

RFA-2532-2021 and
RFA-2529-2021

2024:PHHC:057835
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 25.04.2024

1. RFA-2532-2021 (O & M)

HYDRAULICS AND PNEUMATICS (INDIA) LLP ..Appellant

Versus

STATE OF HARYANA AND ANR ...Respondents

AND

2. RFA-2529-2021 (O & M)

STATE OF HARYANA ..Appellant

Versus

M/S HYDRAULICS AND PNEUMATICS LLP AND ANR
...Respondents

CORAM : HON’BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Puneet Bali, Sr. Advocate with
Mr. Kunal Vajani, Advocate,
Mr. Vipul Joshi, Advocate,
Mr. Shubhang Tandon, Advocate,
Mr. Vishavjeet S. Beniwal, Advocate,
Mr. Prashant Kapila, Advocate and
Mr. Aman Brar, Advocate,
for the appellant in RFA-2532-2021 and
for respondent No.1 in RFA-2529-2021.

Mr. Shivendra Swaroop, DAG, Haryana and
Ms. Nikita Goel, Advocate,
for the appellant in RFA-2529-2021 and
for respondent No.1 in RFA-2532-2021.

Mr. Ankush Chowdhary, Advocate,
for respondent No.2.

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RAJBIR SEHRAWAT, J. (Oral)

1. This order shall dispose of aforesaid regular first appeals i.e. RFA-2532-2021 filed by the land-owner whose land has been acquired and RFA-2529-2021 filed by the State of Haryana.

2. However, for reference, the facts, broadly, are being taken from RFA-2532-2021.

3. The facts as are emerging in these appeals are that a notification No.LAC(F)/NTLA/7/17/2011-2TCP dated 04.07.2012 was issued under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act'), for acquisition of land of the appellant, comprised in khasra no.13/23/1, 20/4, 20/5, 20/6, 20/7, 21/1, 21/2, 21/3/1, 21/8/2, 21/9 and 21/10, situated in village Sarai Khawaja, District Faridabad, for the purpose of metro stations and parking sites from Badarpur to YMCA Chowk, Fariadabad. Thereafter, necessary notification under Section 6 of the Act was also issued on 31.12.2012. After assessing the value of the land, the Land Acquisition Collector awarded Rs.8,000/- per square yard, taking the land of the appellant as an Industrial property. Aggrieved against the said Award passed by the Land Acquisition Collector, the appellant had sought reference under Section 18 of the Act. The Reference Court enhanced the compensation and determined the market value of the land of the appellant at the rate of Rs.70,000/- per square yard, however, deducted the amount of 20% from the awarded amount on the pretext that the project for which the land was being acquired, was of national importance. Questioning the assessment of the market value, as well as, the deductions made by the

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Reference Court, the affected land-owner has filed the above-mentioned appeal i.e. RFA-2532-2021, whereas, questioning the enhancement granted to the land-owner, the State of Haryana has filed the other above-mentioned appeal i.e. RFA-2529-2021.

4. Arguing the case, learned Senior Counsel for the appellant has submitted that land of the appellant, which is situated in Sector 27-D, Faridabad, though is an Industrial property, however, on the left side, as well as, on the right side of the property of the appellant, conversion of the land use, had already been permitted by the respondents-State and the industrial land on both sides stood converted to commercial land. Not only that, vide notification dated 16.11.2010, the State had also issued the notification declaring the entire area, including the area under the premises of the appellant, to be commercial area. Accordingly, though the Reference Court has taken the land of the appellant as commercial land, however, market value of the said land has not been assessed to be commensurate with the commercial value of the land of the appellant, as well as, the land situated in the vicinity of this land. Learned Senior Counsel for the appellant has further submitted that due to acquisition of the land of the appellant, remaining land of the appellant at that place, measuring 33,892 square yards, has been rendered totally useless on account of severance of this land, as well as, on account of the fact that the entire frontage of the land abutting the road has been acquired and the building of Metro Station has been constructed in the entire front side of the land of the appellant. Not only that, the building of Metro Station is about 32 metres in height,

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leaving no visibility to the land of the appellant. Moreso, even approach to the land of the appellant has been given only through the building of the Metro Station, virtually denying any purposeful commercial use of the land of the appellant. Despite that, no compensation has been granted to the appellant on account of severance or on account of extreme diminishing of the value of the remainder land of the appellant in terms of Clauses '*thirdly*' and '*fourthly*' of Section 23(1) of the Act. Learned Senior Counsel for the appellant has also relied upon the judgment rendered by this Court in Chanan Singh Vs. State of Punjab (2009) SCC Online P & H 612, to submit that since the entire frontage of the land of the appellant has been blocked and the remaining land without any appropriate approach has been rendered useless, therefore, the appellant is entitled to the compensation on account of severance of the land as well; at the rate of 50% of the market value of the land.

5. Learned Senior Counsel for the appellant has further submitted that the Land Acquisition Collector, as well as, the Reference Court, both have not properly applied mind to the determination of the market value, and the irrationality in determination of the market value of the land of the appellant is writ large on the face of it; because the same Reference Court has granted the market value of Rs.80,000/- per square yard to the land-owner whose land is situated at about 12.8 kms. towards Faridabad, which is farther from Delhi.

6. Qua the evidence led on the file, learned Senior Counsel for the appellant has referred to Ex.P-30, which is compilation of details of licenses

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of the adjoining properties, showing that the said lands are being used as commercial ones. He has further referred to Ex.P-42, which is photograph of the Commercial Mall, named, Sewa Grand Mall & Hotel Misaki, as well as, of the Crown Business Park. Learned Senior counsel has further referred to Ex.P-9 and Ex.P-12/Y, which are the un-scaled site plans of the area, to show that the land of the appellant has been totally sandwiched from the front side by the Metro Station and on the left side by the office Complex called Vatika Mindscapes and on the right side by the Commercial Buildings of L& T Company and of the Clutch Auto. Accordingly, it is submitted that there is absolutely no scope for disputing the fact that land of the appellant is having huge commercial value. In the same line, learned Senior Counsel for the appellant has also referred to Ex.P-31, Ex.P-38, Ex.P-40, Ex.P-41 and Ex.P-46, to show that the entire area ssurrounding land of the appellant has been developed in the commercial malls or office spaces and the multiplexes. Learned Senior Counsel for the appellant has further submitted that while filing objections dated 14.08.2012 (Ex.P-11), under Section 5-A of the Act, the appellant had raised the issue of giving access to its land to the main road so that the remainder of the land can be put to some commercial use, however, although the lands of proprietors on the left side and right side of the land of the appellant have been given approach to the main road on the front side, yet the appellant has been totally denied that approach to the main road. As a result, the only approach to the land of the appellant is through the building of the Metro Station. Therefore, land of the appellant has been rendered totally useless;

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so far as commercial exploitation of the same is concerned. To highlight the situation of the land and its existing commercial potential, learned senior counsel for the appellant has referred to the document Ex.P-32, which is the site plan showing that the land of the appellant is less than 1.5 kms away from Delhi Badarpur Border. To the similar effects are the documents Ex.P-29B showing the distance of the land of the appellant to be about 2.1 kms. from Plot No.7, DLF, Industrial Estate No.1, Ex.P-29C showing the distance of the land of the appellant to be about 5.6 kms. from Sector 27-A, Main Mathura Road, Faridabad, and also other similar exhibits which have been placed on record to show that distance of the land of the appellant is within a small range from premium commercial premises of other proprietors. Accordingly, it is submitted that the land of the appellant is closest to Delhi as compared to the above-referred properties. Therefore, commercial value of the land of the appellant has to be much more than the value of the above-referred commercial properties. Referring to the above-said documents Ex.P-29A to P-29C, learned Senior Counsel for the appellant has submitted that even the value of the properties mentioned in these exhibits, though was industrial, are ranging from Rs.38,000/- to Rs.45,000/- per square yard.

7. Qua the assertions of the concrete market value of the land in terms of money, learned Senior Counsel for the appellant has referred to the sale exemplars from the surrounding property, namely, Vatika Mindscapes, in which the developed property has been sold just before issuance of the notification under Section 4 of the Act, at the rate of Rs.7,500/- per square

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feet super area, as is reflected in the completed transactions of sale in Ex.P-33/A to Ex.P-33/D. Learned Senior Counsel for the appellant has further relied upon the valuation report Ex.P-28A, to submit that taking the sale price of the developed land, the govt. approved valuer has arrived at the potential value of the undeveloped land by applying the method of reverse calculations through deduction of development and construction charges. As per that assessment, the market value of the land in the area has been arrived at Rs.1 lakh per square yard. Learned Senior Counsel has relied upon the judgment rendered by the Hon'ble Supreme Court in **P.Ram Reddy and others** Vs. **Hyderabad Urban Development Authority and others** (1995) 2 SCC 305, to support his argument that in case of sale exemplar of the developed land, the method of reverse calculations by deduction of the development and construction charges; so as to arrive at the value of only the land, is the appropriate method. Hence, it is submitted that the market value of the land of the appellant has to be taken, at least, at Rs.1 lakh per square yard.

8. Learned Senior Counsel for the appellant has further submitted that even before acquisition of the land, the appellant had applied for permission for change of land use (CLU) after getting a certificate from the authorities that this land is not going to be acquired. Simultaneously, the appellant had also entered into a registered joint development agreement with Adhiraj Construction Pvt. Ltd., and the same was already registered on 16.09.2011; much before the acquisition. As per the above-said development agreement, the appellant was to receive the value of the land at

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the rate of Rs.1,09,998/- per square yard in addition to the enhanced value on account of salable floor area ratio (FAR). The document to this effect has also been placed on record as Ex.P-15A. Accordingly, learned Senior Counsel for the appellant has submitted that the appropriate value of the land of the appellant at the relevant time has to be taken somewhere between Rs.1 lakh to Rs.1,60,000/- per square yard. Hence, the appellant is entitled to the above-said amount as the amount of compensation alongwith the requisite statutory benefits and the other benefits on account of severance compensation and by doing away with the unnecessary deductions made by the Reference Court.

9. On the other hand, learned counsel for the respondent No.1- State of Haryana, which is the appellant in the State appeal, has submitted that the Reference Court has exorbitantly enhanced the value of the land from what was awarded by the Land Acquisition Collector. There is absolutely no justification for enhancement granted by the Reference Court. Carrying forward his arguments, learned counsel for respondent No.1 has submitted that the Reference Court has gone wrong in treating the land of the appellant to be 'Commercial' one. The Land Acquisition Collector had rightly assessed the land of the appellant to be 'Industrial' in nature because even the appellant-Company itself had asserted this fact in the objections (Ex.P-11) filed by it under Section 5-A of the Act. Even the document Ex.P-8, which is the purchase deed by the appellant, shows the land to be industrial in nature. Therefore, there is absolutely no justification for categorizing the land of the appellant to be commercial by unnecessarily

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changing its category from the industrial one. Rebutting the arguments of learned Senior Counsel for the appellant that the govt. itself had declared the area to be commercial one, learned counsel for respondent No.1 has submitted that the notification referred to by the learned Senior Counsel for the appellant, had never been issued by the State, rather, it was only a draft notification, as such, and was not even published at the relevant time. The final development plan was published only on 14.03.2018. Therefore, the nature of land, as per the government notification, was changed to commercial much after the notification issued for acquisition of the land of the appellant. So far as the assertion of the appellant qua usage of the land as commercial land is concerned, learned counsel for the respondent has submitted that no doubt, the appellant had applied for CLU, however, the application filed by the appellant was totally incomplete and, therefore, vide communications Ex.HC-3 to Ex.HC-5, the appellant was required to fulfil the conditions of C.L.U. and to remove the deficiencies. However, the same were not complied with by the appellant. Accordingly, the application of the appellant was ordered to be returned, vide Ex.HC-5, with liberty to the appellant to take its documents back from the office. Hence, the market value of the land has to be determined with reference to the potential of the land as on the date of notification, no future prospects on account of assumption of C.L.U. can be taken into consideration while determining the market value.

10. Learned counsel for respondent No.1 has questioned the finding recorded by the Reference Court that the documents Ex.R-3 to R-7

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are not to be read in evidence qua market value because the same reflect the market value of the land even less than the value awarded by the Land Acquisition Collector. He has further submitted that the said sale deeds were not placed on record to seek any reduction of the market value as determined by the Land Acquisition Collector, rather, the said sale deeds were placed on record to show the market value of the land only to rebut the assertions of the appellant seeking much higher value than the value reflected in the actual sale deeds.

11. Learned counsel for respondent No.1 has also submitted that there is no severance of the land of the appellant. Only one part of the land of the appellant-Company has been acquired while its remainder land is as one parcel only. Since, there is no severance of the land of the appellant in parcels, therefore, the appellant is not entitled to any compensation on account of severance, as such. Learned counsel for respondent No.1 has relied upon the judgment rendered by the Hon'ble Supreme Court in **Wazir and another Vs. State of Haryana 2019(1) RCR (Civil) 702**, wherein the Hon'ble Supreme Court had reversed the judgment passed by this Court granting 30% of the market value as severance compensation in a similar situation where only front portion of the land was acquired, leaving the entire other land of the affected land-owners in a single parcel. Hence, it is submitted that on that count, no compensation can be awarded to the appellant.

12. Learned counsel for respondent No.1 has submitted that value of the land of the appellant has not even been diminished on account of lack

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of passage because the appellant is having at least two passages, one through the building of the Metro Station and other from the back side of the Metro Station, which has been created by the Metro authorities as a service lane. Even, the Metro authorities have already filed an affidavit that they have no objection to the appellant using both these passages. Hence, the appellant is not rightly raising the argument that value of the land has diminished because of non-availability of an appropriate passage. Not only that, under the agreement, the appellant has even been given a right to display the signage in specified dimensions on the property belonging to the Metro authorities.

13. Qua the market value of the land, learned counsel for respondent No.1 has submitted that learned Reference Court has gone totally wrong in law in applying pure guess work based on some report of the earlier Divisional Committee, which was constituted for the purpose of another NHAI acquisition. The report of that Committee does not even include the village in which the land of the appellant is situated. Moreover, even as per the said report, the Committee had not recommended the market value at the rate of Rs.70,000/- per square yard for any commercial land. Otherwise, for the industrial land, the said Committee had recommended only an amount of Rs.15,000/- per square yard as the market value. Hence, reliance upon the said Committee report, to any extent, is totally uncalled for and non-sustainable. Otherwise also, the market value of the land has to be determined with reference to the independent evidence led on the file and not with reference to any previous acquisition or a document relating to the

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previous acquisition. Learned counsel for the respondent has relied upon the judgment rendered by the Hon'ble Supreme Court in Manoj Kumar Vs. State of Haryana and others 2018(2) RCR (Civil) 815, to buttress his arguments.

14. So far as the sale exemplars are concerned, the respondents have placed on record the sale deeds as Ex.R-3 to R-7, details of which have already been mentioned in the judgment of the Reference Court. As per those sale deeds, the market value of the land ranged from Rs.161/- per square yard to Rs.6,786/- per square yard. Out of this, the land of highest value reflected in the sale deed Ex.R-3, pertains to the same village in which the land of the appellant was situated and it reflects the market value of Rs.6,786/- per square yard, in the year 2010, and the said sale deed pertains to industrial land just like the land of the appellant. Therefore, market value of the land could not have been assessed more than Rs.6,786/- per square yard. Qua this sale deed, learned counsel for the respondent has fortified his argument that though no witness was examined to prove the contents of this sale deed, however, as per Section 51-A of the Act, once the registered sale deed was being placed on record, then no witness was required to be produced before the Court to prove the same. This has been so held by the Hon'ble Supreme Court in Cement Corpn. of India Ltd. Vs. Purya and others (2004) 8 SCC 270.

15. Referring to the sale deed placed on record by the appellant-Company itself as Ex.P-29A, which is qua 21.6 square yards of commercial land, learned counsel for respondent No.1 has submitted that although this

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sale deed was subsequent to the notification of the acquisition, yet the market value even in this sale deed is reflected only at the rate of Rs.46,296/- per square yard. No sale deed reflecting the higher market value than this sale deed, has been placed on record by the appellant-land owner. Referring to other documents placed on record by the appellant, learned counsel for the respondent has rebutted that the sale exemplars in the Vatika Mindscapes Commercial Complex and its surrounding properties, by submitting that these are not, in fact, the sale deeds. Those are only the agreements to sell and even that non-registered. Therefore, no evidentiary value can be attached to the same, as such. Learned counsel for the respondent has further submitted that since the said agreements are relating to the transfer of rights and interest in the property of value of more than Rs.100/-, therefore, unless the sale is registered, their evidentiary value has to be totally discarded by the Court.

16. Rebutting the argument of learned counsel for the appellant seeking parity with the developed area in the vicinity, qua its market value, learned counsel for the respondent has relied upon the judgment rendered by the Hon'ble Supreme Court in Lal Chand Vs. Union of India and another 2009(15) SCC 769, and has submitted that in the above-said case, the attempt to calculate the market value, as per the brochure rates published by the Delhi Development Authority for the developed area, was held to be not proper. Therefore, market value of the land of the appellant cannot be determined with reference to any rates of sale or rent as reflected qua the developed area.

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17. Rebutting the submissions of learned Senior Counsel for the appellant qua the development agreement with Adhiraj Construction Pvt. Ltd., learned counsel for respondent No.1 has submitted that the said transaction has been alleged to be fake, and an application has been filed before the Court seeking prosecution of the appellant by exercising the powers under Section 340 Cr.P.C. This complaint has been filed by the none other than the erstwhile partner of the appellant-company. The said application has already been brought on record before this Court as Ex.HC1. The said application has highlighted the *inter se* collusive relations between the Directors of both the firms, which were parties to the development agreement. Hence, no value, as such, can be attached to the said agreement as well.

18. Rebutting the above-said arguments of learned counsel for respondent No.1, learned Senior Counsel for the appellant has submitted that so far as the sale deed Ex.R-3 is concerned, there is nothing on record to show the situation of the land vis-a-vis the land of the appellant or in terms of its distance from the national highway. Still further, the sale in that case was finalized in the year 2006, much before the date of publication of notification of the present acquisition, as is evident from the documents placed on record, though ultimately the sale deed was registered in the year 2010 due to continuous schedule of payment of sale consideration. Therefore, by any means, the said sale deed does not serve any reference for determination of the market value of the land. The same is the situation regarding other sale deeds produced on record by respondent No.1. No facts

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regarding their situation or relativity to the highway have been brought on record. Moreover, out of those sale deeds, the lands comprised in two of the sale deeds, are relating to *gair mumkin pahars* or to the agriculture land at a distant place, regarding which the location is not even mentioned. Learned Senior Counsel for the appellant has also submitted that the sale deeds produced by respondent No.1 have not even been proved as per law. Those have just been tendered by the Govt. Pleader and not even by any witness, as such.

19. Learned Senior Counsel for the appellant has further submitted that whatever sale deeds, the appellant has placed on record qua the industrial land, has been placed on record not to show the actual market value of the land of the appellant, but only to reflect the market value of the industrial land. The land of the appellant, as argued above, had acquired the potentiality of the 'Commercial' land on the date of acquisition, therefore, the land has rightly been treated as commercial by the Reference Court.

20. Regarding the judgment in the case of **Lal Chand's case (supra)**, as cited by learned counsel for respondent No.1, learned Senior Counsel for the appellant has submitted that the said judgment is altogether distinguishable and is not relevant for the decision of the present case. In that case, the land acquired was undeveloped agriculture land situated in a remote village, whereas, in the present case, land of the appellant is situated within the municipal limits and is already fully developed and is also surrounded by the legally existing licensed commercial properties. Regarding the objection of learned counsel for the respondent qua the

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builder-buyer agreements, being not registered, learned Senior Counsel for the appellant has submitted that no registration of the said agreements, as such, is required. Otherwise, all the relevant witnesses i.e. sellers of the property have already been examined by the appellant. Therefore, that documents have to be taken into consideration while determining the value of the land of the appellant.

21. Regarding the objections of learned counsel for respondent No.1 qua the development agreement with Adhiraj Construction Pvt. Ltd., and the application under Section 340 Cr.P.C., moved by one of the erstwhile partners, it is submitted by learned Senior Counsel for the appellant that the application moved by the said person remains unprosecuted for more than past three years as of now. Not only that, the said person himself has been claiming the benefits of the said development agreement through the various e-mails sent to Adhiraj Construction Pvt. Ltd. Hence, assertion of the State qua application under Section 340 Cr.P.C. is totally irrelevant in the matter. Not only that, the dispute having arisen between the appellant and Adhiraj Construction Pvt. Ltd., the matter was referred to Justice (Retd.) A.P. Shah, as an Arbitrator, who had passed the settlement Award for refund of some money by the appellant to Adhiraj Construction Pvt. Ltd.

22. Qua the assertion made by learned counsel for respondent No.1 qua the right to signage and the right to use of passage from the back side of the Metro Station, learned Senior Counsel for the appellant has referred to MoU dated 17.12.2012, to submit that these rights were available to the

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appellant only during the construction of the Metro Station. However, after the construction was complete, there has not been any fresh MoU or authorization to the appellant for the right of signage or right to use the backside passage. Rather, the Metro authorities have given in writing by supplying the information under RTI that backside service lane was a restricted and regulated through a gate as per the requirement and not a public passage.

23. To rebut the arguments of learned counsel for respondent No.1 qua non-entitlement to the severance compensation, learned Senior Counsel for the appellant has relied upon Clause '*fourthly*' of Section 23(1) of the Act, to buttress that any damage done to the value of the property of the land-owner is also redressable through compensation under provisions of law. Therefore, merely because land of the appellant has not been divided into two parcels, is not the ground to deny the compensation on account of diminishing the value of the land of the appellant.

24. Qua the judgment rendered in **Wazir's case (supra)**, as cited by learned counsel for the respondent, learned Senior Counsel for the appellant has submitted that the said judgment is totally distinguishable and not applicable to the facts of the present case for two reasons. Firstly, in the said judgment, Clause '*fourthly*' of Section 23(1) of the Act was not even under consideration before the Hon'ble Supreme Court. Secondly, in that case, the land-owner had sufficient approach to his land from other side and the evidence had come in that case that after acquisition, the prices of his remaining land had increased manifolds. However in the case of the present

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appellant, value of the land of the appellant has gone drastically downward.

25. Regarding return of the application of the appellant moved for change of land use as well, learned Senior Counsel for the appellant has submitted that what was returned by respondent No.1, was the first application moved by the appellant. The second application **(Ex.P15/1)** moved alongwith requisite fee for seeking change of land use for establishment of I.T. Park, which is a commercial activity, was never rejected, as such, till the date of notification of acquisition, nor any defect in the same was pointed out by the respondent at any time.

26. Learned Senior Counsel for the appellant has pointed out that report of the Divisional Committee was rightly made reference by the Reference Court to the limited extent that the land in that report was also abutting the National Highway-2 and the land of the appellant was also abutting the national highway only. The villages to which that report related, were 6 kms. away from the land of the appellant and even farther from Delhi i.e. towards Faridabad. Therefore, value of the land of the appellant has to be awarded on a higher side as compared to the market value reflected in the said report. Hence, the argument of learned counsel for the respondent denying credit for that report is altogether not sustainable.

27. This Court has heard the arguments of learned counsel for the parties and perused the record of the case.

28. The first question which has cropped up in the case is as to the nature of the land of the appellant at the time of acquisition. The Land

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Acquisition Collector had assessed the value of the land at the rate of Rs.8,000/- per square yard, as per the recommendations contained in the Divisional Committee report, constituted by the State Government for the purpose of the present acquisition. This nature of the land of the appellant was taken by the Collector as per its existing use as 'industrial' unit. However, the material placed on record shows that the land of the appellant had acquired the characteristics of a 'commercial' land. Learned Senior Counsel for the appellant has rightly placed reliance upon Ex.P-30 containing the details of licenses qua the surrounding properties for the commercial use. Moreover, the document Ex.P-42 shows that the property of the appellant is surrounded by the commercial properties on all the sides except on the side on which the Metro Station has now been constructed. The photograph shows that there exists Commercial Mall, named, Sewa Grand Mall & Hotel Misaki, as well as, the Crown Business Park. The unscaled site plans placed on record as Ex.P-9 and P-12/Y show that on the left side of the property of the appellant is the office Complex called Vatika Mindscapes and on the right side of the property of the appellant is the commercial building of L & T Company and of another Company, named, Clutch Auto. All these are the established and ongoing commercial ventures since the time of acquisition of the property of the appellant. As mentioned above, the documents Ex.P-31, Ex.P-38, Ex.P-40, Ex.P-41 and Ex.P-46 amply show that the entire area of the appellant-Company had been surrounded by the commercial malls, office spaces and multiplexes. Not only that, even the appellant-Company itself had applied for the CLU for

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exploiting the property for commercial purposes. Although, learned counsel for the respondent-State has submitted that the application of the appellant already stood rejected by the competent authority in that regard, however, the record shows that the appellant had applied for licence to use the property as a commercial property for the first time; which was returned by the competent authority with certain objections. However, again the appellant-Company had applied for CLU for establishing an I.T.Hub and commercial complex; alongwith requisite fee of about Rs.20 lakh. That application was already pending before the authorities on the date of issuance of the notification under Section 4 of the Act; qua acquisition of the property of the appellant. Although, learned counsel for respondent No.1 has submitted that even the subsequent application had been rejected by the competent authority because of a lot of shortcomings in the application form, however, the record shows that the said application was rejected much after the date of issuance of the notification. This rejection of the application would not reduce the significance of the argument of the learned Senior Counsel for the appellant qua the commercial nature of the property because after issuance of the notification of the acquisition, even the competent authority could not have granted the CLU permission qua the land; which included the acquired land as well. Therefore, rejection of the application for CLU for commercial use is more of a formality than having any substantial effect of denuding the land of the appellant of the characteristics of the same being a commercial land. The Reference Court has considered all these aspects and have come to the conclusion that the

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land of the appellant was commercial in nature. In view of the above discussion, this Court does not find any illegality or impropriety in the findings recorded by the Reference Court in that regard. Hence, the nature of the property of the appellant is held to be having 'commercial' characteristics on the date of issuance of the notification.

29. Having come to the conclusion that the land of the appellant was having commercial characteristics, the next question which crops up for consideration of this Court is the fair market value of the land of the appellant, to which the appellant could be entitled. As mentioned above, the Land Acquisition Collector had relied upon the report of the Divisional Level Committee, to award the amount of Rs.8,000/- per square yard treating it as an 'industrial' property. The said Committee had recommended Rs.16,000/- per square yard for the 'commercial' property. Although, the parties to the present *lis* have led evidence of the sale transactions, however, none of them is directly relevant as being *qua* the sale of the land in the vicinity of the land of the appellant or in proximity of the time of issuance of the notification. Seeking reduction in the amount awarded by the Reference Court, learned counsel for respondent No.1-State has submitted that the respondents have placed on record the sale exemplars showing that rate of the land in the area concerned was much less than the one awarded by the Reference Court. In fact, it was not even Rs.8,000/- per square yard. However, the above-said sale deeds placed on record by respondent No.1-State have rightly been rejected by the Reference Court on the ground that the said sale exemplars are showing the market value even less than the one

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awarded by the Land Acquisition Collector. Since the sale exemplars placed on record by respondent No.1 were not showing the value even upto the mark at which the Land Acquisition Collector has granted the compensation to the appellant, therefore, the said documents have to be taken only as irrelevant for the purpose of the market value of land of the appellant. Moreover, there is nothing on record to show the situation of the land contained in the sale exemplars cited by respondent No.1 with reference to its proximity to the land of the appellant which has been acquired. The said sale deeds are even much prior in time, therefore, the same cannot serve as a reference point for determining the market value of the land of the appellant. Even the alleged sale exemplars placed on record by the appellant are not qua the sale of the land, as such. Rather, the same are paid-up 'agreements to sell' qua the commercial spaces in the adjoining commercial complex(s). To what extent, such sale exemplars can have evidence significance, would be discussed hereinafter, however, suffice it to say that such a sale exemplar, in itself, cannot be the straight reference point for determining the value of the land.

30. Another aspect raised by the appellant; that it had entered into an MoU with Adhiraj Construction Pvt. Ltd. for the development of the commercial land and from there, the appellant was to get more than Rs.600 crore as profit, can also not be a reference point for determination of the market value, as such. First of all, learned counsel for respondent No.1 has pointed out that the Directors in the appellant-Company and some of the Directors in Adhiraj Construction Pvt. Ltd. were common, therefore, the

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said MoU having been created for avoiding some legal and financial consequences only cannot be ruled out. Although, the respondents have disputed the bonafides of said MoU and have referred to the complaint made by the one of the Directors of the Company alleging fraud in the said MoU and an application under Section 340 Cr.P.C. being pending against the Directors of the appellant, and the appellant has referred to the arbitration proceedings between the two Companies to stress upon the bonafides, however, whether the said agreement was bonafide or otherwise, *per se*, is irrelevant for the purpose of determination of market value because the said MoU can, at the best, fortify the case of the appellant that the property was to be used as the 'commercial' property. Such MoU, in any case, again, cannot be a reference point for determination of the market value of the land of the appellant which it would have brought on the date of issuance of the notification of the acquisition.

31. It is well settled by now that the market value of the acquired land is the value which a willing buyer would offer to the willing land-owner/seller as on the date of issuance of the notification; by considering all its advantages and disadvantages. Therefore, it is the existing potential of the land under acquisition which has to be the basis for determining the market value of such land. Qua the advantages of the land in question, it has come on record that the land of the appellant-Company was located at 12/4, Milestone, Sector 27-D, Delhi Mathura Highway, Faridabad, in village Sarai Khawaja, which is only about 1.5 km. away from Badarpur Border, Delhi. The land of the appellant was rectangular in shape and one side of the

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land was abutting to the above-said national highway and was having a substantial frontage on the main highway. Therefore, an intending buyer would have considered the locational advantages, if one was to purchase the said land on the date of acquisition.

32. It has come on record; and the Reference Court has so considered that the earlier Divisional Level Committee while dealing with an earlier acquisition made through an earlier notification dated 04.12.2009 had fixed the rates of about 12 villages for the acquisition of the land for widening of the same highway on which the land of the appellant is situated. The said Committee, vide its report dated 27.12.2010, Ex.P-37, recommended the rate of commercial value of the land as Rs.50,000/- per square yard in 09 villages. The above-said villages are towards Faridabad side of the land of the appellant, and are at a more distance from Delhi Border as compared to the land of the appellant. Moreover, the said rates having been fixed for the earlier acquisition on the same highway, but for the distant villages, can be taken as one of the guiding factors for the determination of the value of the land of the appellant. Not only that, even the sale deed Ex.P29/A, which is of village Sarai Khawaja only, though is of a date subsequent to the notification and is for only 21.6 square yards, however, even the said sale deed shows the market value of the land to be Rs.46,296/- per square yard. This makes the report of the earlier Divisional Level Committee even more relevant. Though, learned counsel for respondent No.1 has submitted that the Divisional Level Committee report, Ex.P-37, is not pertaining to the time of the present acquisition or to the

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village where the land of the appellant is situated, rather, the subsequent Divisional Committee report Ex.R-1, prescribed only Rs.16,000/- per square yard for the commercial land, however, it defies the logic that the Divisional Level Committee could fix the commercial value of Rs.50,000/- per square yard at an earlier point of time and for a place which was farther from Delhi; and subsequently, the Divisional Level Committee would fix the rate of commercial property for the land abutting to Delhi as low as Rs.15,000/- per square yard. Therefore, the subsequent Divisional Level Committee report, by any means, cannot be the reference point even as per the standards of assessment of the govt. authorities. Needless to say that there is nothing on record to specifically show any disadvantage of the land of the appellant vis-a-vis the land of 09 other village for which the commercial rate for the land was fixed by the Divisional Level Committee, at Rs.50,000/- per square yard.

33. For claiming compensation at par with the properties qua which the agreements to sell were entered into in the adjoining commercial complexes, the appellant while relying upon the documents Ex.P-33/A to Ex.P-33/D, has suggested that the market value of sold out commercial spaces in those malls was Rs.2,41,007/- per square yard. After deducting the development expenses, the market value of the land would be about Rs.1,60,415/- per square yard. Therefore, the said value should be granted to the appellant. Learned Senior Counsel has relied upon the judgment of the Hon'ble Supreme Court rendered in **P.Ram Reddy's case (supra)**, to support his contentions in this regard, however, this argument of learned

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Senior Counsel for the appellant has its own fallacy, as would be explained herein below. Not only that, learned Senior Counsel for the appellant has also relied upon Ex.P-28A, the report of the govt. approved valuer, who has given the valuation of the land of the appellant by taking the building potentiality of the land of the appellant and the entire sale value thereof; and then by making the deductions of construction and other charges by making reverse calculations. Learned Senior Counsel for the appellant has asserted that even as per the value arrived at by the govt. approved valuer, the rate comes at about Rs.1,09,998/- per square yard. However, these arguments of learned Senior Counsel for the appellant cannot be taken on their face value. No doubt, the Hon'ble Supreme Court in the judgment rendered in **P.Ram Reddy's case (supra)**, has held that the building potentiality of the acquired land can be made basis for the determination of the market value, however, this judgment does not approve of any specific heads of permissible deductions and the calculations as to how the value of the land only is to be assessed after taking the sale price of the developed commercial spaces in already constructed commercial mall(s). It only talks of determination of value of only the land by suggesting certain general development costs deductions. Needless to say that there is a huge difference between the existence of only the land having commercial building potentiality and the existence of already developed commercial complex. If the valuation, as suggested by learned Senior Counsel for the appellant; and as made by the govt. approved valuer, are taken as the basis, then these calculations would assume the existence of already constructed

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and running mall, whereas, none exists on the land of the appellant. If the sale exemplars in the adjoining commercial malls are being made the basis, then one has to realize that for construction of a commercial complex on a huge chunk of land would involve hundreds of crores of financial investment, if not of thousand crores. Availability of such huge amount with the appellant could not be just presumed. And if the appellant was to arrange such amount as fund from the financial institutions, then there would have been a huge debt servicing liability, as well as, investment of human efforts and resources therein. Therefore, by merely reducing the construction and brokerage charges etc., from the value of the developed commercial space in the adjoining commercial complex, value of the land of the appellant could not be assessed. It is the common knowledge that a developed commercial mall gets its own commercial value which is much higher than the sum total of mere value of the land and the development charges incurred on the construction of the mall, which have been deducted by the govt. approved valuer in his report Ex.P-28A. The developed mall has its own market value which may not necessarily have any significant relation with the value of the land on which it is developed. Craving of the traders having enough money to have the commercial space in already developed mall and the competition therefor, can artificially raise the value of the commercial space in the mall to such an extent which virtually has no connection with the value of the land, as such. Therefore, neither the sale exemplars suggesting the market value of the land acquired to be Rs.1,60,415/- per square yard based upon the adjoining commercial malls

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nor the valuation report Ex.P-28A statedly prepared by the govt. approved valuer could be legitimately made an exclusive basis for determining the market value of the land, as such. Moreover, it has already been repeatedly held that the expert report can hardly be the basis for determination of the value of the acquired land, which has to be determined with reference to hard facts and the material brought on record of the case. Therefore, the above-said report of the govt. approved valuer does not suggest the correct market value of the land. Moreover, even as per the said report, while calculating the building potentiality, the govt. approved valuer has given benefit of extra space based on the permissible FAR to calculate the actual value of the entire space in the mall. However, as observed above, there was no existing mall on the land of the appellant and if the appellant was to bring a mall into existence that would have been contingent upon so many factors, including thousands of crores of rupees as finance. Hence, value of the land cannot be determined with reference to what benefit of permissible FAR would have been available on construction of the mall on the same. No intending purchaser would have given the value of the FAR as well to the appellant as on the date of the notification for acquisition of the land. Whatever benefit the FAR would have brought that would have been the creation of the independent finance and effort of the intending purchaser, of which the appellant is not entitled to take advantage by raising the assumptions and presumptions. Even in case of **P.Ram Reddy (supra)**, though the Hon'ble Supreme Court held the building potentiality method of evaluation, however, in that case, the Hon'ble Supreme Court has held that it

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is value of 'land' which is to be paid as compensation, and not the value of commercial spaces, as such. So far as the value of the land only is concerned, even the above said report of the govt. approved valuer has assessed the value of the land only at the rate of Rs.6,786/- per square ft., which translates into about Rs.61,000/- per square yard. Therefore, the report of the govt. approved valuer can, at the best, be suggestive of the value of the land to be Rs.61,000/- per square yard.

34. Accordingly, keeping in view the fact that the Divisional Level Committee had recommended the market value of the commercial land to be Rs.50,000/- per square yard for an earlier acquisition on the same highway, but at a place which is distant from the land of the appellant with reference to Delhi Border and by applying an appropriate time based enhancement and with reference to the market value of the land only, as is coming from even the report of the govt. approved valuer mentioned above, as well as, by applying some rationale guess work, the market value of the land could have very well been assessed to be Rs.70,000/- per square yard, as has been done by the Reference Court. Qua this finding as well, this Court does not find any ground to interfere. Neither there is any material on record to suggest that the value is in excess nor is there any concrete material to show that the value could have been enhanced any more. Therefore, market value of the land of the appellant is assessed to be Rs.70,000/- per square yard. In this regard, it deserves to be mentioned that although learned Senior Counsel for the appellant has referred to the land of Crown Business Park and has submitted that the same Reference Court has assessed the market

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value of the land of that land-owner at the rate of Rs.80,000/- per square yard for the commercial land, despite the fact that the said land is situated at about 6 kms. away from the land of the appellant, but away from Delhi, therefore, the appellant also deserves to be granted market value of Rs.80,000/- per square yard, however, this argument of the counsel has to be noted only to be rejected. Though, the locational advantage can be taken as a basis for the appropriate guess work for arriving at an appropriate market value, however, the concrete market value cannot be determined with reference to a location and distance between the two properties with reference to Delhi only. Needless to say that within the city of Delhi itself, there could be so many places where the value of the commercial land could be even less than what has been awarded to the appellant. The entire aspect would depend upon the actual situational aspect, actual usage and the actual surrounding circumstances of a property. It has come on record that the above-said land-owner was granted higher value of commercial land because the said land was having established commercial mall with completion and occupation certificates, as well as, having the operational commercial spaces at the same place. Therefore, there can hardly be any parallel between the two land owners and their properties, as such.

35. Another aspect which this Court finds, rather surprising, is the deduction applied by the Reference Court, to the market value assessed for the land of the appellant. For determining the compensation payable for the land of the appellant, the Reference Court has applied 20% deduction to the determined market value on the ground that the 'purpose' of acquiring the

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land was to construct a metro Station, and other common facilities like parking etc., which would be used by the public at large, therefore, the project being a project of public importance, the appellant has to contribute towards that purpose, and hence, 20% deduction was required to be made. It deserves to be clarified in no uncertain terms that no charge can be levied upon the patriotism of a citizen. No land-owner can be put to extra disadvantage only for the reason that some project of public importance was to be developed on his land. The appellant being a land-owner was concerned with the market value of its land, of which it has been deprived for a wrong reason. The law requires that the appellant was fully entitled to the fair market value of the land without any ifs and buts. The appellant was under no liability to develop a Metro Station which could be used by the general public. It is the liability of the concerned govt. to spend money for construction of the Metro Station and the development of the necessary appurtenant facilities at the costs of the State revenue, if it is a public project. No private person can be forced to contribute towards a project only because such a project is of public importance and a person is having money or is to receive the money on account of acquisition of his land. The Hon'ble Supreme Court has held in case of **Subh Ram** Vs. **State of Haryana and others**, (2010) 1 SCC 444 that no deduction in payable compensation could be made on account of 'purpose' of acquisition. Hence, the deduction applied by the Reference Court is thoroughly irrational, unjustified, and hence, cannot be sustained. This kind of approach is not even expected from a Court of the level of the Reference Court, as such.

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However, probably, the Court below has been carried away by certain observations made in some judgments of the Hon'ble Supreme Court wherein without much dilating upon the nature of the land of sale exemplar (s) and extent of development on that land, it has been observed that if the land is being acquired for the development of a housing project, then the deduction of 30% as development charges was the well settled rule. However, neither there is any such settled rule nor can there be any such settled rule ever. The above-said observations of the Hon'ble Supreme Court have been made only as an attempt towards standardization of a guesswork for arriving at the market value of the acquired land in those cases where the sale exemplar was qua a land which fulfilled the contingency of full civic development. The concept of deduction on account of the development expenses has very limited application only in a case where the sale exemplar cited by the land-owner is of the property situated in the residential area developed by the govt. housing authority and is having all specified civic amenities and the acquired land is fully undeveloped land. In that case, there can be some justification for reducing the compensation to some degree on the rationale that to bring the acquired land of the land owner at par with the land contained in the sale exemplars, certain expenses would be required to be meted out, and hence, deductions by the reverse calculations would be required to be made. This concept has very limited application if the sale exemplar is from the land developed by a private developer where there is no guarantee of full development of civic amenities, as has been held by the Hon'ble Supreme Court in case of Lal

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Chand Vs. **Union of India** (2009) 15 SCC 769. This kind of deduction has no place even in a case where the sale exemplar is for a property situated in an unauthorized colony where there is no certainty of provision of all or any civic amenities, or is from the residential area where the houses have been constructed in a haphazard and random manner. Therefore, the concept of deduction on account of development expenses can be applied only in a case where there is an evidence qua the development activities in the area of sale exemplar and there is no development at all in the land being acquired. This can be very well understood if one reads the judgments of the Hon'ble Supreme Court rendered in **Anjani Molu Desai** Vs. **State of Goa** (2010) 12 SCC 707 and in the case of **Haryana State Agricultural Market Board** Vs. **Krishan Kumar** (2011) 15 SCC 297, simultaneously. Accordingly, the deduction of 20% applied by the Reference Court to the compensation payable for the land of the appellant assessed by that Court, is hereby set aside.

36. Another significant aspect which has been overlooked by the Reference Court is that the value of the remainder land of the appellant at that place has been diminished to a huge extent. So much so, the remainder land of the appellant has not even been given any independent access to the National Highway, despite the fact that in the objections raised under Section 5-A of the Act, the appellant had highlighted this aspect. The only passage available to the remainder land of the appellant is through the building of the Metro Station. Therefore, the access to and from the remainder land of the appellant can be only through the restricted area

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available under the building of the Metro Station. Because of such restriction, it may not even be possible to take heavy construction machinery to the land of the appellant easily. Not only that, the remainder land of the appellant is sandwiched on three sides by the other commercial lands of the other land-owners and on the side of the National Highway, the entire frontage of the land of the appellant has been covered by the building of the Metro Station which is having the height of about 32 metres. Accordingly, the remainder land of the appellant is not even visible from the National Highway. Hence, the status of the remainder land of the appellant having been degraded from the one being a prime land having its one entire side abutting to the National Highway to a land which is not even visible from the National Highway any more. Another interesting aspect in the case is that during hearing of the present appeals as well, the appellant had offered to sell the land to either the Metro Rail authorities or to the government at the same rates which were determined by the Reference Court for value of land 12 years back. Both the authorities were called upon to consider the proposal. However, none of them had shown interest to purchase the land even at such a depreciated price. Therefore, applying the standard test of price to be offered by an intending willing buyer, one can safely say that the value of the land of the appellant has been diminished, at least, to the extent of 50%. The remainder land of the appellant cannot now be put to any meaningful and paying commercial use. The appellant deserves to be compensated for the same. Hence, the appellant is entitled to 50% of the market value as a compensation for the damage to the value of

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the remaining land of the appellant. Although, learned counsel for respondent No.1 has submitted that no compensation on account of severance of land can be awarded to the appellant because its remaining land is left only in a single parcel without there being a division, however, this argument cannot stand in the way of the appellant in view of the provisions contained in Clause '*fourthly*' of Section 23(1) of the Act. Hence, the appellant is held entitled to the compensation to the extent of 50% of the market value assessed for the land, on account of diminishing of value of the remaining land of the appellant.

37. Needless to say that the appellant shall also be entitled to the statutory benefits and the interests at the rate prescribed in the Act, on account of delay in payment. The necessary payments are ordered to be made within 03 months.

38. In view of the above, RFA-2532-2021 filed by the land owner-Company is allowed in the above said terms. However, RFA-2529-2021 filed by the State of Haryana is hereby dismissed.

39. All pending miscellaneous applications in both the cases shall stand disposed of.

25.04.2024
parveen kumar

(RAJBIR SEHRAWAT)
JUDGE

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