

(2004) 05 P&H CK 0130

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1543 of 2000

Faridabad Gas Power Project, Faridabad

APPELLANT

Vs

Narender Kumar and others

RESPONDENT

Date of Decision : 29-05-2004

Acts Referred:

Citation : (2004) 4 RCR(Civil) 292

Hon'ble Judges : Ashutosh Mohunta, J

Advocate : Mr. Ashok Aggarwal, Sr. Advocate with Mr. A.P. Bhandari and Mr. Alok Jain, Advocates. Mr. M.S. Jain, Sr. Advocate with Mr. Adarsh Jain, Advocate, Mr. R.K. Jain, Advocate; Mr. Rajiv Sharma, Advocate; Mr. Pritam Saini, Advocate; Mr. B.S. Tewatia, Advocate; Mr. C.B. Goel, Advocate; Mr. Lokesh Sinhal, Advocate; Mr. Rajesh Chaudhary, Advocate. For the State of Haryana, Mr. Girish Agnihotri, Addl. A.G. with Mr. J.S. Sidhu, D.A.G., Haryana, Advocates for appearing Parties

Judgement

Ashutosh Mohunta, J.—This judgment will dispose of R.F.A. Nos. 1543, 1575, 1571, 1567, 1606, 1316, 1307, 1605, 1607, 1226, 1551, 1550, 1670, 1315, 889, 1272, 1546, 1553, 1549, 887, 1304, 1544, 1696, 1274, 1570, 1273, 1312, 1545, 1591, 1264, 1311, 1049, 1256, 1552, 1266, 1308, 1309, 886, 1576, 1265, 1305, 1227, 1569, 1574, 1548, 1685, 1225, 1568, 1224, 1051, 1313, 888, 1257, 1050, 1306, 1684, 1259, 1572, 1258, 1603, 1650, 1117, 1604, 1602, 1053, 1438, 1116, 1052, 1118, 1573, 1547, 1113, 1314, 1115, 1317, 1114, 1310, 1785, 1216, 1141, 1187, 1128, 1211, 1593, 1190, 1191, 1139, 1136, 1207, 1135, 1217, 1218, 1127, 1210, 1209, 1132, 1208, 12113, 1138, 1212, 1782, 2275, 2276, 2274, 1195, 2047, 1193, 2048, 1196, 1194, 2045, 1197, 2046, 1198, 1205, 1201, 1204, 1203, 1199, 1202, 1200, 1206, 1220, 1178, 1659, 1179, 2526, 1181, 2530, 1180, 1182, 2531, 1186, 2527, 1183, 1185, 2529, 1184 and 2528 of 2000 as common questions of law and fact are involved in all of them.

2. Pursuant to the government notification dated 16.8.1995 issued under Section 4(1) of the land Acquisition Act, 1894 (for short 'the Act'), 154.23 acres of land in village Mujeri; 67 acres of land in village Neemka; 73 acres of land in village

Sihi; 2412 acres of land in village Jhajru; and 0.96 acres of land in village Pyala falling in District Faridabad, was acquired for a public purpose, namely, for the construction of Gas Based Power Project (known as NTPC) at Faridabad. The Land Acquisition Collector, Faridabad (for short 'the Collector') awarded compensation at the rate of Rs. 2,50,000/ per acre for Chahi land and Rs. 2,00,000/ for the Banjar Kadim and Gair Mumkin land for land falling in the revenue estate of villages Mujeri, Neemka and Sihi. For the land acquired in village Jhajru, the Collector awarded compensation at the rate of Rs. 1,57,000/ per acre for Chahi land and Rs. 1,50,000/ per acre for the other quality of land. With regard to the acquisition of land in village Pyala, the Collector awarded compensation at the rate of Rs. 1,50,000/ for Chahi land. Besides, solatium at the rate of 30% and an additional amount at the rate of 12% per annum was also awarded to the landowners. Dissatisfied with the Award passed by the Collector, the claimants filed applications for making reference under Section 18 of the Act. According to them, the acquired land had great potential value and prayed for enhancement of compensation at different rates in different villages. The State of Haryana contested the references on the ground that the landowners had accepted the compensation without protest and also that the suit land was situated at a far off place from the urban population of Faridabad Ballabgarh towns and also that the suit land was of not much potentiality as it was merely a rural agricultural land.

3. Before the Additional District Judge, Faridabad, mainly the following two issues were raised by the parties :

1. What was the market price of the acquired land on the date of publication of notification under Section 4(1) of the Land Acquisition Act, 1894 ?

2. Whether the petitioners are estopped from filing the petition by their acts and conduct ?

4. After hearing the counsel for the parties and on going through the evidence adduced on record the Additional District Judge, Faridabad, vide the impugned judgments and decrees awarded compensation at the rate of Rs. 306/ per square yard i.e. Rs. 15,50,000/ per acre for the lands acquired in villages Mujeri, Neemka and Sihi. For the land acquired in village Jhajru, the compensation was awarded at the rate of Rs. 191/ per square yard, i.e. approximately Rs. 10,00,000/ per square yard. With regard to the acquisition made in village Pyala, the Additional District Judge, Faridabad, awarded compensation at the rate of Rs. 3,00,000/ per acre. With regard to the second issue, the main plea taken on behalf of the State of Haryana was that the claimants had accepted their compensation without raising any protest. On this ground, it was pleaded that the second proviso to Section 31(2) of the Act prohibits a person from making an application under Section 18 of the Act who had accepted the compensation otherwise than under protest. The learned Additional District Judge, Faridabad, did not agree with the argument raised in this regard on behalf of the State of Haryana. It was held by the District Court that as it had nowhere been pleaded

by the State of Haryana that the landowners, who were rustic and illiterate, were made aware of their legal right under Section 31(2) of the Act at the time of payment of compensation to them by the Collector, they could not be expected to raise protest at the relevant time. It was further observed by the District Court that the filing of the application under Section 18 of the Act was, in fact, acceptance of the compensation under protest by them and it is not necessary that the protest should only be in writing. In this way, the Additional District Judge, Faridabad, allowed the reference applications made by the landowners and enhanced the amount of compensation, as indicated above. Now, M/s. Faridabad Gas Power Project, National Thermal Power Corporation Ltd. (for short 'the NTPC') have filed the present appeals to challenge the judgments and decrees passed by the Additional District Judge, Faridabad, whereas the claimants have filed the appeals for enhancement of compensation.

5. Following two primary issues arise for consideration before this Court :

1. Whether the persons who received compensation without protest are competent to file application under Section 18 of the Land Acquisition Act, 1894 ?
2. What was the market price of the acquired land in villages Mujeri, Neemka, Sihi, Jhajru and Pyala at the time of acquisition ?

6. In order to raise arguments on the first issue, it has been contended by Mr. Ashok Aggarwal, learned Senior Advocate appearing for the appellant (NTPC), that the landowners, who had accepted the compensation without raising any protest, were not entitled to file application under Section 18 of the Act. He has contended that the Additional District Judge has erred in overlooking the mandatory provision under Section 31(2) of the Act. He submitted that specific bar has been imposed upon the persons accepting compensation without raising protest in the second proviso to subsection (2) of Section 31 of the Act. In support of his contention, he has placed reliance on *Wardington Lyngdoh and others v. The Collector, Mawkyrwat*, 1995(3) RRR 546 (SC) : AIR 1995 Supreme Court 2340; *Ashwani Kumar Dhingra v. State of Punjab*, 1992(2) RRR 139 (SC) : AIR 1992 Supreme Court 974 and *Land Acquisition Officer v. Shivabai and others*, 1997(2) RCR(Civil) 718 (SC) : AIR 1997 Supreme Court 2642.

7. The contention raised by Mr. Ashok Agarwal has been controverted by the learned counsel who have put in appearance on behalf of the respondents (landowners). It has been contended by them that it is not mandatory that there should always be a protest in writing. According to them, the respondents (landowners) had raised protest at the time of acceptance of the compensation determined by the Collector. According to them, it was not necessary that all the landowners should have raised protest at the relevant time. If some of the similarly situated landowners accept the compensation under protest, that should be deemed to be the protest on behalf of all of them. The filing of applications under Section 18 of the Act immediately after the acceptance of compensation amounts to acceptance of the same under protest. It has further been contended

that it was the duty of the State authorities to make aware the rustic village landowners about their legal right under the Act. In support of their contentions, the learned counsel appearing on behalf of the landownerclaimants placed reliance on *Mst. Dhan Kaur and others v. The State of Punjab*, 1984 RRR 345 (P&H) : 1984 PLJ 124; *Ajit Singh and others v. State of Punjab and others*, 1994(2) RRR 359 (SC) : 1994(2) PLR 416; *Sher Singh v. Union of India*, 1984 RRR 655 (P&H) : 1983 PLR 86; *Basant Kumar Jena and another v. State of Orisa and another*, AIR 1995 Orissa 288; *Lachhman Dass v. State of Himachal Pradesh and another*, 1988(1) RRR 494 (HP) : AIR 1988 Himachal Pradesh 39; *Kotipalli Chitti v. Special Deputy Collector of L.A. for ONGC, Rajahmundry*, 1997(1) All India Land Acquisition & Compensation Cases 341 and *The Jalandhar Improvement Trust v. The State of Punjab and others*, 2003(1) RCR(Civil) 292 (SC) : 2003(1) LACC 190.

8. After hearing the learned counsel for the parties and on going through the case law cited by them, I do not find merit in the contentions raised by Mr. Ashok Aggarwal, learned Senior Advocate, appearing on behalf of the appellant (NTPC). No doubt it is mandatory for the landowners to raise protest at the time of acceptance of compensation by them. However, a look at the relevant provision in the Act would show that the protest should not always be in writing. What should be the mode of protest ? It has nowhere been explained. A protest in writing or in any other mode can be expected from the rustic villagers only when they are made aware of their right about the same. Moreover, the filing of the application under Section 18 of the Act by them itself shows that the compensation was accepted by them under protest or that they were dissatisfied with the compensation for the acquired land given to them. In *Ajit Singh's* case (*supra*) it has been held by their Lordships of the Supreme Court that the "appellants have filed an application for reference under Section 18 of the Act that will manifest their intention. Therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation." Similarly, in *Sher Singh's* case (*supra*) a Full Bench of this Court has held that "the filing of a valid application under Section 18 of the Act for a reference must be deemed as a protest against the compensation awarded and the subsequent acceptance thereof would in no way bar the claim of enhancement thereof."

9. There is another aspect of the matter. It is an undisputed fact that the landowners are illiterate villagers. It is well settled law that a person against whom waiver is to be pleaded must be aware of his existing legal right. In the present case, the rustic villagers, whose lands have been acquired, cannot be expected to be aware of their legal right under the Act. It is not the case of the appellant (NTPC) or the State of Haryana that the landowners were made aware of their legal right under Section 31(2) of the Act. It was the duty of the authorities to tell the landowners in unambiguous terms that they had a right to accept the compensation under protest and claim enhancement thereof thereafter. In this view of mine, I am forfeited by the dictum of their Lordships of the Division Bench of the Himachal Pradesh High Court in *Lachhman Dass's* case

(supra), wherein it has been held that "the person against whom waiver is to be pleaded must be aware of his existing legal right or privilege which, by his words, deed or conduct, he must be shown to have intentionally and voluntarily given up." Further it was held that in order "that estoppel may operate against a person, it must be shown that the existence of a fact, or a certain state of things, is represented by him or his authorised agent...." As already observed above, the authorities concerned never pleaded or proved the fact before the Court that the landowners were made aware of their legal right by them. In the absence of failure of duty on their part, no estoppel or waiver can be pleaded against the landowners.

10. Still further, it is an undisputed fact that a number of the similarly situated landowners had accepted the compensation after raising protest against the evaluation of the acquired land by the Collector. In case they become entitled to file an application under Section 18 of the Act, then the same relief cannot be denied to the similarly situated other landowners whose land had also been acquired by the same notification and in case of enhancement of compensation for the acquired land of one category of the landowners, the same relief cannot be denied to the other. In the case reported as *Lal Singh and others v. State of Haryana and others*, 2003(1) RCR(Civil) 718 (P&H) : 2003(1) All India Land Acquisition & Compensation Cases 252, it has been held by this Court that "the petitioners cannot be denied compensation as allowed to the other coowners similarly placed, which is certainly violative of Articles 14 and 21 of the Constitution of India, as they have been unreasonably discriminated against the similarly situated persons." On this analogy, I am of the considered opinion that similarly situated persons, who had accepted the compensation without raising protest, cannot be denied the right of filing application under Section 18 of the Act. In *Basant Kumar Jena's case* (supra) it was held by a Division Bench of the Orissa High Court that law does not require the protest to be in writing. Oral protest is permissible in law. It was further held that a contrary view would not only defeat the purpose of the provision but would also work hard against the citizens. The Hon'ble Division Bench further made it clear that for raising such a bar to the maintainability of reference, it must be proved that the Collector had explained the rustic villagers the provisions of the Act. In *Bakshi Ram Jain v. State of Haryana*, 1997(3) RCR (Civil) 637 (P&H) : 1997(3) PLR 831, it has been held by a Division Bench of this Court that mere filing of application for reference under Section 18 of the Act, manifests the intention of the claimant to accept the award under protest and it is for the State to prove as a matter of fact that the claimant had accepted the compensation voluntarily, without registering any protest by his words or conduct or the same were of such a nature that tantamounts to accepting the compensation without any reservation.

11. The authorities cited by the learned counsel for the appellant (NTPC) are not relevant to the facts of the present case. In *Ashwani Kumar Dhingra's case* (supra) the facts were that two coowners filed a writ petition in the High Court challenging the acquisition proceedings which was ultimately allowed. The Letters

Patent Appeal filed by the State of Punjab was dismissed. However, the order passed by the learned Single Judge was modified to the extent that the notifications issued under the Land Acquisition Act were quashed in so far as they related to the land of the writ petitioners. Thereafter, the third coowner Ashwani Kumar Dhingra also filed a writ petition challenging the acquisition proceedings which came up for hearing before the same Bench which decided the earlier Letters Patent Appeal. The writ petition was dismissed. Before the Hon''ble Supreme Court, it was argued that earlier writ petition filed by the two coowners, who were none other than the brother and father of Ashwani Kumar Dhingra, must have been deemed to have been filed by them on his behalf also. Ashwani Kumar Dhingra filed the writ petition approximately five years after the date of notifications under Sections 4 and 6 of the Act as well as the award given by the Collector. It was urged that since the compensation was accepted by Ashwani Kumar Dhingra under protest, the writ petition challenging the acquisition proceedings was maintainable. In these circumstances it was held by the Hon''ble Apex Court that the acceptance of compensation under protest was not with a view to safeguard his right to challenge the acquisition itself but only to safeguard his right to require the matter being referred to by the Collector for determination of the compensation. In the present case the facts are entirely different. Herein the claimants filed the application for making reference under Section 18 of the Act immediately after the receipt of compensation awarded by the Collector. In Wardington Lyngdoh's case (supra) the compensation was received by the claimants under the written agreement wherein it was specifically stated that the total amount of compensation arrived at was acceptable to them. In these circumstances, it was held by their Lordships of the Supreme Court that the claimants, who had received the compensation under the agreement, were not entitled to make any reference under Section 18 of the Act. In the same manner the facts in Land Acquisition Officer v. Shiv Bai and others (supra) are also different and are not relevant for adjudicating the controversy involved in the present case.

12. The crux of the aforementioned discussion is that onus was on the State of Haryana as well as the NTPC to prove the point that the landowners were made aware by them of their legal right to accept the compensation awarded by the Collector under protest. The said onus the authorities concerned have failed to discharge. In such a situation, the landowners, who are rustic villagers and had accepted the compensation without registering the protest in writing, cannot be said to have waived their right to seek reference under Section 18 of the Act. Mere filing of an application for making reference under Section 18 of the Act immediately after the acceptance of compensation by the landowners, tantamounts to accepting the compensation under protest. Thus, the first question is answered in favour of the respondents (landowners) and against the appellant (NTPC).

13. Now I proceed to deal with the question of determination of market price of land at the relevant time in the five villages, namely, Mujheri, Sihi, Neemka,

Jharju and Pyala. As villages Mukheri, Sihi and Neemka are located at a short distance to each other, and the Collector as well as Additional District Judge, Faridabad, have assessed the compensation for all the three villages at the same rate, I propose to take up the assessment of the market value of the lands acquired in these villages together.

Mujheri, Sihi and Neekma

14. The argument of the learned counsel for the appellant (NTPC) is that the Reference Court has determined the compensation of the acquired land at the rate of Rs. 306/ per square yard without any rhyme and reason. According to him, the potentiality of the land acquired in the present case was not the same as the land which was the subjectmatter of the judgment dated 26.8.1999 passed in R.F.A. No. 3502 of 1998 by this Court. According to the learned counsel, the land covered in the judgment dated 26.8.1999 was on the Western side of the Agra Canal, whereas the land in the present case situated on the Eastern side thereof. Further, the contention of the learned counsel for the appellant is that the land acquired in the present case is a pure agricultural land which was not surrounded by any building and no construction activity was going on nearby at the time of acquisition. The counsel contends that the Reference Court ought to have accepted the average of the sale instances of the previous three years depicted in Exhibit R7 and assessed the market price of the acquired land accordingly. He contends that the compensation awarded to the claimants of an adjoining village cannot be made the basis for determining the market value of the land. In support of his contention he has placed reliance on *Kanwar Singh and others v. Union of India*, 1998(4) RCR(Civil) 701 (SC) : 1998(8) SCC 136.

15. On the other hand, the argument advanced by the learned counsel for the claimants is that the Reference Court had determined the market value of the land at a lower rate than the actual market value thereof at the time of acquisition. It has been contended on behalf of the claimants that the acquired land in villages Mujheri, Sihi and Neemka is located near the BallabgarhTigaon road. He contends that two gas godowns, six factories and one farm house as well as a poultry farm were in existence on the road adjacent thereto at the time of the acquisition. He further contends that the acquired land in these villages has great potential for being used for industrial purpose. The land acquired by Haryana Development Urban Authority for development of Sectors 2 and 3, Faridabad, is also abutting the acquired land. Further contention of the learned counsel for the claimants is that the Abadi of Ballabgarh Town had reached upto the land acquired in the present case as well as the land which was acquired for the development of Sectors 2 and 3, Faridabad. The contention of the learned counsel appearing on behalf of the claimants is that a number of colonies by the names of Shiv Colony, Bhikam Colony, Dharamvir Colony, Trikha colony etc. have come up near the land acquired for NTPC and Sectors 2 and 3. In view of these development activities, it has been contended on behalf of the claimants that the Additional District Judge, Faridabad, has awarded compensation at a lesser rate

than the market value prevailing at the time of acquisition.

16. After hearing the learned counsel for the parties and on going through the evidence adduced on record, I do not find any merit in the contentions raised by the counsel appearing on both the sides. So far as the contention raised by the learned counsel appearing on behalf of the appellant (NTPC) to the effect that it was purely an agricultural land and it had no potential for being used for industrial purposes is concerned, this Court cannot shut its eyes to the evidence of development activities going on nearby and the location of the land adjacent to the Ballabgarh Tigaon Road. The Court also takes judicial notice of the fact that it is the common practice among the villagers to mention the lesser price in the sale deeds than the actual sale consideration in order to evade the stamp duty. Thus, the sale instances produced on behalf of the State of Haryana as well as the NTPC cannot be relied upon for determining the market value of the acquired land in the present case. It is the undisputed fact that the revenue estates of these three villages abut each other and are located very close to the Ballabgarh Tigaon road. Besides the statements of the witnesses examined by the claimants, it has even been admitted by the witnesses, who appeared on behalf of the State of Haryana as well as the NTPC, that numerous factories had been set up in the close vicinity of the acquired land at the relevant time. It is also admitted that a Water Treatment Plant also existed there. R.W.4 Dharambir Singh, Deed Writer, District Courts, Faridabad, admitted in cross-examination that the Abadi of Ballabgarh Town reached upto village Mujheri. R.W.9 K.S. Muku Uppadhaya, who is Deputy Manager Rehabilitation and Resettlement NTPC, Mujheri, admitted in cross-examination that there were 23 old factories on the Mujheri Road, R.W.10 Shri Naveen Kaushik, who is Patwari in DRO Office, Faridabad, admitted in his cross-examination that the land in Sector 2, Faridabad, had been acquired by the HUDA. Agra Canal flows in between Sector 2, Faridabad and the acquired land in the present case. It also stood admitted by him that on the Ballabgarh Tigaon road there are residential houses as well as markets on both sides thereof. In view of such like admissions by the witnesses examined by the State of Haryana as well as by the NTPC, one thing becomes clear that certainly residential houses as well as commercial and industrial units were being set up in the close vicinity of the acquired land in the present case at the relevant time. Sectors 2 and 3, Faridabad, were also being developed nearby by the HUDA. The population of Ballabgarh Town had reached upto villages Sihi, Neemka and Mujheri. When such developments were taking place at a short distance, then certainly the prices of nearby agricultural land also pick up pace. In such a situation, the sale instances adduced by the State or the NTPC lose relevance.

17. It was hotly contended by Mr. Ashok Aggarwal, learned Senior Advocate, appearing on behalf of the NTPC, that there was a lot of difference in the potentiality of the land situated on the Eastern side of the Agra Canal as compared to the potentiality of the land situated on the Western side of the land canal. According to him, the acquired land in the present case is located on the

Eastern Bank of canal, which is not of much potentiality, and its market value cannot be determined on the basis of the sale instances of land on the Western side of the canal.

18. I do not find any force in the argument advanced by Mr. Ashok Aggarwal, learned Senior Advocate. No doubt there may be difference in prices of the lands located on both the sides of the Canal, but it does not mean that while determining the market value of the land the Court would not taken into consideration other relevant factors and determine the price on the basis of the mutations entered in the revenue record. It has already been mentioned above that in the sale deeds actual sale considerations are usually not entered. Prices lesser than the actual sale considerations are usually entered in order to evade the stamp duty. Further it has already come in evidence that the abadi of Ballabgarh Town has reached upto the acquired land in the present case. It has also been admitted by the witnesses examined by the State of Haryana that factories and other commercial activities had started taking place in the close vicinity at the relevant time. Even Ashok Kumar, Patwari (R.W.7), admitted in crossexamination that the value of the land in villages Mukheri and Sihi was not less than Rs. 500/600 per square year for the last three years. His statement was recorded on 11.3.1999.

19. However, merely on the basis of the oral testimonies in the absence of the documentary evidence, market value of the land cannot be determined. The site plans, Aksshajras as well as the Master Plan of Faridabad, show that there is similarity of location and potentiality for being put to urban use between the land acquired in villages Sihi, Mujheri and Neemka by the NTPC for construction of 400 M.W. Faridabad Gas Based Power Project and the land acquired by the HUDA for the development of Sectors 2 and 3, Faridabad. The unrebutted evidence adduced by the landowners coupled with the admissions made by the witnesses examined by the NTPC and the State Government add weight to this assertion. As already mentioned by the Additional District Judge, Faridabad, in the impugned judgments, earlier land in village Sihi was acquired for the development of Sector 2, Faridabad, vide notification dated 23.11.1992. On the reference applications filed by the landowners, the District Court vide award dated 29.4.1998 had awarded compensation at the rate of Rs. 250/ per square yard. The claimants as well as the State Government went to the High Court to challenge the award given by the District Court in the said case. This Court in R.F.A. No. 3502 of 1998 made enhancement in the compensation awarded by the District Court, by holding that the market value of the acquired land in Sector 2, Faridabad, was Rs. 291/ per square yard. As that acquisition was made in the year 1992, the Additional District Judge, Faridabad, vide the impugned judgments on the basis of the Division Bench authority of this Court reported as Tek Chand and others v. State of Haryana and another, 1996(1) RRR 680 (P&H) : 1996 PLJ 13, gave premium at the rate of 5 per cent per annum in the market value of the land acquired in villages Sihi, Neemka and Mujheri by the NTPC and in this way awarded compensation to the claimants at the rate of Rs. 306/ per

square yard. While determining the market value of any acquired land, the best evidence is the previous precedent. In the present case the claimants have relied upon judicial precedent itself, whereby the market value of the land acquired vide notification dated 23.11.1992 in village Sihi was assessed at Rs. 291/ per square yard by this Court in R.F.A. No. 3502 of 1998. Thus, it would be safe to rely on this piece of evidence while determining the market value of this case also. Although the land acquired in the present case is on the Eastern side of the approximately 50 ft. wide Agra Canal, nevertheless it would not make any difference while determining the price of the acquired land in the present case. It is pertinent to mention here that there is a bridge over the Canal which makes accessibility to the Western side from the Eastern side. In this view of the matter, I am of the considered opinion that the Additional District Judge, Faridabad, has adopted a very pragmatic approach while determining compensation for the land acquired by the NTPC in villages Sihi, Mujheri and Neemka. When the compensation for the land having similar potentiality and proximity in location had already been determined by this Court in the year 1992 and the judgment had attained finality, five percent premium per year per square yard in the compensation was quite reasonable and did not require any change, upward or downward. The judgment cited by Mr. Ashok Aggarwal, learned Senior Advocate, in Kanwal Singh's case (supra) has no relevance to the facts of the present case. In the present case the land acquired by the NTPC has been proved to be having similarity in potentiality and location to the land acquired in the year 1992 in village Sihi for the development of Sector 2, Faridabad. Even it has been admitted by the witnesses examined by the NTPC and the State of Haryana that the market value of the land acquired in villages Sihi, Mujheri and Neemka has much higher value than the compensation awarded by the Collector. It is well settled that proximity of the town and a reasonable probability to its assimilation into building and accommodation sites, gives the agricultural land higher value. In a very recent judgment reported as V. Hanumantha Reddy (Dead) by Lrs. v. The Land Acquisition Officer and Mandal R. Officer, 2004(1) RCR(Civil) 496 (SC), it has been held by their Lordships of the Supreme Court that the assessment of land abutting National Highway fetches more price than that falling at a distance. Both cannot be equated. In the present case, the proximity of the acquired land to Sectors 2 and 3, Faridabad, and the commercial activities going on in the close vicinity would certainly enhance its market value and the compensation could not be determined merely on the basis of agricultural potentiality.

20. In order to claim enhancement in compensation, the landowners (claimants) have placed reliance on Ex. R5, Ex. R6 and Ex. R7. Ex. R5 is a copy of the sale deed dated 30.6.1993 vide which Smt. Kamla sold land measuring 1 kanal 11 marlas in favour of Haria for a sum of Rs. 30,000/-. Ex. R6 is a copy of the sale deed dated 23.6.1996 vide which Raghbir and Ram Lal sold land measuring 1 kanal and 10 marlas in favour of Manoj Goyal for Rs. 40,000/-. Ex. R7 is a copy of the mutation of the sales having taken place in the year 1992/93. So far as the mutation (Ex. R7) is concerned, it is well settled that mutations are never taken

into consideration for determining the market value of a piece of land. Thus, it being a mutation, Ex. R7 cannot be taken note of. Ex. R5 is the sale deed dated 30.6.1993 vide which land measuring 1 kanal and 11 marla was sold. Besides being much prior in time, Exhibit R5 is a sale instance which has covered a very small piece of land. It being a sale instance of a very small piece of land, cannot take the shape of precedent for determining market value of the land acquired in the present case, Ex. R6 is the sale instance dated 23.6.1996, vide which land measuring 1 kanal 10 marlas was sold. It is also a sale instance which deals with a very small piece of land. Moreover, it is a post dated sale instance. In the present case, the notification under Section 4 of the Act is dated 16.8.1995, whereas the sale deed Ex. R6 is dated 23.6.1996. It being a post notification sale, no reliance can be placed thereon. Consequently, the evidence adduced by the claimants for determining the market value of the acquired land in the present case, cannot be taken into consideration.

In the light of above discussion, I uphold the findings of the Additional District Judge, Faridabad, given in the impugned judgments so far as the determination of the market value of the acquired land in villages Sihi, Mujheri and Neemka is concerned.

Jhajru

21. Now, I take up the determination of the market value of the land acquired in village Jhajru, Tehsil Ballabgarh, District Faridabad. In this village the Government of Haryana had acquired 24.12 acres of land for the construction of Gas Based Power Plant for the NPTC. The Collector had awarded compensation at the rate of Rs. 1,57,000/ per acre for the Chahi land and Rs. 1,50,000/ per acre for the Ghair Mumkin and Banjar Kadim land. The Additional District Judge, Faridabad, vide judgment and decree dated 21.2.2000, by placing reliance on the judgment dated 4.5.1998 (Ex. P8) whereby compensation at the rate of Rs. 155/ per square yard was awarded by the District Court in respect of the land acquired for the development of Sector 59, Faridabad, awarded compensation at the rate of Rs. 190/ per square yard by granting premium on the sale price at the rate of 5 per cent per annum. The sale instance (Ex. P8) relates back to 10.6.1988 vide which the land had been acquired by the State of Haryana for development of Sector 59, Faridabad. The acquired land in the present case adjoins Sector 59, Faridabad. The sale instances Ex. R8, Ex. R9 and Ex. R10 adduced by the State of Haryana, being copies of mutations, could not be relied upon in view of Sections 35 and 91 of the Indian Evidence Act. It has been so held by this Court in *State of Punjab and others v. Sukhdev and others*, 1990 LACC 358. The Additional District Judge, Faridabad, has taken a very pragmatic view of the matter while determining the compensation payable to the landowners. I do not find any ground to interfere with the well reasoned judgment dated 21.2.2000. The detailed reasons given in the earlier paras while determining compensation for the acquisition made in villages Sihi, Mujheri and Neemka apply mutatis mutandis in the present case. I do not feel any necessity to repeat the same for

determining compensation for the land acquired in village Jhajru. Thus, I uphold the judgment passed by the Additional District Judge, Faridabad.

Pyala

22. Merely 0.86 acres of land was acquired in village Pyala. This village is at a short distance from village Jhajru. The village is also located in the close vicinity of Sector 59, Faridabad. The Collector awarded compensation for the land acquired in this village at the rate of Rs. 1,50,000/ per acre irrespective of the quality of land acquired. The Additional District Judge, Faridabad, vide judgment dated 21.2.2000 enhanced the rate of compensation to Rs. 3,00,000/ per acre by applying the guess work. The average of the sale prices (Ex. R2 and Ex. R4), adduced by the State of Haryana, pertained to the years 1992 to 1995. The argument of the NTPC is that the Additional District Judge, Faridabad, ought to have determined the market value on the basis of the sale instances adduced by the State of Haryana (Ex. R2 and R4) and he has erred in determining the market value by using the guess work by ignoring the documentary evidence available on record.

23. I do not find any merit in the contention raised by Shri Ashok Aggarwal, learned Senior Advocate, appearing for the NTPC. As already observed above, the copy of the mutation is not admissible piece of evidence in order to prove the market value of the land as has been held in the case State of Punjab v. Sukhdev (supra). Thus, Exhibits R2 and R4, which are copies of mutations of sale pertaining to the period 1992 to 1995, could not be taken into consideration for determining the market value of the land acquired in village Pyala. Exhibits P1 and R7 are the final development plans for Faridabad Ballabgarh Controlled area, which show the exact location of the acquired land. The acquired land is situated on the boundary of village Jhajru and is also abutting Sector 59, Faridabad. In the absence of direct evidence available on record, the Additional District Judge used the guess work and determined the market value of the acquired land at Rs. 3,00,000/ per acre. As per Aks Shajra (Ex. R3), the acquired land is situated at a distance of 2 1/2 to 3 kilometers from Delhi Mathura Road. It has come in the statement of Hukam Singh, who is Patwari of village Pyala, that the acquired land is surrounded by factories such as Bharat Petroleum Corporation Ltd. and Indian Oil Corporation etc. It has also been admitted by him that the land was acquired by NTPC for commercial purposes. It proves that the acquired land in village Pyala had a great potential for being used for commercial purposes. In case the Additional District Judge, Faridabad, has determined the market value of the acquired land at Rs. 3,00,000/ per acre by using the guess work, it cannot be considered to be on the higher side than the prevailing price at the relevant time. Consequently, I uphold the judgment dated 21.2.2000 passed by the Additional District Judge, Faridabad, for determining the market value of the land acquired in village Pyala.

Resultantly, I do not find any merit in all the appeals filed by the NTPC as well as by the landowners. I dismiss all the appeals and uphold the judgments and

decrees passed by the Additional District Judge, Faridabad.

Appeals dismissed.