IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA-10335-2014 (O&M) and connected cases
Date of decision: 14.11.2022
Reserved on: 28.10.2022

Malho and others

....Appellants

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Sharma,Advocate
Mr. S.P.Chahar, Advocate
Mr.Kulvir Narwal, Advocate
Mr Virender S Punia, Advocate
Mr. Sandeep Singh, Advocate
for the landowners

Mr. Shivendra Swaroop, AAG, Haryana

Mr. A.K.Chopra, Sr. Advocate with
Mr. Pritam S Saini and
Mr. Vidul Kapoor, Advocate for the HSIIDC

ANIL KSHETARPAL, J

1. Background and Introduction:-

1.1 While praying for the modification of the market value assessed by the Reference Court (hereinafter referred to as 'RC') by two different awards dated 26.08.2014 and 06.12.2017, the landowners as well as the HSIIDC have come in the present batch of appeal. The notifications under Section 4, 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the '1894 Act'), the award passed by the Land

Acquisition Collector (hereinafter referred to as the 'LAC') are common. As already noticed, the Reference Court (hereinafter referred to as the 'RC') by two different decisions has decided the various reference petitions filed under Section 18 of the 1894 Act. Vide judgment dated 26.08.2014, the RC has dismissed the reference petitions, whereas by a separate award dated 06.12.2017, the RC has assessed the market value of the acquired land at Rs.31,71,000/- per acre. Learned counsel representing the parties are ad idem that this batch of appeals (details whereof are at the foot of the judgment) can conveniently be disposed of by a common judgment. In fact, the evidence led in both the cases is overlapping in both the cases.

1.2 The relevant particulars of the acquisition, in brief, are as under:-

Sr.No.	Date	Particulars
1.	13.12.2008	Preliminary notification under Section 4 of the 1894 Act was issued to utilize the land for public purpose namely Establishing an Industrial Model Township in Village Garhi Bohar and various other villages
2.	13.12.2008	Declaration under Section 6 was published
3.	17.08.2009	Vide award no.5, the LAC acquired 316 acres 6 kanals and 11 marlas of land while offering to pay at the rate of Rs.20,00,000/- per acre alongwith all the statutory benefits available under the 1894 Act.
4.	26.08.2014	The RC dismissed the applications filed under Section 18 of the 1894 Act.
5.	06.12.2017	By a separate award, the RC has assessed the market value at the rate of Rs.31,71,000/- per acre

<u>2. Facts:-</u>

2.1 Dissatisfied with the amount offered by the LAC, on the application of the landowners, the cases were referred to the RC. They claim that the acquired land is located on the National Highway no.10 (Rohtak-Delhi Road). Various hotels, banquet halls, Tilyar Lake and various educational institutions namely Baba Mast Nath College of Engineering, an Eye Hospital, an Ayurvedic College, a College of Pharmacy, a College of Physiotherapy, Shri Baba Mast Nath Residential Public School, Indus Public School, DGV Public School and DAV Centenary Public School, Rohtak and residential colonies including the Govt. Employees Cooperative Housing Society Limited, Suncity Project, Omaxe Project and Sector 27 are located nearby the acquired land. The landowners claim that the market value of the acquired land on the date of notification under Section 4 of the 1894 Act was not less than Rs.4 crores per acre. On the other hand, HSIIDC while defending the LAC's award claim that the award has been passed after taking into account the average of the sale deeds executed during that particular period and the amount offered by the LAC is just, fair and adequate.

3. <u>Evidence produced by the Respective Parties:-</u>

3.1 In the oral evidence, the landowners examined Ram Mehar PW1, in the cases arising from award dated 26.08.2014.

3.2 In the documentary evidence, the landowners produced the following documents, apart from the sale deeds, a tabulated compilation whereof is extracted in para 5.6 of the judgment:-

Ex.PW1/A	Affidavit of Ram Mehar, PW
Ex.P-11	Copy of Jamabandi for the year 2008-2009

3.3 On the other hand, in the oral evidence, the HSIIDC examined RW1 Baljit Singh, Record Keeper, office of Sub Registrar, Rohtak and RW2 Jai Karan, DRA of HSIIDC, Rohtak.

3.4 In the documentary evidence, the HSIIDC produced the following documents apart from the sale deeds, a tabulated compilation whereof is extracted in para 5.6 of the judgment:-

Ex.RW2/A	Affidavit of Jai Karan DRA of HSIIDC (IMT), Rohtak
Ex.R-5	Copy of Award No.5 dated 17.08.
Ex.R-6	Copy of supplementary Award no.10 dated 04.02.2011
Ex.R-7	Copy of policy for Rehabilitation and Resettlement of Landowners
Ex.R-8	Copy of revised layout plan of IMT
Ex.R-9	Authority letter in favour of Jai Karan DRA of HSIIDC, IMT, Rohtak
Ex.R-10	Copy of Award dated 14.02.2012 passed by Shri Kamal Kant the then learned Additional Sessions Judge, Rohtak in LAC case no.300 of 2010 titled as Smt. Bharpai and others vs. State of Haryana

3.5 In the file of LAC's award dated 06.12.2017, in the oral evidence,the landowners examined the following witnesses:-

PW1	Manjit Singh, Record Keeper, the office of Sub Registrar, Rohtak
PW2	Jai Bhagwan
PW3	Puran
PW4	Prati Pal
PW5	Suresh Kumar

3.6 In the documentary evidence, the landowners produced the following documents, apart from the sale deeds, a tabulated complilation whereof is incorporated in para 5.6 of the judgment:-

Ex.P7	Jamabandi for the year 2008-2009
Ex.P8	Aks-Shizra
Ex.P9	Aks-Shizra
Ex.P10	Khasra Girdawari 1.10.2015
Ex.P11	Khasra Girdawari from 10/2013 to 3/2014
Ex.P18/1	Certified copy of Reference Petition
Ex.P19	Certified copy of Judgment dated 21.01.2014

3.7 In the oral evidence, the HSIIDC examined RW1 Krishan Patwari.

3.8 In the documentary evidence, the HSIIDC produced the following documents, apart from the sale deeds, a tabulated compilation whereof is incorporated in para 5.6 of the judgment.

Ex.R1	Authority Letter
Ex.R5	Village & Skill Development Scheme
Ex.R6	Notification dated 07.12.2007

4. <u>Analysis of the reasons recorded by the RC:-</u>

4.1 On a careful perusal of the award dated 26.08.2014, the RC has held that the sale deeds produced by the landowners cannot be relied upon because the Real Estate Developers after purchasing the land had subsequently mortgaged the property in order to secure a loan of Rs.48 crores. The sale deeds produced by the HSIIDC have also not been relied upon. Thereafter, the RC discussed that 40% of the acquired land will be utilized for providing the basic amenities like roads, waterworks, power house, drainage system, water supply system and a common affluent treatment plant etc which would entail huge expenditure.

4.2 In the award dated 06.12.2017, the RC has wrongly calculated the market value at the rate of Rs.31,71,000/- per acre. While calculating the base price on the basis of average price of the sale deeds, the RC has committed a calculation error by taking it as Rs.45,30,530/- per acre whereas the average base price comes to Rs.67,59,762/- per acre. After taking the average of all the sale deeds produced by the landowners, the RC increased the amount by calculating escalation @ 10% per annum on account of time gap between the sale deeds and the notification under Section 4 of the 1894 Act. Thereafter, the RC deducted the amount by 30%. The sale deeds produced in the evidence by the HSIIDC were not taken into consideration on the ground that these reflect a price lower than the amount offered by the LAC.

5. <u>Discussion and Analysis of the arguments of the learned counsel representing the parties:-</u>

5.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook of both the batches of appeals alongwith their respective requisitioned record.

5.2 At the outset, it is important to note that the acquired land in the village Garhi Bohar is out of the parcel of land comprised in Rectangle nos.255, 256, 257, 258, 289, 290, 291, 292, 293, 294, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329 and 351. In terms of the measurement of agricultural land, the expression *'Rectangle'* denotes a compact parcel of 25 acres of land (5 x 5 acres). At this stage, it would be appropriate to have a glance at the glossary of the words and expressions used while referring to the size of the various units of the agricultural land.

Rectangle	25 acres of compact rectangular parcel of land (5x5 acres)
Acre	4840 square yards (consists of 8 Kanals)
Kanal	605 square yards (consists of 20 Marlas)
Marla	30.25 square yards
Bigha	1000.33 square yards (Divided into 20 Biswas)
Biswa	50.4165 square yard

5.3 On the one hand, the learned counsel representing the landowners while drawing the attention of the court to the calculation error committed by the RC, submitted that even as per the principle adopted by the RC, the market value comes to Rs.47,31,834/- per acre. They further contend that Garhi Bohar is strategically located and vide judgment **Jai Singh vs. State of Haryana (RFA-3000-2016)** decided on 15.11.2021, market value of the acquired land by the same notification located in Village Bohar has been assessed at the rate of Rs.44,69,547/- per acre upto the depth of 1 acre on the National Highway whereas the remaining acquired land has been assessed at the rate of Rs.40,20,823/- per acre. They also claim that the landowners are entitled to a cumulative annual increase at the rate of 15% with regard to the gap period particularly when process to set up the Industrial Model Township in the adjoining villages is already in progress.

5.4 Per contra, the learned counsel representing the HSIIDC contends that the amount offered by the LAC was appropriate, fair and adequate and there is no scope for further enhancement.

5.5 It may be noted here that in additional evidence, the landowners as well as the HSIIDC have been permitted to produce the layout plans indicating the location of the acquired land as also showing location of various sale exemplars produced by the respective parties. The layout plan produced by the landowners was taken on record as HCI whereas the layout plan produced by the HSIIDC has been taken on record as HC2

5.6 At this stage, it would be appropriate to compile the details of the various sale deeds produced by both the parties in evidence. This tabulated information has been compiled from both the awards passed by the RC:-

Sr. No.	Ex. No.	Sale deed/ dated	Description of land I.e Rectangle and Killa No.	Area	Sale consideration	Rate per acre	Village
1.	P-1	923 04.05.2006	343// 6/2 7/1 13 14 15 16 17 18 23/1 344// 11/2 12/2/2 20/1 20/2	6K 17M	77,01,563	89,94,526	Garhi Bohar

2.	P-2	924 04.05.2006	343// 6/2 7/1 13 14 15 16 17 18 23/1 344// 11/2 12/2/2 20/1 20/2	16K 8M	1,84,54,687	90,02,286	Garhi Bohar
3.	P-3	925 04.05.2006	343// 6/2 7/1 13 14 15 16 17 18 23/1 344// 11/2 12/2/2 20/1 20/2	9 K 11.68 M	1,07,82,188	90,00,157	Garhi Bohar
4.	P-4	926 04.05.2006	343// 6/2 7/1 13 14 15 16 17 18 23/1 344// 11/2 12/2/2 20/1 20/2	22 K 19.32 M	2,58,36,562	89,99,935	Garhi Bohar

5.	P-5	927 04.05.2006	343// 6/2 7/1 13 14 15 16 17 18 23/1 344// 11/2 12/2/2 20/1 20/2	6 K 1 M	68,07,188	90,01,240	Garhi Bohar
6.	P-6	928 04.05.2006	343// 6/2 7/1 13 14 15 16 17 18 23/1 344// 11/2 12/2/2 20/1 20/2	14 K 0 M	1,63,11,562	93,20,893	Garhi Bohar
7.	P-12	1183 11.05.2006	255// 10	7 K 12 M	33,25,000	35,00,000	Bohar
8.	P-13	1187 11.05.2006	224// 22	7 K 4 M	31,50,000	35,00,000	Bohar
9.	P-17	1188 11.05.2006	222// 21	8 K	35,00,000	35,00,000	Bohar
10.	P-18	12080 23.01.2006	221// 22 23/2	9 K 18 M	38,36,250	31,00,000	Bohar
11	R-2	9508 24.01.2007	294// 8/2	3 K	2,62,500	7,00,000	Garhi Bohar
12.	R-3	3668 03.07.2007	328// 3	2K	4,25,000	17,00,000	Garhi Bohar
13.	R-4	3843 09.07.2007	285// 3/1/1 7 8	7 K 16.5 M	13,84,000	14,14,952	Garhi Bohar

5.7 Now, the Bench proceeds to analyze the reasons recorded by the RC. The RC has committed an error in excluding the sale deeds produced by the HSIIDC from consideration while misinterpreting Section 25 of the 1894 Act, which is extracted as under:-

> "***25. Amount of compensation awarded by court not to be lower than the amount awarded by the Collector***.—*The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11.*"

5.8 On a careful reading of Section 25 of the 1894 Act, it is evident that the court is only debarred from awarding an amount lesser than the amount offered by the LAC. However, there is no prohibition or bar from taking into consideration the various sale deeds produced by the parties even if they reflect a price lower than the amount offered by the LAC. The issue is no longer res integra. Reliance can be placed on **Lal Chand vs. Union of India (2009) 15 SCC 769.**

5.9 The RC while passing the award on 06.12.2017 has also committed an error in taking into consideration average sale price of all the sale deeds produced by the landowners. The court is expected to identify the sale deeds of the comparable parcels of land during the contemporaneous period, which can be relied upon to assess the market value of the acquired land. This is based on the rule of best evidence. It is not necessary that the market value of the various parcels of land located in various parts of the village would be uniform. It is evident from a bare perusal of the tabulated compilation that one parcel of land was sold at the rate of Rs.90,00,000/- per acre whereas in the same village during the same period the other parcel of land was being sold at the rate of Rs.35,00,000/- per acre. Sale deeds bearing nos.1183, 1187, 1188 and 12080 indicate towards the price at the rate of Rs.35,00,000/- per acre. Whereas the sale deeds bearing nos. 923, 924, 925, 926, 927 prove that the land in the same village was also sold at the rate of Rs.90,00,000/- per acre. In these circumstances, the RC has committed an error in taking average price of all the sale deeds besides committing a calculation error.

5.10 Moreover, the RC has erred while being influenced by the fact that 40% of the acquired land shall be utilized for providing the basic amenities. The landowners are not required to provide for the basic amenities from the market value. Once they are being paid for an undeveloped acquired land, the expenditure on the development and for providing of the common facilities cannot be deducted from the amount payable to the landowners who stand deprived of their livelihood unless the court finds dissimilarity between the sale deeds relied upon by the parties and the acquired land.

5.11 The RC has also committed an error in excluding the sale deeds produced by the landowners from consideration on the ground that the real estate purchaser Companies have after purchasing the land, mortgaged the property for obtaining loan. In the absence of evidence that the prices of the land were jacked up in order to secure a higher loan amount, the RC has committed an error in refusing to rely upon the sale deeds. It is important to note that in the sale deeds bearing no. 1183, 1187 and 1188, M/s Elixir Infrastructure Pvt. Ltd is the vendee. The land has been purchased at the rate of Rs.35,00,000/- per acre whereas M/s Sunview Township Pvt. Ltd. has purchased the land at the rate of

Rs.90,00,000/- per acre. M/s Elixir Infrastructure Pvt. Ltd has mortgaged the property in order to obtain loan. In the absence of evidence to prove that M/s Elixir Infrastructure Pvt.Ltd. has jacked up the price in order to obtain a higher amount of loan by playing fraud with the Bank, the RC has erred in refusing to take into consideration the aforesaid sale deeds.

5.12 At this stage, it becomes important for the Court to examine that the various layout plans produced by the respective parties, alongwith the sale deeds produced by the landowners. Sale deed bearing no.1187 (dated 11.05.2006) with respect to land measuring 7 kanals 4 marlas is out of the land comprised in Rectangle no.224, khasra no.22. This is adjacent to the boundary of the acquired land in the present case. Similarly, sale deed bearing no.1183 (dated 11.05.2006) with respect to land measuring 7 kanals and 12 marlas is out of the land comprised in Rectangle no.255 killa no.10 on a bare perusal of the layout plan produced by the HSIIDC it is evident that the aforesaid parcel of land is located just one acre away from the acquired land. Thus, the aforesaid sale instances (sale deed bearing no.1187 and 1183) are with respect to the comparable parcels of land during the contemporaneous period. Both these sale deeds are with respect to period of 1 years and 9 months before 13.02.2008. It is evident that the parcels of land represented by sale deeds bearing no. 923, 924, 925, 926, 927 are with respect to the parcels of land located in the land comprised in Rect. No.343 and 344 which is located at a distance from the acquired land. Hence, it would not be appropriate to rely upon the aforesaid sale deeds. Similarly, the location of all the sale deeds produced by the HSIIDC are at a greater distance from the acquired land when compared with the location of the sale deed bearing no.1183 and 1187.

5.13 It may be noted here that by the same preliminary notification under Section 4 of the 1894 Act dated 13.02.2008, the HSIIDC acquired the land of the adjoining village i.e Bohar. In **Jai Singh's case (supra)** the court assessed the market value at the rate of Rs.44,69,547/- per acre with respect to land upto the depth of 1 acre from the National Highway whereas beyond 1 acre the market value of the acquired land has been assessed at the rate of Rs.40,20,829/- per acre.

5.14 It is also evident that there is a time gap of 1 year and 9 months between the date of the sale deeds i.e 11.05.2006 and the date of preliminary notification under Section 4 of the 1894 Act dated 13.02.2008. It has come in evidence that in the adjoining villages development of Industrial Model Township was in the progress on 13.02.2008, when the preliminary notification was issued. Hence, in these circumstances, some guess work is required to be applied. This Court considers it appropriate to apply the escalation at the rate of 10% per annum while deciding judgment in **Jai Singh's case (supra)**. Keeping in view the aforesaid facts, this Court adopts the same percentage, however, cumulatively. The average sale price of the sale instances no.1183 and 1187 comes to Rs.35,00,000/- per acre. For the first year, on increase at the rate of 10% per annum, the price comes to Rs.38,50,000/- per acre whereas for the next 9 months on the increase @

7.5%, the market value of the acquired land comes to Rs.41,38,750/- per acre.

5.15 The last issue is with regard to the percentage of deduction which should be applied. It may be noted here that the acquired land is located in an area where the Industrial Model Township has been developed in various phases. This Court has decided the cases relating to acquisition of land for as many as three different phases of Industrial Model Township in the area. In such circumstances, the sale deeds of bigger parcels of land were not available. Sale deeds bearing no.1183 and 1187 represent nearly 1 acre of land each, which is of a reasonable size, to assess the market value of the acquired land. While deciding the case of **Jai Singh (supra)**, this Court analyzed the requirement of applying deduction for development of the land if there are comparable sale instances. The relevant discussion is as under:-

> *7.2 Let us first examine the statutory provisions. It is clear that the Legislature never intended that the Court must apply a cut/deduction in each and every case. Rather, it has been laid down that while acquiring the land,the landowners, who stand deprived of the property against their wishes, shall be held entitled to a sum of 30% on such market value in lieu of the compulsory and involuntary nature of acquisition. In common legal parlance, this amount is called solatium. This part of the amount is in the nature of compensation to the owner for depriving him of his property without his consent.*
> *7.3 This Bench has carefully surveyed/examined the various judgments passed by the courts from time to time providing for deduction or moderation of the market value. In Lal Chand vs. Union of India, (2009) 15 SCC 769, the Court held that 'the deduction for development' consists of two components. The first component is with reference to the area required to be utilized for the development work. In other words, whenever the acquisition is for carrying out a developmental work like setting up a residential/ commercial or industrial township in the area, then a*

certain part of the acquired land is required to be utilized for carving out passages, roads, drains, parks and other facilities. The second component for calculating such deduction is with regard to the cost of such development work to be carried out by the acquiring agency. Further, in Haridwar Development Authority vs. Raghbir Singh and others (2010) 11 SCC 581, the Supreme Court held that when the market value of a large tract of agricultural land has to be determined with reference to a price fetched by the sale of a small residential plot, it is necessary to make appropriate deduction towards the development cost to arrive at an appropriate value for such large tracts of land. The court held that the deduction can range between 20% to 75% depending upon the facts and circumstances of each case.

7.4 While applying 47% cut/deduction on the average market value arrived at, the Reference Court relied upon various judgments passed by the Supreme Court which are required to be analyzed. In Anjani Molu Dessai vs State Of Goa & Anr (2010) 13 SCC 710, the Court held that ordinarily calculating/creating an average of the various sale exemplars is not permissible. The sale exemplar of highest market value should be preferred in the absence of any evidence to the contrary. It was further held that in case of several sale exemplars of comparable pieces of land, the average should be calculated on the basis of the prices of the exemplars ranging in a narrow bandwidth. In this case, the Hon'ble Supreme Court was assessing the market value of 3,65,375 square meter of land in village Balli, Goa. The LAC had deducted 45% from the market value depicted in the sale exemplar. In para 16, the Supreme Court held that no deduction is permissible in a case where the sale is of a comparable land of reasonable size, which is extracted as under:-

> *"16. The Land Acquisition Collector however committed a serious error in deducting 45% from the sale price disclosed by the sale deed dated 30- 8-1989 towards the cost of development. It is well settled that deduction for development cost has to be made only where the value of a small residential/commercial/industrial plot of land in a developed layout is made the basis for arriving at the market value of a nearly large tract of undeveloped agricultural land. Where the land sold under the relied upon sale deed and the acquired lands are both of similar nature (as in this case where both are bharad lands) the question of making any deduction towards development cost to arrive at the cost of "undeveloped land" would not arise. Such a*

deduction would have been necessary if the sale deed relied upon related to a developed residential or commercial plot. Therefore, we are of the view that the Land Acquisition Collector was not justified in making 45% deduction from the price disclosed by the sale deed dated 30-8-1989."

7.5 In Atma Singh vs. State of Haryana (2008) 2 SCC 568, the Supreme Court was into assessing the market value of the land acquired for a Sugar factory. It was observed that the sale exemplars of small parcels of land have been produced to assess the market value of a large tract of acquired land. In those circumstances, the court permitted 10% deduction towards the development of common facilities.

7.6 In C hakas vs. State of Punjab, (2011) 12 SCC 128, the Supreme Court allowed 10% cut to be applied for common facilities as a considerably big chunk of undeveloped parcel of the acquired land was allotted to an industrial conglomerate. Thus, the court applied a cut of 10% for the development.

7.7 In General Manager, Oil and Natural Gas Corporation Ltd. vs. Rameshbhai Jivanbhai Patel and another, (2008) 14 SCC 745, the Court deliberated on the percentage of increase which should be presumed by the court in the absence of any other material. This judgment lays down the general guidelines in the absence of any other material available for determination of the increase to be awarded.

7.8 In Chandrashekhar(D) by LRs and others vs. Land Acquisition Officer and another, (20120 1 SCC 390, the court found out that the sale deed exemplar is with respect to a small piece of land of a developed site and that too with respect to the period post the date of notification under Section 4. The court declared that in the facts and circumstances of the particular case, deduction upto 75% is permissible.

7.9 In A.P. Housing Board vs K. Manohar Reddy & Ors. (2010) 12 SCC 707, the court held that when a large tract of land is acquired and the sale exemplars produced are of the smaller plots, the best course for the court to arrive at a reasonable and fair valuation, is to deduct a reasonable percentage from the valuation shown in the sale exemplar of the land and to arrive at a fair valuation on the basis thereof.

7.10 In Shaji Kuriakose And Anr vs Indian Oil Corpn. Ltd. And Ors. (2001) 7 SCC 650, the court held that in case of a dissimilarity in respect of locality, shape, size or value of the land between the land covered by the sale exemplar and the land acquired, the court can proportionately reduce the value. The court inter-alia noticed five factors to be applied *while assessing the fair market value of the acquired land. The court further went on to hold that in a case where the sale exemplar fulfils all the factors, required to be fulfilled, then, there is no reason for not awarding the price similar to the market value as ascertained in the relevant sale deed exemplar. The relevant discussion is in para 3 which is extracted as under:-*

> *"3. It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are:*
> *(1) the sale must be a genuine transaction,*
> *(2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act,*
> *(3) that the land covered by the sale must be in the vicinity of the acquired land,*
> *(4) that the land covered by the sales must be similar to the acquired land, and (*
> *5)that the size of plot of the land covered by the sales be comparable to the land acquired.*

If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales an land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land. In the present case, what we find is that the first two factors are satisfied. The sale transaction covered by the sale Ext. A-4 is genuine, inasmuch as the sale was executed in proximity to the date of notification *under Section 4 of the Act. However, there is a difference in the similarity in the land acquired and the land covered by Ext. A-4. The land covered by Ext. A-4 is situated at Kottayam and Ernakulam, PWD Road, whereas the acquired land is situated at a distance of 3 furlongs from the main road. There is no access to the acquired land and there exists only an internal mud road which belonged to one of the claimants, whose land has also been acquired. Further, the land covered by Ext. A-4 is a dry land and whereas the acquired land is a wetland. After acquisition, the acquired land has to be reclaimed and a lot of amount would be spent for filling the land. Moreover, the land covered by Ext. A-4 relates to a small piece of land which does not reflect the true market value of the acquired land. It is often seen that a sale for a smaller plot of land fetches more consideration than a larger or bigger piece of land. For all these reasons, the High Court was fully justified in lowering the rate of compensation than what was the market value of the land covered by Ext. A-4. We, therefore, do not find any infirmity in the judgment of the High Court.*

7.11 The learned senior counsel relies upon the judgment in Sajan(supra), to contend that 20% deduction would be appropriate in the present cases. This court has carefully read the aforesaid judgment in which the land was compulsorily acquired for Hiwera Dam Project. The acquired land was measuring around 6 acres. The court while referring to the judgment passed in Lal Chand (supra) held that 20% deduction would be appropriate. The next judgment relied upon by the learned counsel is in Subh Ram (supra). In this case, the compulsory acquisition was for establishment of a jail. In para 16 of the judgment, the court held that when the price of the small residential plot is required to be adjusted to work out the market value of the large tract of undeveloped land, the appropriate deduction to the extent of 75% can be ordered. On the other hand, where the value of the acquired land is being assessed with reference to the sale of an adjacent agricultural land, no deduction is required to be made towards the development cut. Para 16 of the aforesaid judgment is extracted as under:-

> *"Therefore, when deduction is made from the value of a small residential plot towards the development cost, to arrive at the value of a large tract of agricultural or undeveloped land with development potential, the deduction has nothing to do with the purpose for which the land is acquired. The deduction is with reference to the price of the small residential plot, to work back the value of the large tract of undeveloped land. On the other hand, where*

the value of acquired agricultural land is determined with reference to the sale price of a neighbouring agricultural land, no deduction need be made towards `development cost'. "

7.12 In the same judgment, the Bench, after referring to the various other judgments, held that the observations made in Atma Singh vs. State of Haryana (2008) 2 SCC 568 are with reference to special facts of that particular case and they should not be read out of context. Para 32 is extracted as under:-

"The above observations in Atma Singh no doubt seem to suggest that where the acquisition is for a residential lay out, deduction towards development cost is a must, but if the acquisition is for an industry which does not require forming a layout of sites, the market value of small residential plots may be adopted without any cuts towards development cost. The said observations are made with reference to the special facts of that case. If they are read out of context to support a contention that the purpose of acquisition is a relevant factor to avoid the deduction of development cost in valuation, it may then be necessary to consider the said observations as having been made per incuriam, as they overlook a mandatory statutory provision -- section 24 (clause fifthly) of the Act and the series of decisions of larger benches of this Court which hold that when value of large tracts of undeveloped lands is sought to be determined with reference to small residential plots in developed area, it is mandatory to deduct an appropriate percentage towards development cost. But it may be unnecessary to consider whether the observations are per incuriam as para 15 of the decision makes it clear that what is stated therein, is with reference to the special facts of that case, with a view not to disturb the smaller deduction of 10% by the High Court, and not intended to be statement of law."

7.13 Thus, it is apparent that the Hon'ble Supreme Court itself has recognized in more than one judgments that if there is no dissimilarity between the acquired land and the sale exemplar produced is of a reasonable size, then, it shall not be appropriate for the court to apply proportionate deduction to reduce the market value.

7.14 The principle underlined by all these judgments is that while assessing the market value, the court is required to apply the wisdom of a common man and arrive at a figure which a willing seller will get from a voluntary purchaser for the property. Once the market value of the acquired agricultural land is being assessed and many sales exemplars of considerably big sized plots of the agricultural land are available, the application of cut/deduction for *development, in the considered opinion of the Court, is not justified unless the court is assessing the market value of a land where the sale exemplars produced before the Court are of relatively small sized plots or are being used for residential, commercial or industrial purposes. The deduction can be applied when comparable sale exemplar is of a plot of a very small size as compared to the acquired land in order to moderate the difference between wholesale and retail prices as observed by the Supreme court in judgment passed in LaL Chand (supra). The appropriate percentage of cut can also be applied if the sale exemplar is of a plot which was being used or was capable of being used for different purposes like residential, commercial or industrial. The development cut can also be applied when the comparable sale exemplar is of a plot which is located at a key position like near the road, market, developed residential colony or commercial establishments. There can be more than one reasons to apply the development cut. However, if the price is reduced while assessing the market value of the acquired land, without observing the aforesaid principles while making the deduction in the facts and circumstances of the individual cases, it shall be against the statutory intendment. In a case where the court is making an assessment with respect to an undeveloped acquired land as an undeveloped area and the sale exemplar produced for such determination is also of an undeveloped piece of land of reasonable size, then any deduction which is made on account of development work or development cost, in the considered opinion of this Court, shall not be considered appropriate. This can be explained by an example. Hypothetically, if a farmer purchases a sufficiently large chunk of land just before the notification under Section 4. On the acquisition of the land purchased, he is likely to produce the sale exemplar of the land purchased by him. If the court treats the sale exemplar as the base value and thereafter applies a cut or deduction on account of development cut or development cost per se, he shall stand deprived of the market value paid by him while purchasing the land. It would be against the spirit/intention of the Act. While assessing the market value of the undeveloped/agricultural land, the court is not required to work out the market value of the developed land or plot. In such circumstances, the application of development cut in the considered opinion of the court would not be appropriate and justified. The cut/deduction is applied by the courts in order to arrive at a correct figure representing the true market value of the acquired land on the relevant date. This method has been devised by the Courts in order to tide over the situations where exactly comparable sale* *exemplars of contemporaneous period are not available. The court, while making adjustments or treating the prices of the developed plots of smaller size as the base, endeavours to work out the fair market value of the acquired land.*

7.15 This matter can be examined from another angle. The intention of the legislature is not to put the landowners who stand deprived of the land through double whammy. On the one hand, their immovable property is compulsorily taken away, whereas on the other hand, they are not being compensated adequately due to the deduction towards the development. This cannot be the intention of the legislature. The fundamental intention of the Legislature has always been to make the land laws fair, just and reasonable towards the sufferers of compulsory land acquisition.

7.16 Once a large chunk of agricultural land is being acquired for carving out a residential/commercial or industrial colony and the sale exemplars of plots of reasonable size of agricultural land are available, then in the considered opinion of this Court, it would not be appropriate to apply a development cut for the purpose of assessment either towards development cost or towards the area to be used for passages, roads, drains, parks etc. The landowner stands in the shoes of a loser even if some part of the acquired land is being used for providing common facilities. The landowner does not gain anything exclusively on account of reservation of land for common facilities. In fact, the landowner suffers a dual loss. On the one hand, he is deprived of the acquired land and on the other hand, he does not receive a fair and appropriate amount towards the involuntary deprivation.

7.17 There is yet another aspect of the matter. The development agency/ organization/ colonizer or the government do not sell the developed plots on the market value assessed by the court. The plots are sold while determining price on basis of the demand and supply. Usually, the plots are sold on the basis of price determined on per sq. feet or per sq. yard. basis and not on per acre. Therefore, certain percentage of land utilized for carrying out development activities like passages, roads, drains, parks etc. is to be accounted for by the developer and not the landowner. Therefore, in the considered view of this Court, the development cost incurred or to be incurred for providing common facilities is also required to be borne by the developer.

7.18 It is well settled that while assessing the market value, the court is required to adopt a pragmatic approach. The landowners who stand deprived of the property cannot be permitted to be denied of an adequate and just

> *compensation as well. This is the responsibility of the courts to see that the landowners are adequately compensated. The learned counsel representing the parties have failed to draw the attention of the court to any precedent which lays down that while assessing the market value, the application of development cut or deduction on the base value is mandatory."*

5.16 For the reasons noted above, this Court does not find it appropriate to apply any deduction particularly when the sale instances of comparable parcels of land during contemporaneous period have been produced by the landowners.

6. Decision:-

6.1 Keeping in view the aforesaid facts, the market value of the acquired land as on 13.02.2008 is assessed at the rate of Rs.41,38,750/- per acre. On perusal of the layout plan HC2 produced by the HSIIDC in additional evidence, it is evident that some part of the acquired land abuts National Highway no.10. The acquired land abutting the National Highway no.10 is assessed at the same rate as has been assessed with respect to the acquired land in Village Bohar i.e at the rate of Rs.44,69,547/- per acre.

6.2 With all these observations made above, the appeals filed by the landowners are allowed whereas appeals, if any, filed by the HSIIDC shall stand dismissed.

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

14.11.2022 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

SR. NO.	CASE NO.	PARTIES DETAILS
1.	RFA-10335-2014	MALHO & ORS V/S STATE OF HARYANA & ORS
2.	RFA-37-2016	KHAZAN SINGH & ORS V/S STATE OF HARYANA & ORS
3.	RFA-36-2016	DILBAG SINGH & ORS V/S STATE OF HARYANA & ORS
4.	RFA-5402-2015	RAVINDER SINGH & ORS V/S STATE OF HARYANA & ORS
5.	RFA-1551-2019	HARYANA STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT CORPORATION LTD. V/S MAHIPAL AND OTHERS
6.	RFA-1548-2019	HARYANA STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT COPORATION LIMITED V/S MAHIPAL AND OTHERS
7.	RFA-1554-2019	HARYANA STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT COPORATION LIMITED V/S SURAT SINGH AND OTHERS
8.	RFA-1552-2019	HARYANA STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT CORPORATION LTD. V/S NAFE SINGH AND OTHERS
9.	RFA-3596-2018	SURAT SINGH AND ORS V/S STATE OF HARYANA AND ORS
10.	RFA-1549-2019	HARYANA STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT COPORATION LIMITED V/S PURAN AND OTHERS
11.	RFA-1555-2019	HARYANA STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT COPORATION LIMITED V/S JAI BHAGWAN AND OTHERS
12.	RFA-1553-2019	HARYANA STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT CORPORATION LTD V/S VIRENDER AND OTHERS
13.	RFA-3910-2018	NAFE SINGH AND ANR V/S STATE OF HARYANA AND ORS
14.	RFA-10778-2014	KARAN SINGH & ORS V/S STATE OF HARYANA & ORS
15.	RFA-212-2015	SMT. CHANDRO DEVI & ORS V/S STATE OF HARYANA & ORS
16.	RFA-10768-2014	PAWAN KUMAR V/S STATE OF HARYANA AND ORS.
17.	RFA-6302-2015	JAI SINGH & ORS V/S STATE OF HARYANA & ORS
18.	RFA-1842-2018	JAI BHAGWAN AND OTHERS V/S STATE OF HARYANA AND OTHERS

19.	RFA-1838-2018	PURAN AND OTHERS V/S STATE OF HARYANA AND OTHERS
20.	RFA-2190-2018	MAHIPAL AND ORS V/S STATE OF HARYANA AND ORS
21.	RFA-2639-2019	RAN SINGH (DECEASED) THROUGH HIS LRS AND OTHERS V/S STATE OF HARYANA AND OTHERS
22.	RFA-3-2015	BEDO AND ORS. V/S STATE OF HARYANA AND ORS.
23.	RFA-10759-2014	BALJEET AND ORS. V/S STATE OF HARYANA AND ORS.
24.	RFA-1256-2021	VIRENDER AND ORS V/S LAND ACQUISITION COLLECTOR AND ANR.

14.11.2022 **(ANIL KSHETARPAL)**
rekha **JUDGE**