 and the market value was enhanced to Rs.4059.45 per square meter by awarding 15% annual increase on the notification of 1999 keeping in view the fact that the State had not questioned the impugned award and there was a gap of 7 years. It was also noticed that there was another notification dated 20.09.1994 in the case of **RFA No.3356 of 2010 Santokh Singh vs. State of Haryana & Ors.** decided on 05.05.2016 whereby land of village Khera was acquired for the purposes of Dadupur Nalwi canal or Shahabad Feeder wherein market value had been assessed @ Rs.2887 per square meter by awarding 12% increase by this Court. Similarly, another notification dated 30.05.2005 whereby the land had been acquired for Sectors 22, 23 & 24 in village Bhatauli whereby in the case of **RFA No.3860 of 2014 Ajmer Singh vs. State of Haryana & Ors.** decided on 24.02.2016, the market value had been fixed @ Rs.3610 per square meter by this Court.

(5) The State however had taken the landowners to the Apex Court challenging the enhancement granted in the present set of cases and in **Civil Appeal No.9226-9331 of 2018 State of Haryana vs. Daljit Singh & Ors.** decided on 11.09.2018 while deciding the appeals both of the landowners

and the State, the matter was remanded for fresh decision vide order which reads as under:-

> *"Leave granted.*
>
> *Heard the learned counsel for the parties.*
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> *After hearing the matter at some length, we are of the opinion that the High Court has not considered the entire material on record including comparable sale exemplar evidence adduced by the claimants. Mr.P.S.Patwalia, learned senior counsel has relied upon the decisions of this Court in* ***Manoj Kumar Vs. State of Haryana and Ors. in Civil Appeal Nos. 13132-13141 of 2017; Loveleen Kumar Ors.vs.State of Haryana & Ors.(2018) 7 SCC 492****; whereas Shri Shyam Divan, learned senior counsel appearing on behalf of the respondents has referred to the decisions in* ***Ashok Kumar Vs. State of Haryana(2015)15 SCC 200; Haridwar Development Authority Vs Raghubir Singh & Ors. (2010) 11 SCC 581 and Special Land Acquisition Officer, Kalinadai (Hydro-Electric) Project Vs. Vasant Gundu Bale (1995) Supp (4) SCC 649****.*
>
> *As the respondents have prayed for enhancement, let the question of enhancement be examined afresh by the High Court. It is made clear that we have not commented on the merits of the case at all. Let just compensation be worked out by the High Court. The appeals are remitted to the High Court for hearing the matters afresh.*
>
> *This Court has passed an interim order on 2.4.2018 in* ***SLP(C)No..........Dy.2215/2018 (State of Haryana Secretary & Ors. Vs. Diljit Singh & Ors.)*** *and that the compensation @ Rs.2000/- per square metre be deposited within a period of four weeks from today with the reference Court. In case the amount has been disbursed to the land owners, it shall not be recovered during the pendency of the appeal before the High Court.*
>
> *Apart from that, as State has not questioned the disbursement made by the Reference Court @ Rs.1560/-, along with other statutory benefits, out of the said amount that has*

been deposited, the land owners to whom the amount has not been paid shall be paid the amount, as ordered by the Reference Court. Remaining amount may be kept in fixed deposit, which may be disbursed after the decision of case by the High Court. Let the High Court make an endeavor to decide the matter within a period of two months from the date of appearance of the parties.

The appeals are, accordingly, allowed.

Pending applications, if any, stand disposed of."

(6) Resultantly, the matter is again before this Court.

(7) Mr. ML Sarin, senior counsel for the landowners has sought further enhancement mainly on two grounds. Firstly, it is submitted that in view of the judgment of **Santokh Singh** (supra) decided on 05.05.2016 whereby a sum of Rs.2887/- per square meter had been granted for the notification dated 20.09.2004 the cumulative enhancement @ 12% would come to Rs.3621.45 per square meter (Rs.1,46,53,680/- per acre). Reliance was placed upon Annexure A6 to A9 filed in CM-2647-CI-2019 IN RFA-6232-2015 an application for additional evidence filed by the landowners to submit that the petitioners' adjoining land had been acquired for the said acquisition for the Shahabad Feeder which was subject matter of **Santokh Singh** and the landowners had got the said market value and the subsequent notification was more than two years later in point of time. The enhancement thus was liable to be granted. It was further pointed out that SLP as such had been dismissed on 03.10.2018 (A10) as withdrawn.

(8) Secondly, it was argued that in the case of **Ajmer Singh** for the notification dated 30.05.2005 for the land of village Bhatauli which had been acquired for Sector 22, 23 & 24 decided on 24.02.2016, the Co-ordinate Bench had granted Rs.3610 per square meter (Rs.1,46,09,164/- per acre).The said amount had been reduced by the Apex Court in **Manoj Kumar vs.**

State of Haryana (2018) 13 SCC 96 to Rs.2347/49 (Rs.95 lakhs per acre). Resultantly, 12% enhancement was sought for the intervening period till October, 2006 to claim a sum of Rs.2735 per square meter (Rs.1,10,68,162/- per acre).

(9) State on the other hand through Mr. Abhinash Jain submitted that the matter was liable to be remanded for the fresh decision as the judgment of the Reference Court suffered from basic perversity of having not appreciated and considered the evidence on record including sale deeds Ex.P1 to P6 which were of substantial chunks of land and which had been purchased by the builders themselves who are also appellants herein. The land of the said sale deeds also pertained to the villages for which the land had been acquired for Villages Ratauli and Kansapur and the price ranged between Rs.802/- to Rs.1010/- per square meter for the period pertaining to 07.04.2006 to 21.08.2006 just prior to the notification under Section 4 i.e. 03.10.2006. Therefore the compensation had already been granted in excess as market value would thus work out to Rs.40,90,000/- per acre even if the benefit of highest sale deed is to be granted. It is submitted that for village Khera vide Ex.D5 dated 18.08.2006 land was sold for 12 bighas 13 biswas and the value would work out to Rs.32,63,322/- per acre which had been also not taken into consideration by the Reference Court. Accordingly, it is submitted that while exercising the powers under Order 41 Rule 22 & 33 CPC read with Section 151 CPC, the matter should be remanded for fresh decision, even though the State has not filed any appeal.

(10) Mr. Sarin along with array of counsels have opposed the said prayer as such while submitting that the matter had become final *inter se* parties and the amount could not be reduced nor the matter could be

remanded. He has further submitted that no cross-objection or cross-appeal has been filed by the State in spite of the remand who cannot now argue for setting aside the award having been satisfied with the impugned award.

(11) It was argued that this Court was only to examine the issue of enhancement as per the remand order and the power under Order 41 Rule 22 read with Rule 33 CPC was to be exercised only in exceptional cases. It is further submitted that sale deeds Ex.P1 to P6 were in favour of builders and were not liable to be taken into consideration. Keeping in view the above arguments the following issues arise for consideration:-

(i) Whether the award of the Reference Court is justified in the facts and circumstances and suffers from perversity and illegality having not considered all the material evidence in the form of sale exemplars on record and having recorded a finding to the contrary?

(ii) Whether the landowners are entitled for enhancement as contended by counsels for the appellants?

(iii) Whether the amount is liable to be reduced from what has been granted @ Rs.1560/- per square meter or the matter is liable to be remanded for fresh decision?

<u>Issue No.(i) & (ii)</u>

(12) The perversity of the Reference Court is the first factor which is to be noticed by this Court which stares the landowners on the face of the record. The finding which has been recorded by the Reference Court is as under:-

> *"The entire evidence adduced by the petitioners as well as respondents has been scanned and considered. In the instant case, the petitioners have attempted to prove their stand that*

*the market value of the acquired land was not less than Rs.2 crores per acre at the time of notification u/s 4 of the Act. The petitioners-land owners, when stepped into the witness box, have categorically deposed that their land was having great potentiality and further testified that the market value of the land under acquisition was not less than Rs.2 crore per acre. In support of their claim the petitioners have tendered into evidence certain sale deeds. The sale deeds relied upon by the petitioners either pertain to small portion of land or of the period after the acquisition. Further learned counsel for petitioners relying on Hon'ble Apex Court's decision in **Pran Sukh's** case (supra) have contended that possibility of sale deeds being valued by two villagers/individuals, with a view to save stamp duty and registration charges cannot be ruled out. Careful perusal of some of the sale deeds (Ex.P7, Ex.P8, Ex.P9) goes on to show that these sale deeds pertain to plot measuring few square yards, whereas in the instant case land more than 400 acres has been acquired. Similar is the position with regard to sale instances placed on record on behalf of respondents. Hence, the Court does not find it safe to rely on the sale instances while determining the market value of the value on the date of notification u/s 4 of the Act, especially when court finds earlier decision/award proved on record which has attained finality."*

(13) A perusal of the above would show that it has been categorically recorded that the evidence adduced by the petitioners and the respondents has been scanned and considered. It has been mentioned that some of the sale deeds relied upon by the petitioners either pertain to the small portion of land or of the period after the acquisition and thus are not being relied upon.

(14) A perusal of the record would show that that there are as many as 6 sale deeds produced by the landowners themselves whereby reasonably

large chunks of land had been alienated by the sale deeds in question pertaining to the period ranging from 07.04.2006 to 21.08.2006 which was between 6 months to 2 months prior to Section 4 notification which is dated 03.10.2006. The sale deeds (Ex.P1 to P6) in question also do not pertain to small chunks of land but pertained to large chunks of land ranging from as many as 2.65 acres to 6.86 acres. The said sale deeds cannot be termed as small in any manner and the Reference Court has not mentioned the factum of the said sale deeds though it has examined the subsequent sale deeds (Ex.P7 to P9) which are definitely sale deeds of small chunks of land measuring 22.22 sq.yards and 52 sq.yards. The said sale deeds also would show that the market value in February to June was ranging between Rs.1315/- to Rs.4790/- per meter. It is but obvious that the small sale deeds if are to be taken into consideration the relevant cut of as much as 75% would have to be imposed on them keeping in view the law laid down in ***Chander Shekher vs. Land Acquisition Collector 2012 (1) SCC 390*** which would bring down the rate drastically to barely Rs.275/-, Rs.510/- and Rs.1002/- per sq.yard. Therefore the market value as such even if taken for the best sale exemplar would not go beyond Rs.48,49,680/- per acre by any standard whereas in the present case a sum of Rs.63,13,101/- per acre has been awarded. Similarly, the large sale exemplars in favour of the builders are also to be taken into consideration. The relevant sale deeds in the tabulated form are reproduced below:-

Sr. No.	*Area*	*Revenue Estate*	*Total price*	*Per Acre*	*Per meter*	*Per Sq.yard*
(Ex.P1) 07.04.2006	21K 18.25 M (438.25 M) (2.7390 Acres)	Ratauli	1,09,56,250/-	40,00,000/-	988/-	826/-
(Ex.P2) 11.07.2006	51 K 06 M (1026M) (6.4125 Acres)	Ratauli	2,13,09,663/-	33,23,144/-	821/-	686/-

Sr. No.	*Area*	*Revenue Estate*	*Total price*	*Per Acre*	*Per meter*	*Per Sq.yard*
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(Ex.P3) 21.08.2006	38 K 7 M (767 M) (4.7937 Acres)	Ratauli	1,55,57500/-	32,45,371/-	802/-	670/-
(Ex.P4) 11.05.2006	54 K 18 M (1098 M) (6.8625 Acres)	Ratauli	2,76,21,562/-	40,24,999/-	994/-	831/-
(Ex.P5) 22.05.2006	45K 16 M (916 M) (5.725 Acres)	Kansapur	2,34,15,250/-	40,90,000/-	1010/-	845/-
(Ex.P6) 13.07.2006	21 K 4 M (424 M) (2.65 Acres)	Kansapur	1,05,20,500/-	3,97,0000/-	981/-	820/-
(Ex.P7) 22.02.2006	22.22 sq.yard	Kansapur	45,000/-	98,01,980/-	2422/-	2025/-
(Ex.P8) 02.06.2006	22.22 sq.yard	Kansapur	89,000/-	1,93,86,138/-	4790/-	4005/-
(Ex.P9) 20.04.2006	52 sq.yard	Kansapur	57,200/-	53,24,000/-	1315/-	1100/-
(Ex.D5) 18.08.2006	12 Biswa 13 Bigha (10664.900268 Sq.yards) (2.63 Acres)	Khera	86,00,000/-	32,63,322/-	806.38	674.24
(Ex.D9) 15.12.2005	9K 12M	Ratauli	20,00,000/-	16,66,666/-	412/-	344/-

(15) Thus, if the benefit of the largest sale exemplar (Ex.P4) whereby land measuring 6.86 acres of village Ratauli which was sold on 11.05.2006 less than 5 months prior to Section 4 notification is taken into consideration, the market value would only work out in the range of Rs.40,25,000/- which is again well below what has been awarded by the Reference Court. It is also to be noticed even on the same a development cut would necessarily have to be put as the sale deeds were in favour of the builders who usually show keen interest to purchase land at any cost. Also on account of the fact that the land is to be developed by the State would necessarily entail a development cut in view of the settled principles of law

laid down in **Lal Chand Vs. Union of India 2009 (15) SCC 769** and thus the price would further drop. It is thus apparent that what has been granted to the landowners is also in excess as per the sale deeds which they themselves have produced.

(16) Counsel for the State has also referred to the reply to the application for additional evidence which State has filed to submit that the sale deeds (Ex.P1 to P6) are part of the acquired land and also attached the *shajra* plan which has already been exhibited on record as Ex.R3. It is pointed out from the said site plan that the factum of the said sale deeds which were in favour of the builders as per the chart and which had been ignored by the Reference Court are part of the acquired land. They were the best piece of evidence,as such which were before the Reference Court and therefore, reliance upon the earlier notifications in question as such was not justified.

(17) The landowner Rajinder Pal Singh has also filed replication to the reply to the application for additional evidence and this factum as such has not been denied. The Draft Regulation Plan for Controlled Area 202/06 prepared by the District Town Planner dated 31.05.2006 was also taken on record as Annexure 'Z' vide order dated 29.08.2019 as it would help this Court to arrive at a just conclusion as to what is the correct market value. A perusal of the site plan would show that the lowest value has been given @ Rs.20 lakhs by the Land Acquisition Collector for village Sudhail HB No.425 which is at the farthest point from the existing town of Yamuna Nagar and therefore had been granted the minimum amount @ Rs.20 lakhs. The said village is also situated away from the highway running from Ambala to Jagadhari/Yamuna Nagar. Similar was the position with Kheri

Ranghran (HB No.427) which was also granted Rs.20 lakhs per acre which was in between village Sudhail (HB No.425) and Kansapur (HB No.421) and Ratauli (HB No.422). The abadi of village Sudhail also falls on the other side of village Dadupur Shahapur Feeder though the acquired land is on the other side. Similarly, village Khera (HB No.423) whereby the Land Acquisition Collector had granted Rs.25 lakhs per acre is closer to the highway from Ambala (NH-75) and therefore had been granted the higher amount of compensation though it is even farther away from the existing town of Yamuna Nagar though a part of the land also abuts the said highway on which the Police Lines had come and which was subject matter of acquisition in **Swaran Singh's** case (supra).

(18) On account of the land of village Ratauli (HB No.422) situated between the village Kansapur and village Khera it had thus obviously been granted the higher amount of compensation being closer to the town of Yamuna Nagar which is on the eastern side. Kansapur abadi is situated closest to the town of Yamuna Nagar and therefore it had been granted maximum amount of Rs.35 lakhs per acre. These aspects were never examined by the Reference Court while assessing the market value in reference to the sale deeds Ex.P1 to P6 of large chunks of land which pertained to village Ratauli and Kansapur which were the best sale exemplars as such to assess the market value. The position of law has been settled regarding this aspect beyond anvil of doubt by the recent judgments of the Apex Court in ***The General Manager, Oil and Natural Gas Corporation Ltd. vs. Rameshbhai Jivanbhai Patel & Anr. (2008) 14 SCC 745; Manoj Kumar etc. vs. State of Haryana etc., (2017) 12 SCALE 731*** and ***Loveleen Kumar & Ors. vs. State of Haryana & Ors. (2018) 7 SCALE***

596. It has been categorically held that blind reliance upon the awards of the adjoining area are not to be taken into consideration and the sale exemplars are the best piece of evidence and the principle of cumulative enhancement cannot be stretched beyond 4-5 years. It is further important to note that **Manoj Kumar** (supra) pertains to the notification dated 30.05.2005 for the land of village Jarodha, Gulab Nagar and Bhatauli which were acquired for development of Sectors 22, 23 & 24 of Jagadhari.

(19) A perusal of the site plan would show that that controlled area Annexure 'Z' would show that the abadi of Bhatauli is situated above the highway from Ambala to Yamuna Nagar whereas Jaroda is situated closer to the town of Jagadhari on its northern side. Sectors 22 and 24 thus are abutting the highway as such. The Apex Court in **Manoj Kumar** (supra) has reduced the market value for the notification of 30.05.2005 and pegged it down to Rs.95 lakhs per acre alongwith statutory benefits by reducing it from Rs.1,46,09,000/-. The Apex Court kept in mind that better evidence which is adduced is to be kept in mind as also the fact that the price of the land does not appreciate regularly and can remain static and in last several years the prices have gone down and there is no appreciation of value. The relevant portion reads as under:-

> *14. In our opinion, the High Court could not have placed an outright reliance on the decision of Swaran Singh's case, without considering the nature of transaction relied upon in the said decision. The decision could not have been applied ipso facto to the facts of the instant case. In such cases, where such judgments/awards are relied on as evidence, though they are relevant, but cannot be said to be binding with respect to the determination of the price, that has to depend on the evidence adduced in the case. However, in the instant case, it appears*

that the land in Swaran Singh's case was situated just across the road as observed by the High Court as such it is relevant evidence but not binding. As such it could have been taken into consideration due to the nearness of the area, but at the same time what was the nature of the transaction relied upon in the said case was also required to be looked into in an objective manner. Such decisions in other cases cannot be adopted without examining the basis for determining compensation whether sale transaction referred to therein can be relied upon or not and what was the distance, size and also bonafide nature of transaction before such judgments/awards are relied on for deciding the subsequent cases. It is not open to accepting determination in a mechanical manner without considering the merit. Such determination cannot be said to be binding. We have come across several decisions where the High Court is adopting the previous decisions as binding. The determination of compensation in each case depends upon the nature of land and what is the evidence adduced in each case, may be that better evidence has been adduced in later case regarding the actual value of property and subsequent sale deeds after the award and before preliminary notification under section 4 are also to be considered, if filed. It is not proper to ignore the evidence adduced in the case at hand. The compensation cannot be determined by blindly following the previous award/judgment. It has to be considered only a piece of evidence not beyond that. Court has to apply the judicial mind and is supposed not to follow the previous awards without due consideration of the facts and circumstances and evidence adduced in the case in question. The current value reflected by comparable sale deeds is more reliable and binding for determination of compensation in such cases award/judgment relating to an acquisition made before 5 to 10 years cannot form the safe basis for determining compensation.

15. The awards and judgment in the cases of others not being inter parties are not binding as precedents. Recently, we have seen the trend of the courts to follow them blindly probably under the misconception of the concept of equality and fair treatment. The courts are being swayed away and this approach in the absence of and similar nature and situation of land is causing more injustice and tantamount to giving equal treatment in the case of unequal's. As per situation of a village, nature of land its value differ from the distance to distance even two to three-kilometer distance may also make the material difference in value. Land abutting Highway may fetch higher value but not land situated in interior villages.

16. The previous awards/judgments are the only piece of evidence at par with comparative sale transactions. The similarity of the land covered by previous judgment/award is required to be proved like any other comparative exemplar. In case previous award/judgment is based on exemplar, which is not similar or acceptable, previous award/judgment of court cannot be said to be binding. Such determination has to be out rightly rejected. In case some mistake has been done in awarding compensation, it cannot be followed on the ground of parity an illegality cannot be perpetuated. Such award/judgment would be wholly irrelevant.

17. There is yet another serious infirmity seen in following the judgment or award passed in acquisition made before 10 to 12 years and price is being determined on that basis by giving either flat increase or cumulative increase as per the choice of individual Judge without going into the factual scenario. The said method of determining compensation is available only when there is absence of sale transaction before issuance of notification under section 4 of the Act and for giving annual increase, evidence should reflect that price of land had appreciated regularly and did not remain static. The Recent trend for last several years indicates that price of land is more

> *or less static if it has not gone down. At present, there is no appreciation of value. Thus, in our opinion, it is not a very safe method of determining compensation.*
>
> *18. To base determination of compensation on a previous award/ judgment, the evidence considered in the previous judgment/ award and its acceptability on judicial parameters has to be necessarily gone into, otherwise, /gross injustice may be caused to any of the parties. In case some gross mistake or illegality has been committed in previous award/judgment of not making deduction etc. and/or sufficient evidence had not been adduced and better evidence is adduced in case at hand, previous award/judgment being not inter-parties cannot be followed and if land is not similar in nature in all aspects it has to be out-rightly rejected as done in the case of comparative exemplars. Sale deeds are at par for evidentiary value with such awards of the court as court bases its conclusions on such transaction only, to ultimately determine the value of the property.*

(20) The land in question is not as well positioned on the land which was subject matter of **Manoj Kumar's** case being away from the National Highway. It is settled proposition of law that land abutting the NH will always command higher premium than land situated at the back.

(21) Resultantly, this Court is of the clear view that the Reference Court judgment suffers from illegality and perversity and having ignored the sale deeds in question which were relevant and depicted the true market value which was well below what has been awarded by the Reference Court and therefore the reasoning on the basis of which enhancement has been granted is not justified. Resultantly, it cannot be said that the landowners are entitled for enhancement as contended by their counsel.

Issue No.(iii)

(22) The issue remains that whether the amount is liable to be reduced from what has been granted @ Rs.1560/- per square meter or the matter is liable to be remanded for fresh decision in the wake of the above discussion. Though the argument of the State is attractive and it is also apparent that it is a case as such wherein powers under Order 41 Rules 22 & 33 CPC should be exercised. Rules 22 & 33 of Order 41 CPC read as under:-

> ***"22. Upon hearing respondent may object to decree as if he had preferred a separate appeal***
>
> *(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellant Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.*
>
> *Explanation.- A respondent aggrieved by a finding of the Court in the judgement on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding*

that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit the decree, is, wholly or in part, in favour of that respondent.

33. Power of Court of Appeal

The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order."

(23) But the factum that the State had accepted the amount of compensation granted and not filed any cross-appeal/cross-objection would amount to estoppel on their part. As noticed the award of the Reference

Court dated 30.07.2015 was the subject matter of decision initially on 02.03.2017 before Co-ordinate Bench when the market value had been enhanced to Rs.4059.45 per square meter. The State being aggrieved against the said steep hike had woken up from its slumber and taken the landowners to the Apex Court and *inter se* the order has been passed by the Apex Court on 11.09.2018 reproduced in para 5 above. The landowners had themselves prayed for enhancement before the Apex Court wherein the observation had come that it did not comment on the merits of the case and that just compensation be worked out. The appeals were allowed including those of the State and the matters were remitted to this Court for hearing the matters afresh. It was also noticed that the State did not question the disbursement by the Reference Court @ Rs.1560/-.

(24) In such circumstances Mr. Sarin is well justified to submit that the matter has become final *inter se* parties and could not be reopened at the instance of the State and neither the matter was liable to be remanded in the absence of any cross-appeals/cross-objections having been filed. The only issue of market value as such and whether further enhancement was liable to be granted in view of the State not having chosen to question the findings as such of the Reference Court would be within the purview of this Court.

(25) Reliance can be placed upon the judgment of **Kunhayammed and Ors. vs. State of Kerala & Anr. (2000) 6 SCC 359** wherein the issue of merger was discussed when leave is granted in the SLP. The Apex Court held that once leave to appeal has been granted and the appellate jurisdiction has been invoked, the order passed in appeal would attract the doctrine of merger and the jurisdiction of High Court to entertain a review petition would be lost. In the present case as noticed the Apex Court while

examining the issue had granted leave and then remanded the matters afresh. Though it did not comment upon the merits but observed that just compensation is to be worked out *inter se* the parties. It was further observed that the State did not question the disbursement made and directed that where the amount had been disbursed to the landowners @ Rs.2000/- per square meter in view of the interim order passed, it shall not be recovered from the landowners during the pendency of the appeal in view of the earlier orders passed. Similarly, it was directed that the amount @ Rs.1560/- per square meter along with statutory benefits, would be paid and the remaining amount was directed to be kept in fixed deposit which could be disbursed after the decision by this Court. Even after remand as such the State has not preferred to file any such appeal or cross-objection. Therefore this Court is of the opinion that though this Court had issued notice on 29.08.2019 putting the landowners on caveat as to why the impugned award of the Reference Court granting compensation to the tune of Rs.1560/- per square meter be not reduced or the matter be remanded in view of the fact that the sale deeds produced by them which have not been taken into consideration showed that the market value was less than what has been awarded by the Reference Court.

(26) Similarly, the judgment of **Suganthi Suresh Kumar vs. Jagdeeshan (2002) 2 SCC 420**, can be relied upon that it would be impermissible for this Court to comment upon the view of the Apex Court in view of the binding precedents under Article 141 of the Constitution once the matter has been remanded for such reconsideration and the State having chosen not to take any action to question the findings. As such in view of peculiar facts of the case and the issue having been taken to the Apex Court,

this Court is of the opinion that the principle of *res judicata* would come into operation as per the law laid down by a 3-Judge Bench of the Apex Court in **UP State Road Transport Corporation vs. State of UP & Anr. AIR 2005 SC 446**.

(27) Similarly, in **South Central Railway Employees Cooperative Credit Society Employees Union vs. B.Yashodabai & Ors (2015) 2 SCC 727**, the Apex Court has held that it was not upon to the High Court to reopen the issue once it has been settled by the Apex Court on the ground that it was not argued earlier.

(28) In **Bhoop Singh vs. State of Haryana & Ors. 2014(4) PLR 717**, the judgment relied upon by Mr. Avnish Mittal the said power of the Appellate Court under the provision of Land Acquisition Act, 1894 was examined that once the State having been not aggrieved and as such it did not choose to file an appeal, the inherent power of the Appellate Court to do complete justice would not be invoked and such power is to be exercised only in exceptional cases. Once the State had permitted the award to become final not by default but by a conscious act, it cannot be permitted to plead that in the absence of any appeal or cross objections, it be granted relief against the landowners. The relevant portion reads as under:-

> *17. If the case of the State is considered in the light of enunciation of law, as referred to above, where it is seeking to invoke inherent powers of the court under Order 41 Rule 33 CPC for setting aside of the award of the Reference Court, in my opinion, no case is made out for invoking the aforesaid provision.*
>
> *18. The State acquired the land compulsorily. On objections raised by the landowners, the learned Reference Court,*

considering the material placed on record by the parties, assessed the compensation. There is complete procedure in the State to finally decide the cases in which appeals are to be filed and the cases which are not found fit for filing appeals. When no appeals have been filed by the State in the cases in hand, it means that the authorities at the relevant time found the cases to be fit for not filing appeals. The compensation, as assessed by the learned Reference Court, according to it, was found to be justified in terms of the evidence available on record. It is not a case where the principles, as have been laid down in various judgments, would be applicable as rights between number of parties are not to be readjusted in case the appeals filed by the landowners are allowed. In case the relief claimed in the appeals is simpliciter for enhancement of compensation, acceptance of appeals filed by the landowners will not result in making inconsistent, contradictory or unworkable orders which needs to be readjusted by granting relief to the State. The State in the present case had permitted the award of the court below to become final not by default but by conscious act, hence, it cannot be permitted to plead that in the absence of any appeal or cross objections, it be granted relief against the landowners. Therefore, contention of learned counsel for the State to that extent is rejected."

(29) In **Bhoop Singh** (supra) this Court had relied upon the judgment in **Banarsi & Ors. vs. Ram Phal, AIR 2004 SC 1989** wherein it has been held that the First Appellate Court would not reduce the appellants to a situation worse than what they would have been if they had not appealed. It was thus held that the error of law which had been committed by the First Appellate Court in the said case should have been corrected by the High Court.

(30) Similarly, in **Chokalingaswami Idol thr. RN Pillai vs. Gnanapragasam (Dead) by LRs JT 2008 (4) SC 278** it was held that once

the State had not appealed it was not permissible for the Appellate Court to hold in favour of the State Government as it would amount to overstepping the appellate jurisdiction. Reliance can also be placed upon the judgment of Apex Court in **Biswajit Sukul vs. Deo Chand Sardsa & Ors. 2019(1) RLR 40 (SC)** whereby the Apex Court remanded the case to the First Appellate Court to decide the appeal filed by the plaintiff afresh but made it clear that since the defendant had not filed any cross-appeal, they were not permitted to file cross-objection at a belated stage on account of remand of the appeal to the First Appellate Court by the Apex Court. The relevant portion reads as under:-

> *21) In our opinion, in the light of what we have held above, we have no option but to set aside the impugned order and also the judgment of the First Appellate Court and remand the case to the First Appellate Court to decide the first appeal filed by the plaintiff (appellant herein) afresh on its merits only to examine the legality and correctness of the issues which were decided against the plaintiff by the trial court such as issue No.3 and second part of issue No.4*
>
> *22) We, however, make it clear, that since the defendants did not file any cross objection in the appeal under Order 41 Rule 22 of the Code, they are not allowed to file the cross objection at such belated stage taking advantage of the remand of the appeal to the First Appellate Court by this Court.*

(31) It was always open for the State to bring to the notice of the Co-ordinate Bench which had decided the matter on earlier point of time on 02.03.2017 as to the perversity or illegality which had been done by the Reference Court by not referring to the relevant sale deeds. Therefore now it cannot turn around and submit that the decision of the Reference Court would require to be set aside and the matter should be remanded for fresh

decision. It is to be noticed that this Court is dealing with the issue of acquisition of land which had been taken away on the principle of *eminent domain* on account of developing the same for infrastructural purposes and for augmenting the urban development of town of Yamuna Nagar/Jagadhari. In such circumstances the power of this Court to invoke the provisions of Order 41 Rules 22 & 33 CPC would not arise as the State had sufficient opportunity as such to file cross-appeal/cross-objection not on one but two occasions which it has failed to do so.

(32) It is also to be noticed that it has been argued that some of the landowners have already received the amount of compensation @ Rs.1560/- per square meter and it would cause extreme hardship to them if the amount is reduced and if they are asked to refund the said amount which also would have been received not in lumpsum but at various stages. Reliance can also be placed upon the judgment in ***Udho Dass vs. State of Haryana (2010) 12 SCC 51*** wherein this aspect has been noticed as to how landowners can be put to a disadvantage for getting the amount of compensation in instalments which is incommensurate with the inflation which is taking place.

(33) Resultantly, keeping in view the above, this issue is decided in favour of the landowners to the extent that this Court maintains what has been awarded by the Reference Court though not appreciating the manner in which the matter has been adjudicated upon by the Reference Court.

(34) Resultantly, the appeals of the landowners are dismissed.

(35) Misc.applications, if any, also stands disposed of accordingly.

18.09.2019
vvishal

(G.S. Sandhawalia)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*