

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

RFA No. 3158 of 2013 and other connected cases

Date of decision: 12.02.2020

State of Haryana and others

....Appellant(s)

Versus

Rohtas and others (II)

...Respondent(s)

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

Present: Mr. Sudeep Mahajan, Addl. A.G., Haryana,
and Mr. Abhinash Jain, AAG, Haryana,
and Ms. Vibha Tewari, AAG, Haryana.

Mr. Shailendra Jain, Sr. Advocate,
with Ms. Anupama Arigala, Advocate,
and Mr. Sidharath Goyal, Advocate,
Mr. Aditya Jain, Advocate,
Mr. Rajat Garg, Advocate,
Mr. Sanjay Vij, Advocate,
Mr. Rajesh K. Kataria, Advocate,
Ms. Gurinderjit Kaur, Advocate,
for Mr. Rajesh Lamba, Advocate,
Mr. Sudarshan Kumar, Advocate,
Ms. Anita Balyan, Advocate,
and Mr. Jainainder Saini, Advocate,
for the land owners.

G.S.SANDHAWALIA, J.

1. Vide the present judgment, the appeals filed under Section 54 of the Land Acquisition Act, 1894 arising out of the awards dated 04.02.2013 and 17.01.2017 pertaining to village Gharauli Kalan and the awards dated 11.04.2013 and 23.11.2013 pertaining to village Dhankot are being disposed of. Since common questions of law and facts are involved and on the earlier occasion, the matters had also been decided together on 17.05.2016, therefore, reference is being made to ***RFA No. 3158 of 2013, State of Haryana and others vs. Rohtas and others (II)*** for village Gharauli Kalan.

2. The market value, at that point of time, had been assessed by the Co-ordinate Bench for the notification dated 22.02.2007 to be Rs.58,27,500/- per acre alongwith 50% severance charges for village Gharauli Kalan. On the other hand, for village Dhankot, the market value had been enhanced to Rs.1,81,00,000/- per acre. The Apex Court in ***State of Haryana and another vs. Rohtas etc., 2017 SCC Online SC 1560***, decided on 12.12.2017 set aside the said judgment primarily on the ground that the appropriate cuts for development had not been applied on the sale exemplars which were of small areas and remanded the matters. The sale deed relied upon was also of the same date i.e. 22.02.2007 and the severance also which had been granted was without any discussion and on extremely higher side. Resultantly, the appeals are being decided again in the light of the said observations.

Facts and Evidence Regarding the**Acquisition of Village Gharauli Kalan**

3. The land measuring 13.30 acres for village Gharauli Kalan was acquired for the public purpose for development and utilization of the land for Badshahpur Nala, Phase III at Gurgaon which was to go upto Nazafgarh Drain. The notification under Section 4 of the Land Acquisition Act, 1894 (in short 'the Act') was issued on 22.02.2007 followed up by the notification under Section 6 of the Act on 23.02.2007 by invoking the provisions of urgency clause of Section 17(1). Vide the award dated 20.02.2009, the Land Acquisition Collector assessed the market value at Rs.20,00,000/- per acre. The Reference Court enhanced the market value to Rs.34,17,670/- per acre and fixed the severance at 25% on the market value while deciding the lead case i.e. LAC No. 896 of 2010, Rohtas and others vs. State of Haryana.

The reasoning which was given for enhancing the market value was that the sale deeds dated 21.03.2006 (Exs. P-2, P-4, P-6 to P-8) which had been brought on record by the land owners and by taking the average of the sale deeds, the market value was assessed at Rs.52,57,954/- per acre. Thereafter, 35% cut was put on the said sale deeds on the ground that the sale deeds seem to be regarding the land located in an area more developed than the acquired land and, therefore, for development of infrastructure and expenditure and the waiting period etc. and the size of the land in the sale deeds being small in comparison to the acquired land. The market value was, thus, assessed at Rs.34,17,670/- per acre alongwith all statutory benefits.

4. A perusal of the petition under Section 18 of the Act filed by the land owners would go on to show that the claim was that the land had great potential value and the situation of the land was already in the fully developed Gurgaon City which was part and parcel of the Gurgaon Corporation Area. The same had high potential value and was fit and usable for commercial activities, residential, industrial and institutional purposes. The market value was claimed to be Rs.6,000/- per square yard at the time of the notification under Section 4 as it was claimed that the land was very valuable and near to Sectors 9, 9A and 10A near to the main Gurgaon-Pataudi Road as well as the Gurgaon-Basai Road and close to NCR. There were several commercial areas close to it like shops, factories, industries, schools, farm houses etc. Basai and Dhankot railway stations were at a distance of 1 kilometer from the acquired land whereas the Garhi Harsaru Railway Station was at a distance of 2 kilometers from the said railway stations. The Land Acquisition Collector had ignored the rising trend near

the acquired land and the fast developing and increasing town of Gurgaon for assessing the market value. The specific plea was taken regarding the severance of the land and that the unacquired land of the petitioners had been bifurcated into two parts due to the acquisition of the land. The unacquired land could not be used properly and its value and utility had been diminished and adversely affected. Therefore, the petitioners were entitled to 50% of the market value of the un-acquired land which had become waste due to the above said acquisition.

5. In the written statement filed by the Land Acquisition Collector, there was a general denial regarding the market value of the land. It was pleaded that the Divisional Land Rate Fixation Committee under the Chairmanship of the concerned Commissioner of the Division had fixed the rate which was reasonable, fair and adequate. The relevant factors regarding the potential value etc. had been kept in mind. No denial as such was made regarding the loss on account of severance for the land which was being carved out for the public purpose of the *nala*/water channel.

6. The land owners examined PW-1 Surender Singh, Patwari of village Basai and also the village in question who had brought the *Aksh Shijra*. He deposed regarding the location of the land to state that on the east of the said village, boundary of village Gharauli Khurd was situated and on the western side was village Dhankot, which is the subject matter of the other appeals. Similarly, on the north was village Basai and on the south was village Harsaru. The railway line from Delhi to Jaipur was going through the village in question. 425 feet wide road coming from Dwarka and going towards National Highway No. 8 was also going through the land of the said village. The land for SEZ (Special Economic Zone) was

acquired from the said village. Reference was made to the ownership of Om Parkash whereby, he was owner of land falling in Khasra Nos. 54/1 and 55/2 and Khasra No. 54/1 was entirely acquired. However, out of Khasra No. 55/2, 7 biswas was acquired and the unacquired land was 1 bigha and 1 biswa. Regarding Joginder also, there were similar averments that the unacquired land was 5 bighas, 7 biswas and 17 biswanis. Similarly, regarding Ramesh, Mukesh, Dalip, sons of Nathu, the unacquired land was 4 bighas 14 biswas whereas, regarding Rajpal etc., unacquired land was 1 bigha 5 biswas. A *nala* had been constructed on the acquired land which was open and dirty water was flowing from it and the lands were bifurcated into two parts by this acquirement. In Mutation No. 675 (Ex.P-1), the acquired land and unacquired land had been shown and the State had chosen not to cross examine the witness.

7. Ramesh PW-2 tendered into evidence his affidavit (PW-2/A). As per the averments made in Section 18 petition also, it was averred regarding the severance as such of the land that khasra no. 333-Min measuring 4 bhigas 14 biswas had been bifurcated into two parts and the value and utility had been diminished. The petitioners were suffering heavy loss due to the severance of the unacquired land and due to passing of dirty water in the acquired land. There was no way to go to both the portions of the unacquired land and the same had become a total waste due to the above said acquisition. The *nala* was uncovered and the smell of dirty water had made the land on both the sides useless and a total loss and it had become unfertile and 50% compensation was sought on this account. Details were also given regarding bifurcations of other land owners including Rohtas falling in Khasra No. 158 and all details of khasra no. 67/1 of Manoj etc.

8. In cross examination, it was denied that the acquired land was not near Sectors 9, 9A and 10A. It has also been denied that the acquired land was not part of Sector 37-D and there was no development near the acquired land. He also denied the suggestion that due to severance of the unacquired land, no loss had occurred to him. However, no cross examination was conducted for the nuisance of the drain and the loss of the fertility of the land on account of the open *nala* flowing in the said area on account of the acquisition of the land.

9. Similarly, Rajpal PW-3 submitted his affidavit PW-3/A and his cross examination and lack of cross examination was to the same extent as of PW-2. PW-4 Vikas Aggarwal, an authorized representative of M/s. Aaloukik Constructions Pvt. Ltd., submitted his affidavit PW-4/A and averred that the land had anticipatory potential for commercial use as it lay integrated in the radius of 2 kilometers of several group housing societies. Technology Park as well as posh residential societies in the neighbourhood were present before the notification under Section 4 of the Act. In cross examination done on 22.08.2012, he stated that he was working with the company since last 4-5 years. He stated that Gharauli Kalan was situated after village Kadipur from Gurgaon side and admitted that at the time of notification, there was no development in that area but Government had issued licenses to some companies. He volunteered that surrounding areas were already developed. Sectors 9, 9A and 10-A and Sector 7 Extension were already developed. He denied the suggestion that they were situated in the land of villages Kadipur and Basai which was towards Gurgaon. He admitted that Sector 10 was situated near village Kadipur *abadi* and thereafter village Gharauli Kalan was situated. That the land of Sectors 10,

10-A were carved out of the land in village Kadipur and after the *abadi* of Kadipur, no sector had been developed by HUDA towards Gharauli Kalan.

10. PW-5 Om Parkash, also in his affidavit PW-5/A, deposed regarding the bifurcation of the land into two parts and that the tubewell in Khasra No. 54/1 had remained on one side of the acquired land. Therefore, the difficulty in irrigating the remaining the land was stressed due to the acquisition of the land and as there was no way to go to the other portions of the unacquired land. Averments were also made regarding the bad smell of the dirty water of *nala* which was uncovered and become unfertile. The cross examination was also to the limited extent that there was no development around the acquired land and that it was incorrect that due to severance, no loss had occurred to him.

11. Affidavit of Joginder Singh PW-6/A was in the same terms and even the cross examination and the lack of it was also in the same terms. The award dated 22.12.2011 titled as Jeet Ram and others vs. Land Acquisition Collector and others was also brought on record as Ex.P-1/A, which pertained to the notification dated 22.02.2002 wherein, 438 kanals 11 marlas of land had been acquired of 8 villages including Dhankot and Gharauli Kalan. The public purpose in that acquisition was for laying out water carrier channels/pipes, raw water storage, sedimentation tanks and pumping sets for industrial complex of Chaudhary Devi Lal Industrial Model Township, Manesar. The Reference Court had enhanced the compensation which had been fixed on the basis of the revenue classification of the land ranging from Rs.5 lakhs to Rs. 12 lakhs for different types of land at a uniform rate of Rs.26,52,819/-. It is a matter of record that the said market value for the said notification has been enhanced

to Rs.32,27,200/- per acre on 04.02.2016 in ***RFA No. 751 of 2012, Gopi Ram Yadav and others vs. State of Haryana and others. Civil Appeal No. 12981 of 2017, Asha Gupta and others vs. Haryana State and others*** was dismissed on 12.09.2017, which would have a relevant bearing on the assessment of the market value of the land which was subject matter of acquisition exactly 5 years earlier. Similarly, LAC No. 770 of 2008 titled Roop Chand and others vs. State of Haryana and others decided on 30.04.2012 (Ex.P-2/A) was also brought on record, which was for the acquisition done on 29.01.2003 for Gharauli Khurd, which is the adjoining village. Land of 1998 kanals 10 marlas 3 sarsai was acquired for the public purpose for setting of the industrial complex to be planned and developed as SEZ (Special Economic Zone), Phase-I. The market value as such had been awarded at Rs.12,50,000/- per acre by the Land Acquisition Collector, which was enhanced to Rs.31,50,000/- per acre for the land which was acquired 4 years prior in point of time and, therefore, would have also bearing as such on the market value. The same was enhanced to Rs.40,80,000/- per acre in ***RFA No. 2174 of 2012, Smt. Savitri Devi vs. The Land Acquisition Collector, Gurgaon and others*** on 23.09.2014.

12. Award dated 17.01.2017, as such, followed the judgment of this Court when the cases were decided initially on the first occasion on 17.05.2016 to grant sum of Rs.58,27,500/- per acre. Since the said judgment was holding the field at that point of time and had not been set aside by the Apex Court and, thus, the said award has to be reconsidered. The evidence led in the said case M/s. BSY Infrastructure Pvt. Ltd. to the extent of the sale exemplars would not be of relevance as the sale exemplars are post the date of Section 4 notification.

13. Mr. Aditya Jain, Advocate, counsel for the land owners accordingly argued that the benefit of the sale exemplars (Ex. P-3, P-4, P-6 to P-8) should be granted which was Rs.52,50,000/- and the market value as such should be accordingly awarded after giving suitable enhancement for the difference of the time period between 21.03.2006. It is further submitted that since the land was being used for the purpose of construction of a drain as such, the principles which had to be applied in the case of land which was acquired for the road or a railway track would come into play and no development cut as such is liable to be applied and neither it is the case of the State as such. It is further submitted that it has also come on record that on account of usage of the land, the adjoining land had been adversely affected and, therefore, under Clause 4 of Section 23, the said factor had to be kept into consideration as the reason of acquisition had injuriously affected the adjoining property. It is, thus, submitted that under Clause Nos. 3 and 4, both for severance and for damages, additional amount is liable to be paid while assessing the market value. It has also been accordingly contended that in the year 2002, market value had been assessed for Rs.32,27,200/- per acre in *Gopi Ram Yadav's case (supra)*. Even if 12% enhancement was granted on the same adopting by cumulative process as per the judgment in ***ONGC Ltd. vs. Rameshbhai Jivanbhai Patel and another, 2008 (14) SCC 745*** market value is liable to be enhanced from what had been granted by the Reference Court. Similarly, land of the adjoining village Gharauli Khurd had been acquired in January, 2003 and if the market value of Rs.40,80,000/- is to be kept in mind, then enhancement for the 4 years intervening @12% is also liable to be granted.

14. A perusal of the sale deeds would go on to show that land sold

is as under:-

<i>Date</i>	<i>Sale Deed No.</i>	<i>Ex.</i>	<i>Area</i>	<i>Sale consideration</i>	<i>Amount per acre</i>
21.03.2006	27537	PW-3/B	12 bighas 7 biswas 17 biswanis	Rs.4,06,62,891/-	Rs.52,50,000/-
21.03.2006	27538	PW-4	8 bighas 12 biswas	Rs.2,82,18,750/-	Rs.52,50,000/-
21.03.2006	27533	PW-6	2 bighas 15 biswas 10 biswanis	Rs.91,05,469/-	Rs.52,50,000/-
21.03.2006	27534	PW-7	1 bigha 1 biswa 11 biswanis	Rs.35,35,547/-	Rs.52,50,000/-
21.03.2006	27535	PW-8	6 bighas 9 biswas	Rs.2,11,64,063/-	Rs.52,50,000/-
26.10.2005	15028	R-1	7 kanals 11 marlas	Rs.8,12,000/-	Rs. 8,60,397.35/-
08.11.2005	15727	R-2	1 acre 1 kanal 15 marlas	Rs.10,48,125/-	Rs.8,60,000/-
21.10.2005	14627	R-3	5 acres 6 kanals 8 marlas	Rs.49,88,000/-	Rs.8,59,908/-
09.01.2006	21230	R-4	1 acre 5 marlas	Rs.8,87,000/-	Rs.8,60,121/-
09.01.2006	21228	R-5	6 kanals	Rs.6,45,000/-	Rs.8,60,000/-

15. The above chart would go on to show that sale deeds produced by the land owners are in favour of one builder namely M/s. Aaloukik Constructions Pvt. Ltd. Sale deeds (Exs. R-1 to R-5) produced by the State which are approximately for Rs.10 lakhs per acre are below the market value what has been assessed by the Land Acquisition Collector and are in favour of one Prime I.T. Solutions and, therefore, in view of Section 25 of the Act are not liable to be taken into consideration.

16. Similarly, Mr. Mahajan submitted that the sale deeds were in favour of the builders and, therefore, 50% cut should be applied on the same and the market value was liable to be reduced on account of the matter having been remanded also on an earlier occasion since the Apex Court had not appreciated the earlier fixation of the market value.

Facts Regarding the Acquisition of village Dhankot

17. The land was also acquired for the same purpose as noticed for village Gharauli Kalan and the facts are being taken from RFA No. 5770 of 2013, Subhash Chand vs. State of Haryana. The only difference herein is that the land acquired is 47.73 acres in comparison to 13.03 acres. The Reference Court, vide its award dated 11.04.2013 while deciding the lead case i.e. LAC No. 1204 of 2010, Subhash Chand vs. State of Haryana and others, enhanced the market value from Rs.20,00,000/- to Rs.87,20,000/- + 25% severance. Reliance was placed upon sale deeds Exs. P-1, P-3, P-4, P-6 to P-8, P-10 to P-14, P-18 to P-21 to work out the average rate at Rs. 1,74,40,000/- per acre. A 50% cut was imposed keeping in view that the land in the sale deeds were located in a developed area marked for commercial and residential use in small pieces whereas, the acquired land was admittedly undeveloped and had been used for agricultural purposes at the time of its acquisition.

18. Reliance upon Ex.P-21 specifically, which was of 1 kanal 5 marlas, was rejected on the ground of its smallness and that it was a bounded plot and at a fully developed location. The awards dated 29.09.2012 (Ex.P-23) and 15.10.2012 (Annexure P-22) being of village Basai were considered irrelevant when sale instances were available of the same village. It is a matter of record that State appeals against the award were dismissed in ***RFA No. 5540 of 2013, State of Haryana and another vs. Subhash Chand and another*** on 30.08.2013 by noticing that land was being sold between Rs.90,00,000/- per acre to Rs.1,81,00,000/- per acre and showed development in the area and, therefore, the compensation awarded would not be said to be on the higher side. It is, however, a matter of record that market value was further enhanced in the appeals of the land owners on

an earlier occasion on 17.05.2016. The said judgment was set aside and the matter has been remanded. Nothing has been brought to the notice of this Court that the judgment in *Subhash Chand's case (supra)* regarding the State appeals. was set aside. Therefore, the limited question before this Court for village Dhankot is only as to whether land owners are further entitled to enhancement and, therefore, the State cannot question the market value which had been fixed at Rs.87,20,000/- per acre.

19. An application for additional evidence bearing C.M. No. 9303-CI of 2019 under Order 41 Rule 27 CPC has also been filed in RFA No. 5781 of 2013, Suresh Kumar and others vs. State of Haryana and others. The State has chosen not to file any reply to the said application, though notice was issued way back on 01.11.2019 for 20.11.2019 and thereafter, another opportunity was granted to the State on 09.12.2019. The land owners, vide Annexure A-1, brought on record the judgment in RFA No. 1580 of 2012 dated 24.05.2016 titled as Moti Sagar and others vs. State of Haryana and another, which is regarding the acquisition for village Budhera for the notification dated 19.05.2008 for which market value was assessed at Rs.2,80,00,000/- per acre, which was upheld by the Apex Court on 01.01.2017 in SLP No. 23630-23668 of 2016. However, same would not be helpful as such in any manner to the land owners specially keeping in view that there are sufficient sale exemplars of Dhankot in question. Village Budhera is admittedly on the Delhi-Badli Road and closer to Delhi border and the market value, thus, would necessarily be higher in comparison.

20. Similarly, reliance has been placed upon Annexure A-2, a review application filed in ***RFA No. 5872 of 2013, Dharambir and another vs. State of Haryana and another*** wherein, land had been acquired on

25.01.2008 for village Dhankot for the public purpose for linking Dwarka Township Delhi from Gurgaon vide the said order. For the land of village Dhankot, market value had been enhanced from Rs.60,00,000/-, as awarded by the Land Acquisition Collector and Rs.1,50,00,000/- by the Reference Court to Rs.2,55,00,000/- per acre. Vide the said order, various sale deeds were kept into mind which were relevant for the purpose of the said notification being closer in point of time to the Section 4 notification to fix the market value. It was also noticed that for the adjoining village, a sum of Rs.2,12,00,000/- had been awarded by the Apex Court in ***Civil Appeal Nos. 11814-11864 of 2017, State of Haryana and others vs. Ram Chander and another*** on 05.09.2017 (Annexure A-3) by modifying the order in *RFA No. 4475 of 2012, Ram Chander and another vs. State of Haryana and others*. Similarly, it was noticed that the Apex Court had fixed the market value for Kherki Majra, Dhankot to Rs.2,38,00,000/- per acre vide the same judgment and, thus, market value was granted in the same range keeping in view the sale deeds as such which pertained from the period 2006 to 2008 and were also a day prior to the Section 4 notification. The said judgment as such, thus, would not be of much relevance to the land owners since it is apparent that the market values have been climbing steadily since 2006 to 2008 and, therefore, the land values were varying in the intervening period of almost 1 year. The site plan (Annexure A-4), however, would be of relevance which also shows the location of the land as such which had been acquired and of the relevant sale deeds and would help this Court to pronounce the judgment and, thus, would come within the provisions of Order 41 Rule 27 CPC.

Pleadings and Evidence Regarding the Acquisition of village Dhankot

21. The petition filed under Section 18 of the Act would go on to show that potentiality of the land was stressed as HUDA's sectors 9, 9A, 10, 4, 7, 7 Extension were situated in the periphery and the posh residential society and the group housing societies being located within a radius of 2 kilometers. The land in question was situated in the residential zone of District Gurgaon and was part of the residential Sector 102-A. It was having direct approach from Delhi and the Indira Gandhi International Airport and the market value of the adjoining colonies was Rs.50,000/- per square yard. Necessary averments regarding the land being divided into two parts and the entitlement for severance was claimed.

22. The said averments by the State were denied regarding the market value as such and the fixation of the rate on the strength of the report of the Divisional Level Land Fixation Committee under the Chairmanship of the concerned Commissioner. The issue of severance as such was not opposed in the pleadings by the Land Acquisition Collector.

23. Statement of PW-1 Radhe Shyam was in consonance with the petition under Section 18 of the Act and claim was that the land was fully developed having basic facilities like electricity, water supply, sewerage, roads, telephones. The severance factor was also pleaded and the difficulty in cultivation of the divided land. In cross examination, it was denied that the group housing societies were not within a radius of 2 kilometers and it was stated that the surrounded acquired land was in the radius of 2 kilometers from a residential colony called Basai Enclave. The names of the colonies in group housing could not be mentioned by the land owner. He stated that he had seen the land sold under Ex.P-1 and it was situated near the acquired land. The suggestion that it was not bifurcated into pieces

and the land owners were not entitled to get severance charges for the remaining unacquired land was denied, as was the denial that it was ordinary kind of agricultural land.

24. PW-2 Narinder Kumar, Tracer in the office of the DTP brought on record the Gurgaon-Manesar Urban Complex Plan-2021 AD (Ex.P-2) to prove that towards the eastern side of village Dhankot, there was a residential zone. In cross examination, it was admitted that Sectors 99 and 102 were situated on the southern side of Dhankot and it was wrongly stated in his examination-in-chief that Sectors 99 and 102 are situated on the eastern side.

25. PW-3 Satwinder Kumar, the Halqa Patwari of village Dhankot, brought the Aksh Shijra and deposed that on the eastern side, the revenue estate of village Basai and Kherki Majra was lying. On the western side, villages Tuglakpur and Budhera were situated whereas, on the northern side, there was village Kherki Majra. On the southern side, Garhi Harsaru and Tuglakpur lay. Distance from railway station, Dhankot to Basai was 3-4 acres and Basai Railway Station was adjacent to Sector 9. He stated that some portion of the revenue estate of village Dhankot came in the residential zone but he could not tell the exact area. He denied the suggestion put that there was a distance of 3 kilometers between the two villages.

26. Vikas Aggarwal, who appeared as PW-4, being the authorized signatory of Nilesh Realtors Pvt. Ltd., admitted in his cross examination that permission was granted for the ware house after the acquisition of the land though it had been applied before the acquisition. He admitted that the land was being used for the agricultural purposes before obtaining

permission for the warehouse. He also admitted that the land in the revenue record was recorded for agricultural purposes but was not being used as such at the time of notification. It is also admitted by him that at the time of purchasing the land, it was being used for the agricultural purposes by the farmers in the year 2006. He volunteered that the land near the acquired land was underdeveloped land and that no development had been made till date.

27. PW-5 Ashok Kumar produced the certified copy of the sale deeds Exs.P-4 to P-14, being the ARC in the Office of Sub Registrar. Ashok Kumar had also appeared as PW-8 and produced sale deeds (Exs. P-18 and P-19). The draftsman Kanshi Ram Dahiya PW-6 produced the site plans Exs. P-15 and P-16. He had stated that he had shown the unacquired land of the petitioner Suresh Kumar and Ravi Kumar in green colour. Similarly, he had shown the land acquired for the public purpose in dark red colour and in the light red colour. The sale deeds of village Dhankot had been shown in green colour which were executed and registered before the notification. The remaining sale deeds were shown in yellow colour, which were executed after the notification in site plan (Ex.P-16) and the *nala* had been shown in red colour. The sites of private builders and HUDA sectors had been shown in Ex.P-16 whereby the land had already been acquired in the revenue estate. In cross examination, he stood by the stand that he had seen the acquired land and prepared the site plans after spot inspection and verified the revenue records. He also denied that private builders BTP and Uppals projects were still under process and not completed till date and that Sector 102 of HUDA was not developed.

28. PW-7 Ravi Kumar stated about the potentiality of the land and

on the severance issue. In cross examination, he admitted that at the time of notification, the land was agricultural in nature but surrounded by commercial and residential buildings developed by private builders other than HUDA. He admitted that HUDA had not allotted plots in Sector 102 till date i.e. 22.10.2012. He denied the suggestion that the land was not divided into two parts and that the land owners were not entitled to get severance charges.

29. Harsh Wardhan, PW-9 produced the revenue record and deposed in the same terms including the claim for severance. He denied the suggestion that the land was agricultural at the time of acquisition. He volunteered that the same was surrounded by many HUDA sectors and private colonies. He denied that sectors 9, 9A, 10, 4, 7, 7 Extension were more than 10 kilometers from the acquired land and that the land was not divided into two parts. The chart of the sale deeds produced by the land owners read as under:-

<i>Sr. No.</i>	<i>Exh</i>	<i>Vasika No.</i>	<i>Date</i>	<i>Land Area</i>		<i>Total Sale Consideration</i>	<i>Rate per acre</i>	<i>Revenue Estate</i>
				K	M			
1	P3	7209	26.06.2006	26	14	3,00,37,500	90,00,000	Dhankot
2	P4	7211	29.06.2006	25	0	2,81,25,000	90,00,000	Dhankot
3	P12	9650	02.08.2006	24	1	4,50,93,750	1,50,00,000	Dhankot
4	P13	9635	02.08.2006	8	5	1,39,21,875	1,35,00,000	Dhankot
5	P14	11006	23.08.2006	41	8	5,69,71,000	1,10,08,888	Dhankot
6	P21	15130	24.10.2006	1	5	73,00,000	4,67,20,000	Dhankot
7	P20	22914	01.02.2007	39	0	7,55,62,500	1,55,00,000	Dhankot
8	P19	23566	09.02.2007	11	12	2,62,20,000	1,56,00,000	Dhankot
9	P18	24398	22.02.2007	134	0	30,31,75,000	1,81,00,000	Dhankot
10	P6	25550	08.03.2007	8	8	1,60,00,000	1,52,38,095	Dhankot
11	P7	25554	08.03.2007	9	8	1,76,25,000	1,50,00,000	Dhankot
12	P8	25552	08.03.2007	9	2	1,80,00,000	1,50,00,000	Dhankot
13	P10	1762	20.04.2007	9	5	2,42,15,625	2,09,43,243	Dhankot
14	P11	1802	23.04.2007	24	5	6,36,56,250	2,10,00,000	Dhankot
15	P9	1961	24.04.2007	16	0	4,20,00,000	2,10,00,000	Dhankot

<i>Sr. No.</i>	<i>Exh</i>	<i>Vasika No.</i>	<i>Date</i>	<i>Land Area</i>	<i>Total Sale Consideration</i>	<i>Rate per acre</i>	<i>Revenue Estate</i>
16	P5	1961	24.04.2007	16 0	4,20,00,000	2,10,00,000	Dhankot
17	P1	1961	24.04.2007	16 0	4,20,00,000	2,10,00,000	Dhankot

30. Ex.P-23, *LAC No. 579 of 2010, Birbal and others vs. State of*

Haryana and another, which was brought on record was rightly rejected on the ground of being pertaining to village Basai and being a post notification acquisition dated 25.01.2008 which would be pertaining to the case of *Ram Chander (supra)*, as noticed above.

31. Vide order dated 17.01.2020, photographs produced by the land owners marked as Mark 'A' to Mark 'K' have been taken on record. The same would go on to show, as pointed out by Mr. Shailendra Jain, Sr. Advocate that the situation of the land on the spot had been adversely affected on account of the drain flowing in the area but also the fact that there is no sign of development in the near neighbourhood.

32. Mr. Shailendra Jain, senior counsel for the land owners placed reliance upon Exs. P-19 and P-20, which were executed on 09.02.2007 and 01.02.2007 respectively to submit that the market value was ranging around Rs.1,56,00,000/- per acre at that point of time. He also placed reliance upon Exs.P-18 dated 22.02.2007, which had been executed on the same date as of Section 4 notification to submit that market value had gone upto Rs.1,81,00,000/- per acre. He submitted that there were large chunks of land and no cut was warranted specially keeping in view the fact that there was no development cut which was to be applied on account of the usage of the land as it is not for residential or commercial areas. The principle of no cut, as laid down for acquisition of land for roads and railway tracks was liable to be applied. Severance was also claimed by relying upon the site plans Exs.P-15, P-16 and Annexure A-4 brought on record by virtue of the

additional evidence. Reliance was placed upon the judgment of this Court in *Smt. Bindu Garg vs. State of Haryana, 1999 (2) PLR 794* to submit that land had been severed. It was submitted that where there was bifurcation, damages are payable at least 50% of the awarded amount in addition to the amount on account of severance for the unacquired land which had been rendered inaccessible on account of the water channel across for which there was no access provided. It was submitted that there is no absolute bar as such regarding the development cut and it was not liable to be applied and the remand order specified that the case was to be decided in the light of the observations. Exs. P-3 and P-4, which were sale deeds of Nilesht Realtors Pvt. Ltd. were relied upon to submit that land had been purchased at Rs.90,00,000/- per acre on 26.06.2006 and, therefore, the market value was liable to be enhanced. Reliance was placed upon village Dhankot's acquisition of 25.01.2008 to press forth the principle of reverse cut and that if the same was applied even at 30%, the market value would still come to Rs.1,78,50,000/- while reducing it from Rs.2,55,00,000/- per acre, as awarded on 25.01.2008.

33. Counsel for the State, Mr. Sudeep Mahajan, has vehemently argued in his usual self that builder sale deeds could not be accepted except with a pinch of salt and 50% cut was the minimum requirement which would go upto 75%, as laid down by the Apex Court in *Chander Shekhar (D) through LR.s and others vs. Land Acquisition Collector and another, 2012 (1) SCC 390*. He argued that even if Exs.P-19 and P-20 are taken into consideration, the market value was only Rs.1,56,00,000/- per acre and the market value, thus, would come to Rs.78,00,000/- after applying 50% cut. Exs.P-7 and P-8 also showed the market value in March, 2007, post

notification in the range of Rs.1,51,00,000/- per acre. It is submitted that there was an obvious jump in the market value post the notification, which would be clear from Exs. P-1, P-5, P-9, P-10 and P-11, which showed that the market value had climbed to around Rs.2,10,00,000/- per acre at that point of time and there was very steep rise within a period of two months. Therefore, the principle of reverse cut could not be applied and was dangerous to calculate the market value on the same. The amount of 25% severance charge was the right amount granted as such and reliance was placed upon the findings recorded in para no. 17 of the Reference Court award that the sale instances were of land located in a developed area and, therefore, deduction has been rightly applied and it was a case of no scope of enhancement of market value.

Assessment of Market Value for the land for village Gharauli Kalan

34. The pleadings and the evidence has already been reproduced in detail in para nos. 3 to 12. The sale deeds in question Exs.P-3, P-4, P-6 to P-8 would, thus, go on to show that the land was purchased on the same day by M/s. Aaloukik Constructions Pvt. Ltd., who is obviously a builder. If the total of the sale deeds is taken into consideration, the land measures about 33 bighas, which cannot be said to be a small chunk of land, which works out to approximately 20 acres. It is to be noticed that the land as such which has been acquired measures less i.e. 13.30 acres than the land which was purchased by the builder at an average rate of Rs.52,50,000/- per acre 11 months prior on 21.03.2006 from Section 4 notification which was issued on 22.02.2007. The sale deeds, thus, cannot be questioned on the ground that they have been executed for the purposes of raising the market value in the revenue estate as such or that the land owners were aware as such of the

impending notification. Resultantly, the benefit of the sale exemplars as such has to necessarily go to the land owners and there is no tangible reason as such as to why the market value has to be considered below the above said amount. The sale deeds which have been produced by the State (Exs.R-1 to R-5) pertain to the period 2005 and January, 2006 and the rates are varying around Rs.8,60,000/- per acre. The Land Acquisition Collector himself has awarded Rs.20,00,000/- per acre and, therefore, the sale deeds produced by the State would not be of much relevance keeping in view the fact that the market value has been steadily going up in the said area, as would be clear from the evidence which has come on record since for the 2002 notification, the Collector on an earlier occasion, only granted Rs.5,00,000/- to 12,00,000/- per acre for different types of land on 22.02.2002, which has been the subject matter of Ex.PW1/A and thereafter the market value has been enhanced in *Gopi Ram Yadav's case (supra)*. Similarly, the market value had also been awarded at Rs.12,50,000/- per acre for the adjoining village of Gharauli Khurd, which is the sister village for the land which was acquired on 29.01.2003 and, thus, the sale deeds of the State (Exs.R-1 to R-5) are of no relevance.

35. Another way of examining the market value of the land as such would also be to give cumulative enhancement on the market value which was awarded for the notification dated 22.02.2002 and which was fixed by this Court at Rs. 32,27,200/- in *Gopi Ram Yadav's case (supra)*. If the cumulative enhancement of 12% is granted for the intervening 5 years which has been approved by the Apex Court in *Rameshbhai's case (supra)*, the market value would work out to Rs.56,87,456/-. The chart is as under:-

Sr. No.	Year	Principal amount	12% enhancement	Cumulative Increase
1	2002	Rs.32,27,200/-	Rs.3,87,264/-	Rs.36,14,464/-
2	2003	Rs.36,14,464 /-	Rs.4,33,735/-	Rs.40,48,199/-
3	2004	Rs.40,48,199/-	Rs.4,85,783/-	Rs.45,33,982/-
4	2005	Rs.45,33,982/-	Rs.5,44,077/-	Rs.50,78,059/-
5	2006	Rs.50,78,059/-	Rs.6,09,367/-	Rs.56,87,426/-

36. It is also to be noticed that the builder M/s. Aaloukik Constructions Pvt. Ltd. has filed RFA No. 5850 of 2013 and specific plea as such has been taken that the sale deeds dated 21.03.2006 are in its favour. The specific plea has been taken that the land which has been acquired of the said appellant falls in Khasra Nos. 159 Min., 163/2 Min., 182 Min. and 164/1 Min. The argument, thus, raised is that the said khasra numbers were part of the acquired land and form a portion of the sale deeds (Exs.P-2, P-4, P-7 and P-8), which have been reproduced in para no. 14. It is settled principle that the sale deeds of the acquired land itself are the best sale exemplars to supply the date to assess the market value as has been held by the Apex Court in *Special Tehsildar, Land Acquisition, Vishakapatnam vs. Smt. A. Mangla Gowri, 1991 (3) SCR 472*. The same has been followed by this Court in *Gian Chand vs. State of Haryana and another, 2009 (3) RCR (Civil) 546* and *Bur Singh and others vs. State of Punjab and another*. In such circumstances, it would be safe to fall back on the said sale exemplars.

37. However, it is settled principle that the assessment of market value as such on the basis of sale exemplars are safer method and should be preferred rather than falling back on the above said cumulative method. The sale exemplars, which are of 11 months earlier, the cumulative enhancement is liable to be granted for 11 months @ 12% keeping in view that the land is situated in Gurgaon, which has seen rapid development on

account of its vicinity and being part of the NCR. The 11% increase for the intervening period between the sale exemplars Exs.P-3, P-4, P-6 to P-8 would give the benefit to the land owners of Rs.5,77,500/- per acre to take the market value to Rs.58,27,500/- per acre. One is to also see the market value of the sister village i.e. Gharauli Khurd, which has been ignored by the Reference Court as such of not being of the same village and which was subject matter of the acquisition dated 29.01.2003 and the same would go on to show that the land had been acquired @ Rs.12,50,000/- per acre which was for setting up the industrial complex and for development of Special Economic Zone (SEZ). The Reference Court had enhanced the amount to Rs.31,50,000/- per acre. This Court in, *Roop Chand's case (supra)*, decided on 23.09.2014 further enhanced the amount to Rs.40,80,000/- per acre while noting the potentiality of the land that the land is close to NH-8 which goes from Delhi to Jaipur. The reference was also made to the acquisition of IMT, Manesar, which was 20 kilometers from Village Khandsa, which was one of the villages which were subject matter of acquisition and where Rs.20,00,000/- had been assessed way back on 15.11.1994. Gharauli Khurd, however, being at a distance from NH-8, was held not to be entitled to the same amount of compensation which was granted to the other villages, which was to the tune of Rs.57,80,000/- per acre. If a 12% enhancement is granted on the same principle on Rs.40,80,000/- from 29.01.2003.

<i>Sr. No.</i>	<i>Principal amount</i>	<i>12% enhancement</i>	<i>Cumulative Increase</i>
1	Rs.40,80,000/-	Rs.4,89,600/-	Rs.45,69,600/-
2	Rs.45,69,600/-	Rs.5,48,352/-	Rs.51,17,952/-
3	Rs.51,17,952/-	Rs.6,14,154.24/-	Rs.57,32,106.20/-
4	Rs.57,32,106.20/-	Rs.6,87,852.75/-	Rs.64,19,958.90/-

38. Thus, the market value would work out to Rs.64,19,958.90/- per acre.

39. In such circumstances, it is apparent that the market value as such cannot be deemed to be less than Rs.50,00,000/- for village Gharauli Kalan as it is the adjoining village being the sister village. The principle that the market price of the adjoining villages can also be taken into consideration, as has been held by the Apex Court in ***Charan Dass vs. Himachal Pradesh Housing and Urban Development Authority, 2010 (13) SCC 398, Union of India vs. Harinder Pal Singh, 2005 (12) SCC 564*** and ***Ali Mohammad Beigh vs. State of Jammu and Kashmir, 2017 (4) SCC 717.***

40. This Court has also examined the site plan of Gurgaon in detail and the potentiality of the land as such cannot be doubted and, therefore, this Court is of the view that the amount of Rs.58,00,000/- per acre would be the relevant market value.

41. Coming to the issue of the cut which has to be applied in view of the law laid down by the Apex Court which can be for reasons of smallness of the sale exemplars on account of the land being raw in nature and on account of the cost of development qua levelling of land, laying of roads and drains and laying out green belt parks upon spaces etc.

42. To rebut the claim of said compensation, it is necessary for the State also to have produced such evidence that there was any development cut which is liable to be levied upon the sale exemplars produced. It is to be noticed that the State did not produce any evidence to contradict the claim of the land owners at any stage. Apart from tendering the sale deeds Exs.R-1 to R-5, the State did not chose to examine any witness in support of their

case. It has already been noticed that if all the sale deeds are read consolidatedly which are in favour of one builder, the area works out to 20 acres, which is more than the land which has been acquired which is only of 13.3 acres. Therefore, the cut for smallness, as such, cannot be levied upon the land owners.

43. Similarly, the issue of development cut, as such, is not liable to be levied as it is to be noticed that the land is to be acquired for carving out a *nala*/water channel. Therefore, the issue of any development cut on the same is not liable to be applied. In similar circumstances, where development cut as such had been applied on the land which was acquired for the purposes of building a road and railway lines, the same was set aside by the Apex Court in ***Nelson Fernandes & others Vs. Special Land Acquisition Officer, South Goa & others 2007 (9) SCC 447; Anjani Molu Dasai and C.R.Nagaraja Shetty Vs. Special Land Acquisition Officer & another 2009 (11) SCC 75 and Himmat Singh and others vs. State of M.P. and another, 2013 (16) SCC 392.*** The relevant portion from *Himmat Singh's case (supra)* reads thus:-

“26. The next issue which merits consideration is whether the Reference Court and the High Court had correctly made deductions in the name of development charges/cost of development. The Reference Court made three- tier deduction. In the first place, 25% was deducted in the name of leaving out portions of the acquired land for the purpose of laying roads, drains, sewer line, parks, electricity line etc. Thereafter, 25% deduction was made towards expenses for development work. Finally, 50% deduction was made because of smallness of the plots sold vide Exhibits P1 to P12. The learned Single Judge of the High Court approved the

deduction and determined market value of the acquired land at the rate of Re.1 per sq. ft.

27. The approach adopted by the Reference Court and the High Court in making deductions towards the cost of development / development charges from the market value determined on the basis of the sale deeds produced by the appellants was clearly wrong. The respondents had not even suggested that the development envisaged by the Reference Court, i.e., laying of roads, drains, sewer lines, parks, electricity lines etc. or any other development work was required to be undertaken for laying the Railway line. Therefore, 25% deduction made by the Reference Court and approved by the High Court under two different heads is legally unsustainable.”

44. In such circumstances, this Court is of the opinion that in the present case acquisition in question vis-a-vis the land acquired in the sale exemplars and in the absence of any evidence as such that there was any development to be done by way of parks, roads etc, the development cut is not liable to be levied.

45. Resultantly, this Court is of the opinion that the market value as such would work out to Rs.58,00,000/- per acre alongwith all statutory benefits. The issue of severance and the damages on account of the nuisance which the land owners have suffered on account of the *nala* being carved out will be discussed under a common heading subsequently.

Assessment of Market value for the land for Village Dhankot

46. A perusal of the large number of sale deeds reproduced in para nos. 22 to 29 for village Dhankot would go on to show that on account of its potentiality as such, keeping in view its location being close to the northern peripheral road which comes from Dwarka into Gurgaon and on which the

Metro route also falls, the land of Dhankot had great potentiality and was being eyed by the builders in a big way. It has already come on record that sectors 99 and 102 have been carved out, out of the land of village Dhankot, which fall on the western side of the northern peripheral road which eventually goes on to join NH-8, Delhi to Jaipur. On account of its immense potentiality, the market value of village Dhankot has seen a steady climb from Rs.90,00,000/- per acre in the year 2006 and was varying between Rs.1,10,00,000/- to Rs.1,50,00,000/- in August, 2006, which would be clear from sale deeds (Exs. P-12 to P-14). Vide Exs. P-19 and P-20, which were executed on 09.02.2007 and 01.02.2007, the land was sold at approximately Rs.1,56,00,000/- per acre. If one is to fall back on the larger chunk of land which was sold (Ex.P-20), the market value works out to Rs.1,55,00,000/- per acre in as much as 4 acres 7 kanals of land had been sold and had been purchased by M/s. Moon Light Builders. The chart would also go on to show that there was phenomenal increase as such post notification. In as much as 12 days later, Ex.P-18 had been executed on 22.02.2007 whereby, 16 acres 6 kanals had been sold in favour of Pragati Buildwell. However, the sale deeds had been executed on the same day as the date of the notification dated 22.02.2007 and a perusal of the sale deed would go on to show that the payment was made by cheques which was also dated of the same date. The land owners had not examined the vendor or the vendee as such of the said sale deed to explain the jump in the market value within 12 days and whether the cheques were encashed and the sale was not subject matter of litigation. Ex.P-18 was only produced by the official of the Sub Registrar and though the said sale deed is liable to be taken into consideration under Section 51-A of the Act. However, the Constitutional

Bench of the Apex Court in *Cement Corporation of India Ltd. vs. Purya and others, 2004 (8) SCC 270* has held that the Court would consider all factors as to the relevancy of the sale deed. The authorized representative of Pragati Buildwell did not appear as a witness as such to depose that the cheques dated 22.02.2007 had been encashed by the vendors and neither the vendors had been examined namely Sube Singh, Richpal, sons of Ram Singh and Smt. Bimla, Kuldeep Singh, Rajbir Singh, Dharambir, Jagbir and Vijay Pal. Therefore, the said sale deed is not liable to be taken into consideration since vide Exs. P-6 to P-8, land was sold in the range of Rs.1,50,00,000/- to Rs.1,52,00,000/- per acre. However, by April, 2007, the market value had shot upto Rs.2,10,00,000/- per acre.

47. A perusal of the site plans Exs.P-15 and P-16, seen with the site plan Annexure A-4, which has been produced by way of additional evidence, would go on to show that sale deeds Exs. P-12 to P-14 dated 02.08.2006 and 23.08.2006 have been depicted green colour and the site plan which shows that the land of the abadi of the village is situated on the northern side and close to the sector roads of 99-115. Similarly, Ex.P-15 would go on to show the acquired land also and how it bifurcates and cuts the land of the land owners shown in green and dividing the same. The said site plans have been duly proved by PW-5 Kanshi Ram Dahiya. However, Dhankot is located north of the northern peripheral road. Its land is contributing to Sectors 99 and 102 of Gurgaon which abuts the said Northern Peripheral Road which is coming from Dwarka and New Delhi. Ex.A-4 shows the location of Exs.P-19 and P-20 which are being relied upon and the land had been shown in green colour. The lands in the said sale deeds are situated abutting the Dwarka Express Way/Northern

Peripheral Road and, therefore, would command the highest sale value as such though they are farthest away from the village *abadi* and also in proximity from Delhi. Ex.P-18, which strongly relied upon, is closer to the *abadi* of village Dhankot. The site plans also show that the *nala* unforgivingly cuts through and bifurcates the holdings of the land owners. The land which has been acquired, thus, is situated at different portions, some closer to the highway and other further away closer to the *abadi* of village as the *nala* skirts and heads in northern direction to meet the Nazafgarh drain. Necessarily, the market value as such would also increase as it is closer to the village *abadi* though further away from the road.

48. In such circumstances, this Court is of the opinion that the sale deed Ex.P-20 is the best sale exemplar and would be relevant for assessing the market value.

49. The location and the size of the sale deed has already been discussed above which measures 4 acres 7 kanals would necessarily require a cut on account of the smallness of the sale deed in comparison to the land which has been acquired as much as 47.73 acres. Resultantly, this Court is of the opinion that a 30% cut on Rs.1,55,00,000/- would work out to Rs.46,50,000/- and the market value would work out to Rs.1,08,50,000/- per acre with all statutory benefits, which would be appropriate market value as such for the land which has been acquired of village Dhankot.

Severance Issue

50. Coming to the issue of severance and the loss which has been caused to the land owners on this account, this Court is of the opinion that the provisions of Section 23 wherein, under Clause 3, the damage sustained by the person interested at the time of the Collector taking possession of the

land by reason of severing such land from his other land is to be kept in mind and taken into consideration. The land owners' claim has been very specific regarding the bifurcation of the land into two parts and they have led evidence and even produced Mutation No. 675 for village Gharauli Kalan on record (Ex.P-1). State had chosen not to cross examine the revenue officer, PW-1 Surender Singh, Patwari who had made similar deposition as also of PW-2 Ramesh and Rajpal PW-3 alongwith PW-5 Om Parkash, PW-6 Joginder Singh, which has already been discussed in detail above in para nos. 6 to 11. For village Dhankot also, PW-1 Radhe Shyam and PW-7 Ravi Kumar had stated about the severance as had PW-9 Harsh Wardhan, who also deposed in the same terms. They had been cross examined on the said issue and nothing tangible as such has come out. The site plans Exs.P-15 and P-16 have been examined, which go on show that the claim of severance as such is made out. It has already been noted that no evidence has been brought by the State in any positive manner to rebut the case of the land owners. The Reference Court, for village Gharauli Kalan, while examining the said contention under issue no. 2, has also come to the valid finding as such that the case of the petitioners is proved by cogent evidence and has granted the additional amount at 25% of the market value of the acquired land. Similarly, for village Dhankot also, under issue no. 2, the Reference court had relied upon the statement of the draftsman PW-6 Kanshi Ram Dahiya, who had prepared Ex.P-15 and has come to the rightful conclusion that land owners in *Suresh Kumar's case (supra)* were entitled for severance @ 25% while denying the claim for any damage or loss to the remaining unacquired land.

51. State having chosen not to produce any contrary evidence on

record but has only tendered the copy of the sale deed and award and now cannot as such contend that the land owners had not been adversely effected.

52. This Court in '*Tehal Singh Vs. State of Punjab through Collector Land Acquisition Drainage Circle Patiala, 1987 RRR 495, 'State of Punjab Vs. Gopal Singh', 2002 (2) PLR 843, 'Surjit Singh Vs. State of Punjab, Land Acquisition Collector, 2008 (2) PLR 8763, State of Haryana Vs. Kartar Singh 2010 (4) RCR (Civil) 443 and 'Smt. Maya Vs. State of Haryana', 2012 (4) PR 747* has consistently time and again granted 50% severance in case of water channels. In the case of *Tehal Singh (supra)* the land was acquired for the purpose of SYL Canal. The same was on the basis that the land which falls across and which is a small piece of land necessarily as such would be difficult to cultivate and landowners would not be able to get sufficient income from the same. The relevant observations of *Tehal Singh's (supra)* read as under:-

“10. The compensation for severance thus awarded does not appear to be based on sound reasoning. The loss which has been caused by severance includes loss on account of uneconomic agricultural holding, which has been left after acquisition, bifurcation of a big economical holding into two small holdings which may not be any longer viable for profitable cultivation, loss of access to the land where the canal intervenes between the village and the land or availability of a bridge over the canal in the course of time which may be quite distant from the village as also the land on the other side of the canal, loss of irrigation facilities in case the well or the canal watercourse which is the source of irrigation is

located on the other side of the S.Y.L. Canal. It is well known that agricultural based habitations i.e. the villages, are located and in the course of time get established at a place where access to the agricultural land is easy; the agriculturists barter or sell small uneconomical holdings which are purchased by the adjoining landowners though the price fetched is comparatively less than its market value. Where land is canal irrigated the authorities of the Irrigation Department re-frame schemes for the watercourse to command the area for irrigation purposes taking due account of the obstruction caused by the construction for which the land has been acquired. Land measuring more than two acres normally makes a viable agricultural holding in the tehsil of Rajpura where the mode of cultivation and harvesting is by and large conventional and is yet to be mechanized.”

53. Similarly, the Apex Court in '**Wazir & another Vs. State of Haryana', 2019 (1) RCR (Civil) 702** has discussed the issue of severance and the loss which could be caused on account of the railway track. The relevant portion of the said judgment read as under:-

“29. We, however, find it difficult to accept grant of further 30% as severance charges to M/s. Kohli Holdings Private Limited. Normally the additional component of compensation in terms of Section 23(1) (thirdly) of the Act is granted when, a landholder suffers damage as a result of acquisition to the extent that the holding that he is left with stands comparatively diminished in terms of quality and value. For instance, if a railway track is to be built through an agricultural land held by a person, leaving two different halves with him, it would be impossible for him to carry on agricultural operations at an optimum level. This would

lead to reduction in the value of the halves that he is left with.”

54. Resultantly, the land owners will be entitled to 50% of the market value on account of the severance charge. However, keeping in view the judgment of the Apex Court in '**State of Punjab Vs. Amarjit Singh', 2011 (4) SCC 734**, the benefits of Section 23(1-A) and 23(2) of the Act will not be granted on the said amount. The relevant portion in *Amarjit Singh's case (supra)* reads thus:-

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

amount under Section 23(1A) payable on solatium. Solatium and additional amount are also not payable on the damages/expenses that may be awarded under second to sixth factors under Section 23(1) of the Act.

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

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

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

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

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

Relief

55. Accordingly, keeping in view the above, the market value for village Gharauli Kalan is assessed at Rs.58,00,000/- per acre with all statutory benefits. For village Dhankot, the market value is assessed at Rs.1,08,50,000/- per acre alongwith all statutory benefits.

56. Apart from the above market value, this Court is of the opinion that an additional sum of 50% is liable to be granted on the market value on account of severance. However, it is made clear that on the amount of 50% severance charge, the landowners would not be entitled for the

benefits of Section 23 (1A) and Section 23 (2) as it has been held not to be the market value.

12.02.2020
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No

