306 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA-1215-2021 (O&M)
Date of decision: 08.12.2022

Khazan Singh (deceased) through his LRs and another

....Appellants

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.C.Shahpuri, Advocate
Mr. Gaurav Aggarwal, Advocate
for the landowners

Mr. Shivendra Swaroop, AAG, Haryana

Mr. Pritam Singh Saini, Advocate for HSIIDC

ANIL KSHETARPAL, J (Oral)

1. By this order a bunch of 6 appeals, (details whereof are on the foot of the judgment), shall stand disposed of.

2. Through these appeals filed under Section 54 of the Land Acquisition Act, 1894, (hereinafter referred to as 'the 1894 Act') the landowners who stand deprived of their land due to the compulsory acquisition, assail the correctness of award passed by the Reference Court on 07.11.2019. The learned counsel representing the parties are ad idem that this bunch of appeals can be conveniently disposed of by a common judgment.

3. With highest regard to the direction of the Hon'ble Supreme Court to avoid reproduction and individually record the adjudication upon questions pertaining to land acquired in different villages, it is

observed that in a significant number of appeals listed before this Bench, the land has been acquired through a common notification involving identical issues, which have already been sufficiently and elaborately dealt with, in the previous judgments. Hence, certain extracts from the previous judgments, have been reproduced in this judgment, for the sake of convenience, clarity and judicious use of time. In all these cases, the following issues arise for consideration:-

> *1. Whether the parties have produced comparable sale exemplars of the contemporaneous period to enable the Court to assess the market value of the acquired land as prevalent on the date of notification under Section 4 of the Land Acquisition Act, 1894?*
>
> *2. Whether the landowners of the acquired land can be deprived of just, fair and reasonable compensation, on the ground that they have failed to claim the amount as per the policy decision of the State?*
>
> *3. Whether the Court is required to assess the severance damages suffered by the landowners with regard to the bifurcation of their unacquired land into different parcels due to the compulsory acquisition of a narrow strip of the land for constructing an elevated express highway?*

4. The discussion on issue number 2 and 3 involves common questions which have been, comprehensively, answered in the previous judgments arising from the same notification under Section 4 of the 1894 Act.

5. FACTS

5.1. Some relevant facts are required to be noticed. The State of Haryana in order to use the land for developing and constructing Kundali Manesar Express Highway (hereinafter referred to as "KMP") Phase VII connecting NH-1, NH-10, NH-8 and NH-2, issued a notification under Section 4 of the 1894 Act on 11.01.2005 proposing to acquire land measuring 520 acres, 2 kanals and 13.5 marlas spread over a total of 18 villages. The declaration under Section 6 of the 1894 Act was published on 31.05.2005 whereas the award No.18 was announced on 10.05.2006 with respect the acquired land located in Village Babra Bakipur, Tehsil and District Gurugram. The landowners were held entitled to a uniform market value of the acquired land at the rate of ₹12,50,000/- per acre. In the first round, on 08.10.2012 the Reference Court, assessed the market value of the acquired land at the rate of ₹43,17,841/- per acre. While deciding the appeals, the High Court vide a judgment dated 05.02.2016 revised the market value of the acquired land to ₹62,11,700/- per acre. However, the Hon'ble Supreme Court vide judgment dated 25.1.2018 in **Surender Singh vs. State of Haryana and others (2018) 3 CC 278** remanded all the cases back to the Reference Court wherein the parties were permitted to lead further evidence. In the second round, the Reference Court has dismissed the various reference petitions while upholding the assessment made by the Land Acquisition Collector (hereinafter referred to as "LAC") at ₹12,50,000/- per acre.

5.2 At this stage, it would be important to note that in the village Babra Bakipur itself, 100 kanals and 19 marlas of land, in other words, 12.5 acres of land, approximately, has been acquired.

5.3. The reference Court, on appreciation of the pleadings, framed the following issues:-

> *"1. What was the market value of the acquired land on the date of notification u/s 4 of Land Acquisition Act? OPP*
>
> *2. Relief."*

6. <u>Evidence produced by the respective parties:-</u>

6.1 The landowners, in order to prove their case, in oral evidence, examined Ram Kishan as PW1. After remand of the case, the landowners have examined Nand Kumar Nagpal, Government Approved Valuer as PW2 and Laxmi Narain as PW3.

6.2 In documentary evidence, the landowners have also produced the following documents, apart from the sale deeds, a tabulated compilation whereof is incorporated in para 7.3 of the judgment:-

Ex.P1	Copy of conveyance Deed no.22885 dated 4.02.2009 vide which plot measuring 1012.50 sq. meters situated in IMT Manesar was sold for Rs.25,31,250/-
Ex.P2	Copy of conveyance Deed no.21981 dated 20.12.2009 vide which plot measuring 1450 sq. meters situated in IMT Manesar was sold for Rs.9,90,000/-
Ex.P8	Copy of Award dated 18.12.2010 passed by the Court of Shri Y.S.Rathore the then learned ADJ, Gurugram in case titled as '*Avtar isngh and others vs. State of Haryana and others'*
Ex.P10	Certified copy of site plan (Ex.PW2/A) filed in case *'Sher Singh vs. State'*
Ex.P11	Aksh Shijra
Ex.P12	Certified copy of PW1 Med. Singh in case '*Sher Singh vs.*

	State'
Ex.P-13	Certified copy of PW2 Suresh Kumar in case '*Sher Singh vs. State'*
Ex.P14	Certified copy of PW3 Jagdish Chander in case '*Sher Singh vs. State'*
Ex.P15/ Ex.PY	Copy of Award dated 27.02.2012 passed by the Court of Shri Vikram Aggarwal, the then learned ADJ Gurugram in case titled as '*Hari Mohan and ors vs. State of Haryana and ors'*
Ex.P19/ Ex.PX	Copy of Award dated 31.07.2012 passed by the Court of Shri Vikram Aggarwal the then learned ADJ, Gurugram in case titled as '*Sher Singh and ors vs. State of Haryana and ors'*
Ex.PX1	Copy of Jamabandi for the year 2002-03 of village Babra Bakipur
Ex.PX2	Copy of Jamabandi for the year1997-98 of village Babra Bakipur
Ex.PX3	Copy of Jamabandi for the year 1992-93 of village Babra Bakipur
Ex.PX4	Copy of Jamabandi for the year 1993-94 of village Kasan
Ex.PX5	Copy of Jamabandi for the year 1998-99 of village Kasan
Ex.PX6	Copy of Khasra Girdawari for the year 1993-94 of village Kasan
Ex.PX7	Copy of Aksh Shijra of Village Kasan
Ex.PX8	Copy of jamabandi for the year 1993-94 of village Naharpur Kasan
Ex.PX9	Copy of jamabandi for the year 1998-99 of village Naharpur Kasan
Ex.PX10	Copy of jamabandi for the year 1991-92 of village Khoh
Ex.PX11	Copy of jamabandi for the year 1996-97 of village Khoh
Ex.PX12	Copy of jamabandi for the year 1991-92 of village Manesar
Ex.PX13	Copy of jamabandi for the year 1996-97 of village Manesar
Ex.PW2/1	Valuer Report
Ex.PW2/2	Site plan prepared by Shri Nand Kumar Nagpal

6.3 The HSIIDC has examined Sh.B.S.Rana, Senior Manager, KMP Cell, Uyog Vihar, Gurugram, as RW1.

6.4 In documentary evidence, the HSIIDC relied upon the following documents, apart from the sale deeds, a tabulated compilation whereof is incorporated in para 7.3 of the judgment:-

Ex.R1	Copy of Award no.18 dated 10.05.2006
Ex.R2	Copy of letter sent by Deputy Commissioner to Sub Divisional Officer (Civil) Gurugram
Ex.R3	Copy of policy for rehabilitation and resettlement of landowners
Ex.R9	Copy of Aksh Shijra
Ex.R10	Copy of Award dated 16.10.2010 passed by the Court of Shri S.K.Kaushik, ADJ, Palwal, in case titled as '**Chhida and ors Vs. State of Haryana and ors'**
Ex.R16	Integrated Shijra Plan

<u>7. Discussion and Analysis by this Court:-</u>

7.1 Heard learned counsel representing the parties at length and with their able assistance perused the judgment passed by the reference Court along with the record of the reference Court which was requisitioned.

<u>Issue No.1</u>

7.2 At this stage, it wold be appropriate to compile the details of the various sale deeds produced by both the parties in evidence in tabulated form, which is as under:-

Sale deeds produced by the landowners

Sr. No.	Exhibits	Sale deed No.	Date	Total Area	Sale consideration Rs.	Price per acre Rs.	Village
1.	Ex.P1	22885	04.02.2009	1012.50 square meters	25,31,250/-	1,01,17,140/-	Manesar
2.	Ex.P2	21981	20.01.2009	450 Sqare Meters	9,90,000/-	89,03,093/-	Manesar
3.	Ex.P3	549	08.06.2009	11A-6K-14M	9,65,00,000/-	81,52,059/-	Patti Hazipur
4.	Ex.P4/	2147	13.10.2008	2A-1K-12M	4,01,40,000/-	1,82,45,455/-	Babda Bakipur

	Ex.P16						
5.	Ex.P5	402	03.05.2007	0K-1M	50,000/-	80,00,000/-	Babda Bakipur
6.	Ex.P6	1338	05.07.2007	4K-12M	27,02,500/-	47,00,000/-	Babda Bakipur
7.	Ex.P7/ Ex.P17	171	30.04.2009	2A-2K-16M	4,70,00,000/-	2,00,00,000/-	Babda Bakipur
8.	Ex.P9	1954	20.10.2005	19K-9.5M	60,00,000/-	24,64,698/-	Patti Hazipur
9.	Ex.P18	2737	28.01.2010	1A-1K-12M	5,00,00,000/-	4,16,66,667/-	Judola

Sale deeds produced by the HSIIDC

Sr.No.	Exhibits	Sale deed No.	dated	Area	Sale consideration Rs.	Price per Acre Rs.	Village
1.	Ex.R4/ Ex.R14	133	26.04.2004	24K-0M	9,30,000/-	3,10,000/-	Babda Bakipur
2.	Ex.R5	818	21.07.2004	4K-0M	2,00,000/-	4,00,000/-	Babda Bakipur
3.	Ex.R6	1716	26.10.2004	3K-7M	1,35,000/-	3,22,388/-	Babda Bakipur
4.	Ex.R7/ Ex.R12	2349	07.02.2005	54K-7M	33,90,625/-	4,99,080/-	Babda Bakipur
5.	Ex.R8	1873	19.11.2004	21K-19M	8,78,000/-	3,20,000/-	Babda Bakipur
6.	Ex.R11	2309	25.01.2005	43K-13M	27,28,125/-	5,00,000/-	Babda Bakipur
7.	Ex.R13	1981	24.10.2005	4K-13M	2,15,500/-	3,70,753/-	Babda Bakipur
8.	Ex.R15	2239	11.01.2005	62K-4M	38,87,500/-	5,00,000/-	Babda Bakipur

7.3 Learned senior counsel, while referring to the various policies issued by the State of Haryana submits that even in the absence of any definite evidence to prove the market value of the acquired land, the RC should have relied upon the policy and awarded increase as per the order in RFA-421-2021 titled as '**HSIIDC vs. Om Dutt and others**' decided on 07.10.2021.

7.4 The RC has found that though the landowners produced sale deeds of various parcels of land located in Village Babra Bakipur, however, these are pertaining to the period post the date of notification under Section 4 of the 1894 Act. Further, sale instances Ex.P5 is with respect to a tiny size plot.

7.5 On the other hand, the sale deeds (Ex.R4 to R15)produced by the HSIIDC were kept out of consideration on wrong interpretation of Section 25 of the Act. They were ignored on the ground that they reflect a price lower than the price offered by the LAC. In fact, there is no bar in taking such sale deeds into consideration. The only bar is to award an amount which is lower than the amount awarded by the LAC. This issue is no longer res integra in view of the judgment of **Lal Chand vs. Union of India (2009) 15 SCC 769.** Thus, the RC has erred in excluding the sale deeds produced by the HSIIDC (Ex.R4 to R15) by wrongly interpreting Section 25 of the 1894 Act.

7.6 In view of the above discussion, the issue no.1 is decided against the landowners who have failed to produce relevant sale deeds and in favour of State as the sale deeds produced by it can be taken into consideration for determining the market value of the acquired land.

<u>Issue no.2</u>

7.7 Learned counsel representing the landowners do not dispute the correctness of the findings of the RC with regard to the sale instances of Village Babra Bakipur, however, they rely upon the policy.

7.8 The issue with regard to the benefit of policy has been discussed in detail in RFA-7819-2013 titled as '**Dharam Chand @ Dharambir and others vs. State of Haryana and others'** decided on 21.03.2022. Though in RFA-889-2021 titled as '**Birender and others vs. State of Haryana and others'** decided on 29.11.2021, the court had calculated the increase as per the policy upto the date of award, however, subsequently, in **Dharam Chand's case (supra)**, the attention of the Court was drawn to Section 23 of the 1894 Act, which mandates the court to assess the market value prevalent on the date of preliminary notification under Section 4 of the 1894 Act. The relevant paragraphs of the judgment are extracted as under:-

> *"5.18 Now, the last question which requires determination is "whether the RC has correctly held that while determining the market value of the acquired land according to the policies, the market value prevailing on the date of award is to be determined and not on the date of notification under Section 4 of the 1894 Act? At this stage, it is appropriate to extract Section 23 of the 1894 Act:-*
>
> ***"23. Matters to be considered in determining compensation-***
>
> *(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—*
>
> ***first the market-value of the land at the date of the publication of the notification under Section 4, sub-section (1).***
>
> *secondly the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;*
>
> *thirdly the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;*
>
> *fourthly the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;*
>
> *fifthly if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable*

expenses (if any) incidental to such change, and

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

(1-A) In addition to the market-value of the land, as above 16 of 54 provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum of such market-value for the period commencing on and from the date of the publication of the notification under Section 4, subsection (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.—In computing the period referred to in this subsection, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.

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

5.19 Both the policies of the Government i.e 23.03.2007 as well as 09.11.2010 are also extracted as under:-

"Subject:- Fixation of floor rates for the acquisition of land for public purpose in the State of Haryana.

Ref: This Department Memo No.2025-R-5-2005/4299 dated 28.4.2005.

Vide this Department Memo. Under reference, minimum floor rates for acquiring land for public purposes for various Departments as well as other State Agencies were fixed by the Haryana Government as follows:-

i) Minimum floor rate for urbanisable area of Gurgaon.	*Rs.15.00 lacs per acre*
ii) Minimum floor rate for rest of the Haryana Sub-Region of NCR including	*Rs.12.50 lacs per acre*

Panchkula and area of Chandigarh-periphery in the Haryana State	
iii) Minimum floor rate for the rest of the Haryana State	*Rs.05.00 lacs per acre*

These floor rates did not include the solatium and interest payable under the provisions of the Land Acquisition Act, 1894).

2. Now it has been observed that with the passage of time market rates of the land have increased substantially. Therefore, Haryana Government has re-increased this matter and has decided to re-fix these floor rates as follows:

i) Minimum floor rate for urbanisable area of Gurgaon	*Rs.20.00 lacs per acre*
ii) Minimum floor rate for rest of the Haryana Sub-Region of NCR including Panchkula and area of Chandigarh periphery in the Haryana State	*Rs.16.00 lacs per acre*
iii) Minimum floor rate for the rest of the Haryana State	*Rs.08.00 lacs per acre*

3. *These floor rates do not include the solatium and itnerest payable under the provisions of the Land Acquisition Act, 1894.*
4. *These revised rates will be applicable on all those acquisitions where awards have been announced on or after 22.3.2007 irrespective of the date of notification under Section 4 of the Land Acquisition Act, 1894.*
5. *The Committee headed by the Divisional Commissioner will continue to perform its duties while fixing the rates of compensation for various categories of land under acquisition based on these floor rates. It will continue to take into account all those parameters for working out the land acquisition rates being followed at present while communicating the rates to the Acquiring Departments/Agencies in the State."*

5.20 The aforesaid policy issued by the Government of Haryana was revised vide Notification No.3212-R-5-2010/12140 dated the 9th November, 2010, increasing the minimum rates in the State as fixed in the year 2007. The relevant portion of the policy dated 09.11.2010, is as under:-

"1. Revision of Floor Rates for determining the Compensation:

i)The Government had introduced the concept of determining the minimum floor rates of land for acquisition purposes for the first time vide Memo No.2025-R-5-2005/4299, dated 28.04.2005, which were further revised vide Memo No.1298-R-5-2007/4174, dated 06.04.2007. It has been observed that market rates of land have registered on upward movement with the passage of time and recovery of markets from the general economic meltdown of 2008-09. Accordingly, after considering all the related aspects for determining the compensation amount payable to the landowners, the Government has decided to revise the minimum floor rates as under:-

Sr. No.	*Particulars*	*Floor Rates per acre of land (pre-revised)*	*Floor Rates per acre as revised w.e.f. 07.09.2010*
1.	*Land situated within the notified limits of Gurgaon Municipal Corporation*	*Rs.20.00 lakh*	*Rs.40.00 lakh*
2.	*Land situated within (i) the notified limits of Faridabad Municipal Corporation, (ii) the notified limits of Panchkula Municipal Corporation as on 07.09.2010, (iii) Development Plans of (a) Gurgaon-Manesar Urban Complex (excluding the areas falling within the limits of Municipal Corporation Gurgaon) (b) Sohna, and © Sonepat-Kundli Urban Complex*	*Rs.16.00 lakh*	*Rs.30.00 lakh*
3.	*Area situated within the Development Plans of Bahadurgarh, Rohtak, Rewari, Dharuhera, Bawal and Panipat towns*	*Rs.16.00 lakh*	*Rs.25.00 lakh*
4.	*Rest of National Capital Region, areas situated out side the limits of Panchkula Municipal Corporation (as on 07.09.2010) in Panchkula District, and the land situated within the Development Plans of all other district headquarters outside the NCR*	*Rs.16.00 Lakh* *Rs.8.00 Lakh*	*Rs.20.00 Lakh*
5.	*Remaining parts of the State*	*Rs.8.00 Lakh*	*Rs.12.00 Lakh*

Note: 1. The floor rates mentioned above represent the basic rate of land and do not include the amount payable under Section 23 (1A) and 30% Solatium (U/s 23(2), payable in addition.

2. Please see Appendix-1 for an indicative total amount payable to landowner based on these floor rates.

ii) The Committee headed by the Divisional Commissioner will continue to perform its duties while fixing the rates of compensation for various categories of land under acquisition. The Committee shall take *into account (i) the sale deeds executed in the area during the one year period immediately before issue of Section 4 of the Act (while doing so, it will ignore any isolated transaction/sale deed that may be in the nature of a distortion/oberration and not representative of the average market value of land in the area) (ii) the Collector Rates prescribed for the area for charging the stamp duty on sale deeds, and (iii) the Minimum floor rates revised under this policy. While the highest of the above three rates would form the basis for working out the basic rates, the Committee would not be precluded from taking into account the current prevailing market rates, which could still be higher in certain cases, but based on some dependable/reliable guiding parameters. The said Committee is expected to give a well-reasoned justification behind its recommendations. It will continue to take into account all these parameters for working out the land acquisition compensation rates being followed at present while communicating the rates to the Acquiring Departments/ Agencies in the State. To the rates so determined, would be added the additional amount as per Section 23 (1A) and the 30% amount under Section 23(2) Payable in accordance with the Land Acquisition Act, 1894".*

5.21 On a careful reading of Section 23 of 1894 Act, it is evident that under clause 1 of sub-section 1 of Section 23, the market value of the acquired land at the date of publication of notification under Section 4(1) of the 1894 Act is required to be assessed. Furthermore, it is also crystal clear from the reading of the clause 4 of the policy dated 06.05.2007 that the policy does not provide that the amount is to be assessed as it is provided on the date of the award and not on the date of notification under Section 4 of the 1894 Act. Clause 4 only provides that the revised rates will be applicable only to those acquisitions wherein the awards were announced on or after 22.03.2007 irrespective of the date of notification under Section 4 of the 1894 Act. In the considered opinion of this Court, this clause does not provide that the Court should ignore the mandate of the Act and assess the market value on the date of award. Once the entire scheme of the 1894 Act is based on the fact that the market value of the acquired land is required to be assessed on the date of issuance of publication of notification under Section 4 of the 1894 Act, then the policy, in the humble opinion of the Court, cannot be read in the manner interpreted by the RC which *results in overriding the mandate of the statute. It may be noted here that a coordinate Bench in **Om Parkash and others vs.State of Haryana and others** in RFA-7450-2011 and connected cases decided on 30.03.2012 has no doubt, held that as per the policy, the assessment has to be made on the date of the award and not on the date of notification*

"12. The policy dated 6.4.2007, shows that the minimum floor rates for the rest of the Haryana State were revised to Rs. 8,00,000/- per acre from Rs.5,00,000/- per acre and the rates are applicable on all those acquisitions where awards by the Collector have been announced on or after 22.3.2007 irrespective of date of notification under Section 4 of the Act.

13. In the present case, the award was announced by the Collector on 28.11.2006 whereas as per aforesaid policies dated 28.4.2005 and 6.4.2007, the dates of applicability are 5.3.2005 and 22.3.2007, respectively. The State of Haryana itself had increased the value of the land from the year 2005 to 2007 by 60% in the area in question i.e. from Rs. 5,00,000/- to Rs.8,00,000/- per acre. A perusal of the aforesaid policies shows that after a gap of nearly two years, the minimum compensation payable for acquisition of land was enhanced @ 30% per annum or the price as shown in 2005 is 37.5% less than the price shown in the year 2007. This is evident of rising prices of land on which there is lot of pressure in recent times because of demand for urbanization and other infrastructural facilities. The process to frame or revise a policy starts in advance and finalisation thereof takes time.

14. The aforesaid policy letters, in my opinion, can be considered as a piece of evidence showing the value of the land. Considering the fact that the award in the present case was announced on 28.11.2006 and the fact that the State itself had granted increase @ 30% per annum for the time gap of two years in the policies, referred to above, at the same rate the landowners in the present case deserve to be granted proportionate increase. The time gap from policy dated 28.4.2005 till the award of the Collector in the present case is 19 months. For this period granting proportionate increase the amount of compensation shall come out to Rs. 7,35,000/- per acre. Accordingly, the value of the land in the present set of appeals is determined @ Rs. 7,35,000/- per acre. The landowner shall also be entitled to all the statutory benefits available under the Act. As *compensation is being assessed on the basis of the policies framed by the State and there being no other relevant material on record showing value of the land in the area, in my opinion, nothing extra is required to be given on account of severance as the compensation already assessed will take care of even that aspect.*

15. The appeals are disposed in the above terms..”

5.22 This Bench has also followed the aforesaid judgment. It is evident from the reading of the aforesaid judgment that the attention of the Court was not drawn to Section 23 (1)(i) of the 1894 Act. Furthermore, it is evident that the benefit under Section 23 (1-A) is also required to be calculated from the date of publication of notification under Section 4 of the 1894 Act till the date of award. Sub-section 1-A of Section 23 of the 1894 Act provides that 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 before the date of publication of notification under Section 4 of the 1894 Act to the date of award passed by the Collector or the date of taking possession of the land, whichever is earlier. Thus, the entire scheme of the Act provides that the market value of the land is required to be assessed on the date of notification under Section 4 of the 1894 Act. The 1894 Act was repealed by the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Re-settlement Act, 2013 Act(hereinafter referred to as 'the 2013 Act'). Further, even the first proviso of Section 26 (1) of the 2013 Act clearly provides that the date for determination of market value shall be the date on which the notification has been issued under Section 11 of the 2013 Act. Section 11 enables the appropriate Government to issue preliminary notification.

5.23 Furthermore, this matter can be examined from another angle. It is well settled that a provision of a statute cannot be modified by issuing administrative instructions/policy decision. In such matters, the provisions of the Act are regarded supreme. No policy made under delegated legislation can be read in a manner which violates the provisions of the statute which is a superior form of legislation. If there is any conflict between the two (which in this case does not exist), the provisions of the Act shall prevail.

5.24 No doubt, this Bench has also followed the judgment passed by the Coordinate Bench while assessing the market value on the date of award in certain cases. However, since these aspects were not brought to the notice of the Court, therefore, this Bench does not wish to repeat

> *the same mistake. In the absence of detailed discussion and proper examination, a point cannot be said to have been decided so as to be treated as a ratio decidendi of a judgment. It is well settled that before a judgment is cited as a precedent, it is incumbent upon the party to prove that the judgment was delivered after due discussion and discourse on the point in issue. Further, once it is evident that the judgment has been passed in ignorance of a statutory provision, then, it is not considered appropriate to follow it as a precedent. In such situations and in general, the ultimate guide of the court is law, logic and justice. To err is human but the ideal approach is to learn from one's mistake. Keeping this spirit in mind, this Court holds that the date of assessment of the market value is required to be date of publication of notification under Section 4 of the 1894 Act and not the date of award."*

7.9 The Government Policy was issued on 22.03.2007 whereas in this case preliminary notification was issued on 11.01.2005. Hence, the landowners are not entitled to the benefit under the policy.

<u>Issue No.3</u>

7.10 The issue 3 has been discussed in detail in **RFA-889-2021 titled as 'Birender and others vs. State of Haryana and others' decided on 29.11.2021.** The relevant paragraphs are reproduced as under:-

> *"11. ISSUE NO.3*
>
> *As regards the claim of the landowners for damages on account of severance of their remaining/unacquired land into two different parcels due to compulsory acquisition of land in a narrow strip, the matter has already been discussed at length in Om Dutt's case (supra). In this case also, this Court was called upon to examine the issue of severance charges arising from the acquisition of land under the same notification issued for the same purpose. The relevant discussion is extracted as under:-*
>
> > *"8.14 The next argument of the learned counsel representing the owners is with regard to damages for severance/splitting of the unacquired land in two parcels. It may be noted here that the land owners have not produced any evidence to prove*

the extent of land left on one side of the road as compared to the other side of the road. The owners may have suffered a loss due to splitting of their remaining unacquired land, however, in the absence of proper evidence to prove the extent of unaquired land which stands split up on both the sides of road and to what extent they have suffered a loss, it becomes very difficult for the court to assess the damages on account of severance. Unequivocally, Section 23 of the 1894 Act recognizes and permits the court to grant damages sustained by the person interested by reason of severance of such land from his other land. In the aforesaid situation, ordinarily this Court might have remitted the matter back to the Reference Court, however, keeping in view the fact that matter has already been once remitted by the Hon'ble Supreme Court, it is considered appropriate to use thumb rule and assess the damages on account of severance of the land on the basis of precedents. Recently, while deciding appeals arising from acquisition of land for KMP Expressway from villages Daboda Khurd and others (RFA-5620-2013 titled as HSIIDC vs. Rattan Singh and others decided on 05.10.2021) this Court after noticing that the Reference Court awarded 20% of the acquired or un-acquired land, whichever is less, as damages for severance of the land, upheld the aforesaid view. In the cases arising from acquisition of land in one of the villages i.e Daboda Khurd, HSIIDC did not file any appeal.

8.15 Keeping in view the aforesaid facts, it is declared that if on account of acquisition of a land the remaining land holding of the landowner has been split into two or more parts, then the landowners shall be entitled to 20% of the smaller parcel of unacquired land. However, the damages for severance shall be restricted only to those owners who are left with less than 5 acres land in the smaller parcel. This assumption has been made, particularly, in view of the fact that due to splitting of the land, the landowner will have to not only cultivate his land in two independent parcels but also make a provision for irrigation of the land located in each parcel of land. Even the agricultural implements have to be carried to the other side of the road by going through underpasses, which may be at a distance. If an owner is left with a very small parcel of land, he may be forced to indulge in distress sale thereof".

8. Decision:-

8.1 Keeping in view the aforesaid facts, the landowners are not entitled to any increase even as per policy, because the notification under Section 4 of the 1894 Act is prior to the policy dated 28.04.2005 but effective from 03.03.2020. Therefore, the appeals are dismissed.

8.2 All the pending miscellaneous applications, if any, are also disposed of.

08.12.2022 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

Sr. No.	Case No.	Parties Details
1.	**RFA-1215-2021**	KHAZAN SINGH (DECEASED) THROUGH ITS LRS AND OTHERS V/S STATE OF HARYANA AND OTHERS
2.	RFA-1220-2021	KANWAR SINGH AND ANOTHER V/S STATE OF HARYANA AND OTHERS
3.	RFA-2499-2021	PARDEEP KUMAR AND OTHERS V/S STATE OF HARYANA AND OTHERS
4.	RFA-2511-2021	PARDHAN SINGH NOE DECEASED THR. LR V/S STATE OF HARYANA AND ORS
5.	RFA-819-2021	BASANTI AND OTHERS V/S STATE OF HARYANA AND OTHERS
6.	RFA-840-2021	BHAGWAN SINGH AND OTHERS V/S STATE OF HARYANA AND OTHERS

08.12.2022 **(ANIL KSHETARPAL)**
rekha **JUDGE**