
(2016) 06 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : RFA No. 3161 of 2009 (O&M) and other connected cases

Jasmer Singh

APPELLANT

Vs

State of Punjab through Land Acquisition Collector

RESPONDENT

Date of Decision : 01-06-2016

Acts Referred:

Citation : (2016) 06 P&H CK 0042

Hon'ble Judges : Rameshwar Singh Malik, J.

Bench : Single Bench

Advocate : Surjit Singh Swaich, Advocate, I.D. Singla, Advocate, Parshotam Lal Singla, Advocate for Gurbachan Singh Bhatia, Advocate, Naresh Kaushal, Advocate, R.K. Dhiman, Advocate, P.C. Dhiman, Advocate, Deepak Sharma, Advocate, Gurvinder Sandhu, Advocate, Vijay L

Final Decision : Disposed Off

Judgement

Rameshwar Singh Malik, J. (Oral) - This batch of 522 appeals out of which 272 appeals bearing RFA Nos. 2491 to 2507, 2610, 3229 to 3272 of 2007; 1, 2, 3, 5, 366, 367, 559 to 568, 1087 to 1104, 1112, 1289, 1639 to 1669, 3419 to 3432, 3445 to 3453, 3499 to 3515, 3730 to 3738, 5327 to 5348, 5351, 5352 of 2008; 2688, 3767 to 3772, 3850 to 3872, 5461, 5462, 5493 of 2009; 1100 to 1127 of 2010; 7194 of 2012; 1279, 1283 to 1289 of 2014, filed by the Railway Department and 250 appeals bearing RFA Nos. 2921 to 2938, 3908, 4397 to 4424, 4490 to 4493 of 2007; 447, 659, 676, 1358, 1720 to 1722, 1772 to 1779, 1785 to 1787, 1888, 1895 to 1898, 1902 to 1905, 1907 to 1912, 1927 to 1929, 1951 to 1953, 2458 to 2465, 2543 to 2555, 2632 to 2635, 2667, 2668, 2868, 3021, 3022, 3241, 3587, 3588, 3719 to 3725, 3783, 3975, 4565, 4596 to 4600, 4836, 4851, 4954, 5201, 5219 to 5225, 5366 to 5380, 5494 and 5573 of 2008; 366 to 371, 375 to 377, 416, 1954, 2063, 2259, 2260, 2888, 2926, 2927, 3127 to 3131, 3161, 3354, 3400, 3410, 3411, 4896, 5918 of 2009; 1812 to 1815, 3251, 3284, 3489, 4196 to 4200, 4640 to 4645, 4650 to 4652, 4893, 5049, 5206 to 5210, 5212 of 2010; 2006 to 2016, 3691 to 3693, 4325, 7372 of 2011;

781 of 2012; 1093, 1780, 3816 to 3820, 4282 and 4283 of 2013 filed by the landowners, alongwith cross objections bearing Nos. XOBJR Nos. 28-CI-2008 to 30-CI-2008, 5-CI, 39-CI, 72-CI, 83-CI, 84-CI- 2009, 164-CI-2010, 28-CI-2014, 62-CI, 63-CI, 65-CI to 71-CI, 73-CI, 74- CI, 235-CI to 237-CI and 244-CI-2016, is being decided vide this common order, as all these appeals arise out of the same acquisition and raise identical questions of law and facts. Since the purpose of the acquisition was the same namely; laying down of Railway Line from Chandigarh to Ludhiana, however, notifications were different, it would be appropriate to deal with the evidence either village-wise or common evidence for more than one villages, wherever fact situation so warrants.

Villages Kambala and Kambali

2. With the consent of learned counsel for the parties and for the facility of reference, facts are being culled out from RFA No. 3161 of 2009 (Jasmer Singh v. State of Punjab).

3. Briefly put, facts of the cases pertaining to abovesaid two villages namely Kambali and Kambala, are that land measuring 258 kanal 8 marla was sought to be acquired out of revenue estate of village Kambala, Tehsil and District Ropar (Now District Mohali), at public expenses for public purpose namely; laying down railway line from Chandigarh to Ludiana as well as for construction of Railway Station at Mohali. Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 ("the Act" for short), came to be issued on 16.6.1999, which was followed by notification dated 14.6.2000 under Section 6 of the Act. The Land Acquisition Collector ("LAC" for short), vide his award No.1 dated 4.6.2000, assessed the market value of the acquired land at the uniform rate of Rs. 10 lacs per acre without resorting to any belting system. The learned reference court, vide impugned award dated 15.12.2008, assessed the market value of the acquired land of village Kambala at the uniform rate of Rs. 17 lacs per acre. The learned reference court also granted 20% of the abovesaid market value, as compensation, on account of severance charges, but only to some landowners.

4. Similarly, land measuring 45 kanal was sought to be acquired from the revenue estate of adjoining village Kambali. Another piece of land measuring 11 kanal 3 marla was also sought to be acquired out of this very village Kambali. Accordingly, notification dated 24.6.2000 was issued under Section 4 of the Act qua the land measuring 45 kanal and for the land measuring 11 kanal 3 marla, it was issued on 6.2.2001. Purpose of the acquisition was same. LAC, vide his award No.6 dated 9.4.2001 passed qua land measuring 45 kanal and award No. 17 dated 19.3.2002 passed qua land measuring 11 kanal 3 marla, assessed the market value of both these pieces of land at the same rate, i.e. Rs. 8 lacs per acre.

5. Feeling aggrieved, landowners filed their objections under Section 18 of the Act and as a consequence thereof, land references were forwarded to the learned

reference court for its decision. The learned reference court, vide impugned award dated 30.4.2007, decided the land references of both the abovesaid pieces of land, i.e, 45 kanal and 11 kanal 3 marla for village Kambali, assessing the market value of the acquired land at the uniform rate of Rs. 17 lacs per acre. The learned reference court also granted 50% of the abovesaid market value, as compensation, on account of severance charges.

6. Both the parties felt aggrieved against the abovesaid impugned awards passed by the learned reference court. The beneficiary-department, i.e. Northern Railway, is seeking reduction in the amount of compensation awarded to the landowners whereas the landowners are seeking further enhancement in the amount of compensation for their acquired land. That is how, all these appeals are being decided together.

7. Thrust of arguments raised by learned counsel for the landowners is that the auction sale by way of Ex.P4 ought to have been made the basis for assessing the market value of the acquired land but the learned reference court has illegally rejected the same. It is submitted by learned counsel for the landowners that once a plot was auctioned by the Government department by way of Ex.P4 out of adjoining area in Phase IX, Mohali, learned reference court committed a serious error of law, while rejecting this sale instance. In support of their submissions, learned counsel for the landowners place reliance on the judgment of the Hon''ble Supreme Court in Maj. Gen. Kapil Mehra and others v. Union of India and another, 2015 (2) SCC 262. They concluded by submitting that the Hon''ble Supreme Court in Maj. Gen. Kapil Mehra's case (supra), has made perpetual lease deeds of residential plots, as basis for assessing the market value, after applying a reasonable cut of 60%, to which they would also not be averse. However, they submit that no cut is warranted to be imposed on account of development charges because no development of any kind, whatsoever, was required for laying down the railway line.

8. Per contra, learned counsel for the beneficiary department- Northern Railway, submits that Ex.P4 cannot be made the basis for assessing the market value of the acquired land because that was a sale in developed area, whereas the acquired land was not in developed area. In support of his contentions, learned counsel places reliance on the judgment of this Court in Charan Singh and another v. Union of India, 2004 (1) RCR (Civil) 467. He also submits that the acquired land was a simple agricultural land and since it could not be put to any other use, it could not be compared with the plots sold by auction in the developed area. He concluded by submitting that since there was no sufficient evidence for any further enhancement of compensation for the acquired land over and above what was granted by LAC, learned reference court committed a serious error of law, while assessing the market value of the acquired land @ Rs. 17 lacs per acre, on the basis of market value of the land of village Sohana which was situated far away and also because land was acquired out of revenue estate of Sohana for residential sectors, by the Punjab Urban Development Authority

("PUDA" for short).

9. Having heard learned counsel for the parties at considerable length, after careful perusal of record of the cases and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that appeals filed by the beneficiary-department are bereft of merit and are liable to be dismissed, whereas the appeals filed by the landowners deserve to be partly allowed, suitably enhancing the compensation for their acquired land. To say so, reasons are more than one, which are being recorded hereinafter.

10. It is a matter of record that no sale deed was produced by either of the parties from the revenue estate of village Kambala. However, couple of the sale deeds were produced by the landowners from village Kambali, but those were pertaining to very small pieces of land, i.e. 1 marla and 1½ marla, and were also post acquisition sale instances. This was the reason that learned reference court rightly not considered these sale exemplars for the purpose of assessing the market value of the acquired land.

11. So far as location and potentiality of the acquired land is concerned, a bare perusal of the site plan Ex.PW2/A, available at page 203 of the lower court record ("LCR" for short), and also other site plans, including an Index Plan produced before this Court by learned senior counsel for the beneficiary department, during the course of hearing, would make it crystal clear that revenue estate of village Kambali was adjoining Chandigarh and revenue estates of both these villages Kambali and Kambala were adjoining with each other. The acquired land was situated at a prime location and was having immense potentiality. Categorical averments taken by the landowners in their objections under Section 18 of the Act have also gone uncontroverted which amounts to admission by the beneficiary department.

12. The scanned copy of the Index Plan, furnished before this Court by the learned senior counsel for the Railways Department, during the course of hearing, showing different villages between Chandigarh and Morinda, through whose revenue estates Chandigarh-Ludhiana railway line has been laid, is being made part of this order for ready reference. This Index Plan is also taken on record as Mark A. Different villages have been put in four Blocks; A, B, C and D by this Court for the facility of reference. Villages Kambali, Kambala, Chilla, Manauli and Raipur Khurd are put in Block A. Villages Dhurali, Sukhgarh, Saneta, Raipur Kalan, Maujpur and Ledi are put in Block B. Villages Sawara, Landran, Kailon, Tole Majra, Khuni Majra and Badala Nayashahar are put in Block C. Likewise, remaining villages Khanpur, Bhagomajra, Badali, Peer Sohana, Simbal Majra, Gharuan, Shukrullapur, Marauli Kala, Marauli Khurd and Ramgarh Manda are put in Block D. It is pertinent to note that the cases of villages put in Block B have been decided vide separate order passed today in RFA No. 5463 of 2009 (Deputy Chief Engineer, Construction-II Northern Railway, Chandigarh and another v. Jagir Singh and others).

13. In the absence of availability of any other relevant sale instances, learned reference court ought to have considered the auction sale Ex.P4, whereby the plot measuring 16.6 x 82.6 feet (152.35 sq. yards) being a shop-cum-office, was sold in phase IX, Mohali. This plot was sold for Rs. 13,39,000/- @ Rs. 4,27,95,280/- per acre. Another objection raised by learned senior counsel for the beneficiary department regarding this sale instance Ex.P4 was that it was only an allotment letter which might have not ultimately matured in a concluded sale. However, said argument has been found wholly misconceived and the same is only to be noted to be rejected. It is so said because authenticity and genuineness of this document has never been disputed by the beneficiary department at any point of time and rightly so, it being a matter of record.

14. So far as the judgment relied upon by learned senior counsel for the beneficiary department in Charan Singh's case (supra), is concerned, the same has not been found of any help to him for the reason that it was rendered in an entirely different fact situation. Further, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judge made law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon''ble Supreme Court in Padmasundara Rao (Dead) v. State of Tamil Nadu and others, 2002 (3) SCC 533.

15. Further, a Division Bench of this Court in Harchal Singh v. State of Punjab, 1991 PLJ 20, found both these villages Kambali and Kambala to be at par and enjoying same potentiality for urbanisation. It was further held by the Division Bench in para 7 of its judgment that once urbanisation has come up and the acquired land has gained potentiality for that purpose, it will be wholly wrong to classify the land on the basis of its agricultural quality. In fact, judgment of the Hon''ble Supreme Court in Maj. Gen. Kapil Mehra's case (supra), has been found squarely applicable to the facts of the cases in hand, because the Hon''ble Supreme Court in para 15 of the judgment, has made sale by perpetual lease deeds of residential plots, to be the basis for assessing the market value of the acquired land. In that case also, perpetual lease deeds would be executed by Government agency namely Delhi Development Authority for small plots, vide Ex. A-7 to A-10.

16. Since size of plots in the exemplars was small, the Hon''ble Supreme Court applied cut on three grounds; firstly, to the extent of 20% on account of it being of competitive sale, secondly on account of smallness of plots sold by way of perpetual lease deeds and thirdly, on account of development charges. After combining all the three components, the Hon''ble Supreme Court applied 60% cut on the market price disclosed by the sale exemplars. Relevant observations made by the Hon''ble Supreme Court in para Nos. 15 to 17, 20, 21, 24 to 29, 32 and 41, read as under:-

15. Appellants have produced Exs A7 to A10-four perpetual lease deeds of residential plots in Pocket C of Vasant Kunj Area between September 1995 to

December 1996, the details of which are as under :-

Exh.

Sale Date

Plot No.

Size (Sq.Mtr.)

Sale Price (Rs.)

Rate (Rs. Per sq. yd.)

A-7

22.09.95

59C

218

5,75,05,000/-

28,719/-

A-8

02.02.96

5C

220

96,55,000/-

36,695/-

A-9

02.02.96

8C

231

1,01,61,000/-

36,779/-

A-10

10.12.96

13C

242

1,37,60,000/-

47,542/-

16. Exs A7 to A10 are lease deeds of small plots-executed by DDA. Plots in the above lease deeds are in the same vicinity of the acquired land and High Court had taken the same as comparable sales. The size of the plots covered in the exemplars are smaller. If there is a dissimilarity in regard to the area, it is open to the court to make proper deduction towards smallness of area. We find no error in the approach of the High Court taking Exs A7 to A10 as comparable sales for fixation of market value.

17. The High Court has taken average of sale price of Exs A7 to A10 and deducted 40% towards smallness of the plot taken for comparison, further deducted one third towards development. Though we may finally affirm the rate fixed by the High Court, for the reasons stated infra we fix the market value in accordance with the well settled principles laid down by this Court.

xx xx xx xx

20. Where the lands acquired are of different type and different locations, averaging is not permissible. But where there are several sales of similar lands, more or less, at the same time, whose prices have marginal variation, averaging thereof is permissible. For the purpose of fixation of fair and reasonable market value of any type of land, abnormally high value or abnormally low value sales should be carefully discarded. If the number of sale deeds of the same locality and the same period with short intervals are available, the average price of the available number of sale deeds shall be considered as a fair and reasonable market price. Ultimately, it is in the interest of justice for the land losers to be awarded fair compensation. All attempts should be taken to award fair compensation to the extent possible on the basis of their accessibility to different kinds of roads, locational advantages etc. Four perpetual lease deeds A-7 to A-10 relied upon by the appellants are of the same locality - Vasant Kunj Residential Scheme and relate to the period ranging from September 1995 to December 1996, but they are just prior to Section 4(1) notification. In our view, the High Court was justified in taking the average of the said four exemplars and approach adopted by the High Court in averaging the sale prices of Exs A7 to A10 cannot be said to be perverse.

21. Freehold vis-a-vis Leasehold Price - Market Value:

Contention of the appellants is that Exs A7 to A10 relate to long term perpetual leasehold deeds and what was acquired was appellants' freehold property and freehold property has higher value than the leasehold plot and suitable addition should have been made. The appellant contends that the terms stipulated in perpetual leasehold are extremely stringent and in such cases, no sale is permitted without the permission of DDA and there are many other uncomfortable clauses in the terms of the perpetual lease deeds and all these 'stringent conditions' increase the gap between 'freehold' price and 'leasehold' price. It is submitted that market value of 'freehold property' is

much higher than the value of 'leasehold property" and this was not taken into consideration by the High Court.

XX XX XX

24. Exs A7 to A10 are the perpetual lease deeds relating to the period from September 1995 to December 1996 and to get the perpetual lease deeds converted as freehold, the holder of perpetual leasehold has to pay further amount to DDA. Having regard to the period of Exs A7 to A10 and the date of issuance of Section 4 notification dated 19.2.1997, in our view, addition of 20% is to be added for arriving at the value of 'freehold" property. Adding 20% to Rs. 37,433.75 per sq. yard which comes to Rs. 7,486.75, the value is calculated at Rs. 44,920.50 rounded off to Rs. 44,921/- per sq. yard.

25. Deduction Towards Competitive Bidding: Exs A7 to A10 exemplars are perpetual lease deeds of commercial plots auctioned in Vasant Kunj area. Learned senior counsel for the respondents contended that this auctioned commercial site can never be equated to the value of large extent of agricultural land like the land acquired in the present case and those plots auctioned are developed plots on which the Government had spent a considerable amount. It is contended that the auction prices of commercial plots in exemplars are not true index of a fair market value of the land at the relevant time because elements of speculation and unfair competition in such auctions and suitable deduction ought to have been made for competitive bidding.

26. While considering the competition involved in auction sales of commercial/residential plots and observing that the element of competition in auction sales make them unsafe guides for determining the market value of the acquired lands, in *Executive Engineer, Karnataka Housing Board v. Land Acquisition Officer, Gadag And Ors.*, (2011) 2 SCC 246 paras 6 & 7, this Court held as under:-

"6. But auction-sales stand on a different footing. When purchasers start bidding for a property in an auction, an element of competition enters into the auction. Human ego, and desire to do better and excel over other competitors, leads to competitive bidding, each trying to outbid the others. Thus in a well advertised open auction-sale, where a large number of bidders participate, there is always a tendency for the price of the auctioned property to go up considerably. On the other hand, where the auction-sale is by banks or financial institutions, courts etc. to recover dues, there is an element of distress, a cloud regarding title, and a chance of litigation, which have the effect of dampening the enthusiasm of bidders and making them cautious, thereby depressing the price. There is therefore every likelihood of auction price being either higher or lower than the real market price, depending upon the nature of sale. As a result, courts are wary of relying upon auction sale transactions when other regular traditional sale transactions are available while determining the market value of the acquired land. This Court in *Raj Kumar v. Haryana State*, (2007) 7 SCC 609 observed that the element of competition in auction-sales makes them unsafe guides for

determining the market value.

7. But where an open auction-sale is the only comparable sale transaction available (on account of proximity in situation and proximity in time to the acquired land), the court may have to, with caution, rely upon the price disclosed by such auction sales, by providing an appropriate deduction or cut to offset the competitive hike in value. In this case, the Reference Court and the High Court, after referring to the evidence relating to other sale transactions, found them to be inapplicable as they related to far away properties. Therefore we are left with only the auction-sale transactions. On the facts and circumstances, we are of the view that a deduction or cut of 20% in the auction price disclosed by the relied upon auction transaction towards the factor of "competitive price hike" would enable us to arrive at the fair market price."

(Underlining added)

XX XX XX

28. The general rule that the sale prices of the comparable sales should be relied upon for calculating the market value will not apply when the sale transactions relied upon are auction sales. As per the decision in Karnataka Housing Board's case (2011) 2 SCC 246, in our view, 20% deduction is to be made for competitive bidding. Deducting 20% i.e. Rs. 8,984/- from Rs. 44,921/-, balance arrived at Rs. 35,937/- per sq. yard is fixed as the value for the acquired land.

29. Deduction Towards the Development: The High Court has deducted 40% from the average price to equalise the factor of the market value of a small plot of land as compared to large area of land acquired and the figure works out to Rs. 22,460.25. High Court has also deducted one third towards development cost and determined the market value of the acquired land at Rs. 14,974/- per sq. yard.

32. While making one third deduction towards development cost, the learned single Judge did not keep in view the two essential components of deduction for development. Deduction for development consists of two components:- firstly, appropriate deduction to be made towards the area required to be utilised for roads, drains and common facilities like parks etc.; secondly, further deduction to be made towards the cost of development, that is cost of levelling the land, cost of laying roads and drains, erection of electrical poles and water lines etc. For deduction of development towards land and development charges, the nature of development, conditions and nature of the land, the land required to be set apart under the Building Rules for roads, sewerage, electricity, parks, water supply etc. and other relevant circumstances involved are required to be considered.

41. In the instant case, having regard to the extent of the land acquired and the development in and around Vasant Kunj area, in our view, it is appropriate to make 35% deduction towards utilisation of the land area in the layout for roads, drains, parks, playgrounds and civic amenities. So far as the expenditure for

development of the large extent of land into a developed area by construction of proper roads, underground drainage, sewerage and erection of electricity lines, it is appropriate to make further deduction of 25%, though 35% of the value was deducted in Lal Chand case (supra) towards development charges. Two components taken together, the total deduction to be made would be 60%. 60% of Rs. 35,937/- works out to Rs. 21,562/- and deducting the same, the value of the land would be Rs. 14,375/- per sq. yard. What was awarded by the High Court was Rs. 14,974/- per sq. yard. Since the SLP (Civil) No.15272/2011 filed by DDA was dismissed by this Court on 12.5.2011 and the sale has become final as against the appellants, we are not inclined to further reduce the value of the acquired land from Rs. 14,974/- per sq. yard as determined by the High Court and the compensation awarded by the High Court at Rs. 14974/- per sq. yard is maintained.

17. Reverting to the fact situation obtaining in the cases in hand and respectfully following the law laid down by the Hon"ble Supreme Court in Maj. Gen. Kapil Mehra's case (supra) and also in Mehrawal Khewaji Trust (Registered), Faridkot and others v. State of Punjab and others, (2012) 5 SCC 432, wherein it was held that the landowners are entitled to receive the best price for their acquired land, this Court feels no hesitation to conclude that the only relevant evidence available on record is sale instance Ex.P4. It has gone undisputed before this Court that by way of this auction sale, plot was sold in the close proximity of the acquired land.

18. In this regard, a reference can be made to the recent judgment of the Hon"ble Supreme Court in Ashok Kumar and another etc. v. State of Haryana, Civil Appeal No(s). 2714-2721 of 2012), decided on 18.2.2016. The Hon"ble Supreme Court, in its judgment in Ashok Kumar's case (supra), while interpreting the scope of Section 25 of the Act and duty cast on the courts to grant just and reasonable compensation, even higher than what was claimed by the landowners, observed as under:-

"Learned counsel appearing for the appellants however points out that in the matter of fixation of just and fair compensation, the Court is not bound by claim made by the owner. It is for the Court, in the facts and circumstances of each case, to award just and fair compensation.

XXX XXX XXX

The pre-amended provision put a cap on the maximum; the compensation by court should not be beyond the amount claimed. The amendment in 1984, on the contrary, put a cap on the minimum; compensation cannot be less than what was awarded by the Land Acquisition Collector. The cap on maximum having been expressly omitted, and the cap that is put is only on minimum, it is clear that the amount of compensation that a court can award is no longer restricted to the amount claimed by the applicant. It is the duty of the Court to award just and fair compensation taking into consideration the true market value and other

relevant factors, irrespective of the claim made by the owner.

Although in the context of the Motor Vehicles Act, 1988, this Court in *Sanjay Batham v. Munna Lal Parihar* held that

"17. It is true that in the petition filed by him under Section 166 of the Act, the Appellant had claimed compensation of Rs. 4,20,000/- only, but as held in *Nagappa v. Gurudayal Singh*, (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."

In *Bhag Singh and Others v. Union Territory of Chandigarh*, this Court held that there may be situations where the amount higher than claimed may be awarded to the claimant. The Court observed -

"3. ... It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where, as for instance, under" agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution, be deprived of land which is not being personally cultivated by him or which is in excess of the ceiling area with payment of little compensation or no compensation at all, but where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms, declares that he shall be paid such market value. ..."

In *Krishi Utpadan Mandi Samiti v. Kanhaiya Lal*, this Court held that under the amended provisions of Section 25 of the Act, the Court can grant a higher compensation than claimed by the applicant in his pleadings -

"17. Award being in this case between the dates 30th April, 1982 and 24th September, 1984 and as per the *Union of India and Anr. v. Raghubir Singh (Dead)* by LR's etc. (Supra), the amended provisions would be applicable under

which there is no restriction that award could only be upto the amount claimed by the claimant. Hence High Court order granting compensation more than what is claimed cannot be said to be illegal or contrary to the provisions of the Act. Hence the review itself, as is confined for the aforesaid reasons, has no merit."

11. Further, in *Bhimasha v. Special Land Acquisition Officer and others*, a three-Judge bench reiterated the principle in *Bhag Singh* (supra) and rejected the contention that a higher compensation than claimed by the owner in his pleadings cannot be awarded by the Court. In that case, the High Court had concluded that although the market price of the land was Rs. 66,550/- per acre, since the appellant had only claimed compensation at the rate of Rs. 58,500/- per acre in his pleadings, therefore he could only be awarded compensation limited to his claim. This Court, while reversing the decision of the High Court, awarded the petitioner the market value, i.e., Rs. 66,550/- per acre thereby holding that the award would not be limited to the claim made by him."

19. Again, in the case of *Udho Dass v. State of Haryana*, 2010 (12) SCC 51, the Hon"ble Supreme Court has held that landowners hardly get compensated in true sense of word in the matters of compulsory acquisition, because they had no role to play either in the price fixation policy adopted by the State or to avoid the acquisition. Relevant observations made by the Hon"ble Supreme Court in paras 17 and 18 of its judgment in *Udho Dass*'s case (supra), which deserve to be noticed here, read as under:-

"Although, in the present matter, sale instances around or near abouts the date of Notification of the present acquisition are available yet these cannot justify or explain the potential of a particular piece of land on the date of acquisition as the potential can be recognised only some time in the future and it is open to a landowner claimant to contend that the potential can be examined first at the time of the Section 18 Reference, the first Appeal in the High Court or in the Supreme Court in appeal as well. We must also highlight that Collectors, as agents of the State Government, are extraordinarily chary in awarding compensation and the land owners have to fight for decades before they are able to get their due. We take the present case as an example. The land was notified for acquisition in May 1990. The collector rendered his award in May 1990 awarding a sum of Rs. 2,00,000/- per acre. The Reference Court by its award dated January 2001 increased the compensation to Rs. 125 per square yard for the land of the road behind the ECE factory and Rs. 150 per square yard for the land abutting the road which would come to Rs. 6,05,000/- and Rs. 7,26,000/- respectively for the two pieces of land. This itself is a huge increase vis-a-vis the Collector's award. The High Court in First Appeal by its judgment of 24th September 2007 enhanced the compensation for the two categories to Rs. 135 and 160 respectively making it Rs. 6,53,400/- and Rs. 7,74,400/-. In other words, this is the compensation which ought to have been awarded by the Collector at the time of his award on 12th May 1993. This has, however, come to the land owner for the first time as a result of the judgment of the High Court

which is under challenge in this appeal; in other words, a full 17 years from the date of Notification under Section 4 and 14 years from the date of the award of the Collector on which date the possession of the land must have been taken from the landowner. Concededly, the Act also provides for the payment of the solatium, interest and an additional amount but we are of the opinion, and it is common knowledge, that even these payments do not keep pace with the astronomical rise in prices in many parts of India, and most certainly in North India, in the land price and cannot fully compensate for the acquisition of the land and the payment of the compensation in dribblets. The 12% per annum increase which Courts have often found to be adequate in compensation matters hardly does justice to those land owners whose land have been acquired as judicial notice can be taken of the fact that the increase is not 10 or 12 or 15% per year but is often upto 100% a year for land which has the potential of being urbanized and commercialized such as in the present case. Be that as it may, we must assume that the landowners were entitled to the compensation fixed by the High Court on the date of the award of the Collector and had this amount been made available to the landowners on that date, it would have been possible for them to rehabilitate their holdings in some other place. This exercise has been defeated for the simple reason that the payment of compensation has been spread over almost two decades. In this view of the matter, we are of the opinion that a landowner is entitled to say that if the compensation proceedings continued over a period of almost 20 years as in the present case, the potential of the land acquired from him must also be adjudged keeping in view the development in the area spread over the period of 20 years if the evidence so permits and cannot be limited to the near future alone. We, therefore, feel that in the circumstances, the appellants herein were fully entitled to say that the potential of the acquired land had not been fully recognised by the High Court or by the Reference Court. We must add a word of caution here and emphasise that this broad principle would be applicable where the possession of the land has been taken pursuant to proceedings under an acquiring Act and not to those cases where land is already in possession of the Government and is subsequently acquired.

There is another unfortunate aspect which is for all to see and to which the Courts turn a Nelson's eye and pretend as if the problem does not exist. This is a factor which creates an extremely grim situation in a case of compensation based exclusively on sale instances. This is the wide spread tendency to under value sale prices. The provision of Collector's rates has only marginally corrected the anomaly, as these rates are also abnormally low and do not reflect the true value. Where does all this leave a landowner whose land is being compulsorily acquired as he has no control over the price on which some other landowner sells his property which is often the basis for compensation?.

20. In this regard, it is also relevant to refer to the new Land Acquisition Act known as "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the New Act"). The

legislature has found the Land Acquisition Act, 1894 (for short 'the Old Act') to be an outdated law, because of which it was thought appropriate to bring a new piece of legislation in the form of the New Act. The statement of objects and reasons for framing the New Act are not being reproduced here for the sake of brevity and only highlights thereof would suffice, which read as under:-

"HIGHLIGHTS OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 (30 OF 2013)

- Payment of compensation upto four times the market value in rural area and two times the market value in urban areas.
- To address historical injustices, the Law applies retrospectively to cases where no land acquisition award has been made.
- No one shall be dispossessed until and unless all payments are made and alternative sites for the resettlement and rehabilitation have been prepared.
- Compensation to those who are dependent on the land being acquired for their livelihood.
- In cases where Public-Private Partnership PPP projects are involved or acquisition is taking place for private companies, the Act requires the consent of not less than 70 per cent and 80 per cent respectively (in both cases) of those whose land is sought to be acquired.
- To safeguard Food Security and to prevent arbitrary acquisition, the Act directs States to impose limits on the area under agricultural cultivation that can be acquired. - In case, land remains unutilized after acquisition, the new Act empowers State to return the land either to the owner or to the State Land Bank.
- No income-tax shall be levied and no stamp duty shall be charged on any amount that accrues to an individual as a result of the provisions of the new Law.
- Where acquired land is sold to a third party for a higher price than 40 percent of the appreciated land value (or profit) will be shared with the original owners.
- The Act requires a Social Impact Assessment study to be conducted for every acquisition of land."

21. However, before proceeding further, some other arguments raised by learned senior counsel for the beneficiary department deserve to be considered. Firstly, that acquired land could not have been put to any other use except agricultural use, as one of the landowners has admitted this in his cross examination. Secondly, there was a prohibition of the change of land use in view of the provisions of The Punjab New Capital (Periphery) Control Act, 1952 ("Act of 1952" for short). Thirdly, judgment of the Hon'ble Supreme Court in Maj. Gen. Kapil Mehra's case (supra) is not applicable to the fact situation of the cases in hand because there was no such prohibition in that case. Fourthly, Ex.P4 was not

duly proved on record. He also places reliance on the judgment dated 4.5.2009 passed by this Court in RFA No. 2400 of 2005 (Dharambir Singh and others v. Union of India, through the Land Acquisition Collector), to contend that this Court had assessed the market value of the land acquired for this very purpose, i.e. laying down railway line from Chandigarh to Ludhiana, out of the revenue estates of villages Jhumru and Burail @ Rs. 22,51,600/-.

22. After giving anxious consideration to the abovesaid arguments raised by learned senior counsel, this Court is of the considered view that the learned senior counsel for the beneficiary department has miserably failed to substantiate any of his arguments. These villages were, as a matter of fact, were almost touching Chandigarh, having been situated just on the outskirts of Chandigarh. Acquired land could have been very easily put to residential as well as commercial use. Commercial and residential constructions raised in alleged violations of Act of 1952, already stood regularised by the State authorities. This very landowner-Dr. Jasmer Singh never received even a show cause notice about his hospital. It is so said because the judgment in Maj. Gen. Kapil Mehra's case (supra), has been found squarely applicable to the facts of the cases in hand. So far as argument regarding Ex.P4 is concerned, factual foundation has been found conspicuously missing in this regard.

23. This official document Ex.P4 was coming from proper custody. No objection, whatsoever, either about its genuineness or authenticity was raised before the learned reference court. As far as his argument based on Dharambir Singh's case (supra), is concerned, the landowners in the instant set of appeals cannot be denied the benefit of particular piece of evidence available in their favour, which might not have been available in favour of the landowners in Dharambir Singh's case (supra) or it was not relied upon by them.

24. So far as similar claim of the landowners of villages Kambala and Kambali is concerned, learned senior counsel for the beneficiary department submits that both these villages were not at par because evidence in the form of Ex. P4 was available only in the cases of village Kambala and not available in the cases of village Kambali. In this regard, he also places reliance on two judgments of the Hon''ble Supreme Court in Kanwar Singh and others v. Union of India, (1998) 8 SCC 136 and Basant Kumar Etc. v. Union of India Etc., 1996 (11) SCC 542.

25. Having heard learned counsel senior counsel for the beneficiary department and after going through the judgments relied upon by him, none of the judgments has been found of any help to him for the reason that both these judgments are distinguishable on facts. In this regard, the view expressed by this Court hereinabove referring to the judgment of the Hon''ble Supreme Court in Padmausundara Rao's case (supra), is being reiterated for the sake of brevity and to avoid any repetition. There is no denying the fact that villages Kambala and Kambali were adjoining each other. They were falling on the same line. The land was acquired for the same purpose. The sale exemplar in the form of Ex.P4, being out of Phase IX of Mohali, was from a place in very close proximity of the

land acquired from village Kambali.

26. In fact, basic fallacy in the argument raised by learned counsel for the beneficiary department is that he has tried to make out an entirely new case and that too, without there being any factual foundation having been laid before the learned reference court. Such course of action will be wholly impermissible. Neither the beneficiary department has raised any kind of objection about the genuineness of sale exemplar Ex.P4, nor any such question was put to the witnesses during the course of cross examination. The landowners of both these villages having been found at par for the purpose of claiming just compensation for their acquired land, this Court has found no good reason to treat the landowners of village Kambali differently. Accordingly, while rejecting the abovesaid contentions raised by learned senior counsel for the beneficiary-department, the landowners of village Kambali are also held entitled to receive the same amount of compensation for which the landowners of village Kambala have been found entitled.

27. Now the next important question of law that falls for consideration of this Court is, as to how much percentage of cut would be reasonable to be imposed on the market price disclosed in the sale instance Ex.P4. The market price disclosed in the sale instance Ex.P4 was Rs. 4,27,95,280/- per acre, however, this figure has been clarified by the learned counsel for the landowners to be Rs. 4,26,01,680/- per acre, which has also not been disputed by learned senior counsel for the beneficiary department.

28. In view of the ratio of judgment of the Hon'ble Supreme Court in Maj. Gen. Kapil Mehra's case (supra), 60% deduction would be reasonable on the abovesaid market price. After applying 60% cut on the abovesaid market price, amount comes to Rs. 1,70,54,630/- per acre. Any further deduction, as sought by learned senior counsel for the beneficiary-department, on any of other factors, would be wholly unjustified. Accordingly, the landowners of these two villages namely Kambali and Kambala are held entitled to receive compensation for their acquired land at the uniform rate of Rs. 1,70,54,630/- per acre, from the date of notification under Section 4 of the Act.

29. In this appeal bearing RFA No. 3161 of 2009 (Jasmer Singh v. State of Punjab), claimant was a medical professional and he was running a hospital in the name "Amrit Heart & General Hospital" in the acquired land owned by him. Covered area of the hospital was 1 kanal 6 marla and this hospital was being run since year 1984 whereas notification under Section 4 came to be issued on 16.6.1999.

30. Learned counsel for the appellant-claimant submits that when Dr. Jasmer Singh raised construction of the building to start his hospital in the year 1984, neither any notice was issued to him by any of the competent authorities of the State, nor he received any such notice at a later point of time as well, till the land, alongwith hospital, was acquired. He submits that this undisputed fact also

gives direct answer to the abovesaid argument raised by learned senior counsel for the beneficiary department that the land could not have been put to any other use, except agricultural use or there was some prohibition on the change of land use. He also submits that, as a matter of fact, there had been all-round development in and around the acquired land.

31. Very many high rising buildings have been constructed by the builders and private colonisers in and around Mohali. In such a situation, marginal farmers or any other landowner cannot be denied just compensation for their acquired land on the ground that the land was a simple agricultural land because of the abovesaid alleged prohibition for putting the land to any other use. Placing reliance on clauses fourthly and fifthly of Section 23 (I) of the Act, learned counsel for this landowner submits that appellant-Jasmer Singh himself was having a postgraduate degree in Cardiology. His daughter, son and daughter-in-law were also doctors who had been working in this very hospital. Since the land alongwith hospital was acquired, their earnings were adversely effected and they had to change their place of business, because of which they are entitled for just compensation under clauses fourthly and fifthly of Section 23 (I) of the Act.

32. LAC, while pronouncing his award dated 4.6.2001, discussed about the existence of the building of the hospital owned by the appellant, which is available at page Nos.250 and 251 of the LCR and relevant part thereof, reads as under:-

"Dr. Jasmer Singh claimed that he is running a hospital "Amrit Heart & General Hospital" in khasra No. 14//27 measuring 3 K 6 M since 1984. All the land owners mentioned in Appendix A have confirmed the existence of hospital on the abovesaid land and Dr. Jasmer Singh has attached certificate from sarpanch & Nambardar of V. Kambala in this respect. In Jamabandi also there is entry of gair mumkin makaan on this khasra No.14//27 measuring 2K. but out of this 2K, only 1K 6M is being acquired with hospital building and other structures on it. He has demanded that the building and structures of the hospital should be evaluated as one unit as land under it has commercial value. He has claimed that the hospital abuts the main road and main gate of hospital opens on the main road and the plot is fully developed. He claims that there is fall of income during current year due to hospital building being acquired. He is justified for asking for valuation of hospital as one unit because his demand falls under the purview of section 23 of Land Acquisition Act 1894. But he has demanded very high and unreasonable price of Rs. 1,25,00,000/- [rupees one crore twenty five lac only]. Moreover, the building is situated on 1K 6M land only. After considering all aspects and claims put by him, I am of the opinion that Rs. 9,00,000/- [rupees nine lac only] is the right price for said hospital unit on 1K 6M land and same is therefore allowed accordingly. This price makes up for severance charges, injurious affect and other damages claimed by him. Dr. Jasmer Singh will not be entitled to get separate compensation for land measuring 1K 6M of khasra no 14//27, and building as assessed separately. Dr. Jasmer Singh has also demanded that he

should be allowed to construct his hospital building on land left unacquired. His demand is genuine and he deserves to be compensated in this way for loss of livelihood. Thus, I recommend that he be allowed to construct hospital building on piece of land left unacquired and electric connection be provided to that building on priority basis.

Provision of Permission For Electric Connections

Hospital building of Dr. Jasmer Singh's Amrit Heart & General Hospital is being acquired. He will have to construct a new building for hospital on his adjoining land. He should be given permission to construct new building and should be provided electric connection on priority for the same. The farmers whose tube wells have been acquired will have to dig tube wells in the land left unacquired. Thus, these farmers should be provided with electric connections for new tube wells. The tube well of Sh. Gurdev Singh & Gurnam Snigh has been left unacquired with small chunk of land and has become useless whereas their big piece has been acquired and other piece is left unacquired on the other side of railway station. They will have to install new tube well for irrigation of land left unacquired on other side of railway station and will need electric connection for the same. Their old existing connections be transferred to new site."

33. After hearing learned counsel for the parties and going through the record of the case, this Court is of the considered opinion that LAC as well as learned reference court have committed serious errors of law, while not granting just compensation to this landowner for his land as well as superstructure in the form of hospital building, under clauses fourthly and fifthly of Section 23 (I) of the Act. Since no valuation report about the building of hospital is available on record, some guess work would be involved to grant reasonable amount of compensation for the building of the hospital. Further, since the claimant-Jasmer Singh had never been issued any notice, whatsoever, by any of the authorities, the abovesaid arguments are not available to the learned senior counsel for the beneficiary department.

34. With a view to strike a balance between the parties and considering the scheme as well as object of the Act, this Court is of the considered view that granting an amount of Rs. 30 lacs to the claimant-appellant Dr. Jasmer Singh, for the building of hospital and his earnings having been adversely affected, under clause fourthly as well as for change of place of business under clause fifthly of Section 23 (I) of the Act, would meet ends of justice. Owing to the location and big size of the working hospital, any lesser amount would be wholly inadequate. It is also made clear that this amount of Rs. 30 lacs would be over and above the compensation awarded for the acquired land on which the hospital was constructed.

35. Learned counsel for the appellant-landowner in RFA No. 4643 of 2010 (Chajju Ram v. State of Punjab) submits that a very meagre amount of Rs. 12,631/- was awarded by LAC for the tubewell owned by this claimant. The learned reference

court enhanced only Rs. 1263/-, whereas the appellant claimed an amount between Rs. 1,50,000/- to Rs. 2 lacs, because he would have to instal a new tubewell. Again, in the absence of any valuation report, some guess work would be involved for granting just compensation for tubewell owned by this appellant-Chhaju Ram. No doubt, amount of compensation awarded to him is on very lower side. In this view of the matter, an amount of Rs. 90,000/- for the tubewell will be just and reasonable. Granting any lesser amount, as compensation for the tubewell would be unjustified, thus, this appellant-landowner Chajju Ram is held entitled to receive compensation @ Rs. 90,000/- for his tubewell from the date of notification under Section 4 of the Act.

Village Chilla

36. For the purpose of deciding the cases pertaining to village Chilla, facts are being culled out from RFA No. 4196 of 2010 (Gurdev Singh v. State of Punjab and others).

37. Land measuring 59 Bigha 13 Biswa was sought to be acquired by way of notification dated 24.6.2000 under Section 4 of the Act which was followed by notification dated 6.2.2001 under Section 6 of the Act. Similarly, land measuring 14 Bigha 11 Biswa was also acquired vide notification dated 6.2.2001 under Section 4 of the Act which was followed by notification dated 30.1.2002 issued under Section 6 of the Act. LAC, announced his award No. 5 dated 9.4.2001 qua land measuring 59 Bigha and 13 Biswa and award No. 18 dated 19.3.2002 for land measuring 14 bigha 11 biswa, assessing the market value of acquired land at the uniform rate of Rs. 6 lacs per acre, without resorting to any belting system. Learned reference court, vide impugned award dated 9.1.2008 and other identical awards, assessed the market value of the land acquired from village Chilla at the uniform rate of Rs. 17 lacs per acre, following the earlier award dated 4.5.2006 Ex.P8, whereby learned reference court had assessed the market value of the land of other village namely Sohana @ Rs. 17 lacs per acre. However, nothing was awarded on account of severance charges.

38. Learned counsel for the landowners, while placing reliance on the statements of RW1-Ashok Kumar, available at page 50 and 52 of the LCR and PW1-Daljit Singh, Halqa Patwari, available at Page 41 of the LCR, have submitted that both these witnesses have admitted that village Chilla was adjoining the revenue estate of village Kambala. It was also found abutting the Industrial Area of Phase IX Mohali. Chandigarh was at a distance of just one kilometer from the acquired land of village Chilla. On the basis of these facts established on record, learned counsel for the landowners would contend that the landowners of village Chilla are also entitled to be treated at par with landowners of village Kambala for all intents and purposes.

39. On the other hand, learned senior counsel for the beneficiary department, reiterating his abovesaid arguments as well as judgments relied upon by him, submits that once this Court has already assessed the market value of villages

Kambali and Kambala on the basis of auction sale, said evidence would not be available in favour of the landowners of village Chilla. He also refers to the sale deeds which were relied upon by the landowners themselves despite being post acquisition.

40. Giving anxious consideration to the arguments raised by learned counsel for the parties, this Court is of the considered opinion that although the landowners of village Chilla have been found entitled to be treated at par with the landowners of village Kambala, yet some further cut on the market value assessed for the land of village Kambala would be required to be applied. It is so said because it is a matter of record that village Chilla was situated at farther place from Chandigarh than village Kambala. Although village Chilla and Kambala were adjoining each other, yet with a view to strike a balance between the parties, further reasonable cut on the abovesaid market value for the land of village Kambala deserves to be imposed, while assessing the market value of the land of village Chilla.

41. In view of what has been discussed hereinabove, this Court is of the considered view that 20% further cut on the market value of Rs. 1,70,54,630/- on which the land of village Kambala has been assessed by this Court would be required to be applied. After applying 20% further cut on the market value of Rs. 1,70,54,630/-, amount comes to Rs. 1,36,43,704/- per acre.

42. It is pertinent to note here that in view of the law laid down by the Hon'ble Supreme Court in *Ashrafi and others v. State of Haryana and others* 2013 (5) SCC 527, *Kashmir Singh v. State of Haryana and others*, 2014 (2) SCC 165 and *Thakarsibhai Devjibhai and others v. Executive Engineer and another*, AIR 2001 SC 2424, although this 20% cut might seem to be on higher side, yet peculiar facts and circumstances of the case require this much cut on the abovesaid market value. Accordingly, landowners of village Chilla are held entitled to receive the compensation @ Rs. 1,36,43,704/- per acre, from the date of notification under Section 4 of the Act.

Village Manauli

43. For the purpose of deciding the cases pertaining to village Manauli, facts are being culled out from RFA No. 5494 of 2008 (*Gian Singh and others v. State of Punjab and others*).

44. Similarly, as in the case of abovesaid village Chilla, land measuring 23 bigha and 10 biswa was acquired from the revenue estate of village Manauli by way of abovesaid notifications issued for acquiring the land of village Chilla. Purpose of acquisition was the same. Another piece of land measuring 5 bigha and 10 biswa was acquired from the revenue estate of village Manauli, vide later notification. LAC, vide award dated 19.3.2002, assessed the market value of the land @ Rs. 6 lacs per acre. Learned reference court, vide its impugned award dated 13.3.2008, assessed the market value of the acquired land @ Rs. 13,43, 000/- per acre. However, landowners of this village Manauli were awarded 50% of the

abovesaid market value, as compensation, on account of severance charges, which was not granted to the landowners of village Chilla.

45. Thrust of the arguments raised on behalf of the landowners, is that since village Manauli was adjoining to village Chilla, landowners of this village would also be entitled for the same amount of compensation which has been awarded to the landowners of village Chilla. On the other hand, learned senior counsel for the beneficiary department, while referring to sale instance Ex.R3 dated 3.5.2000, submits that land measuring 2 bigha and 3¹/₂ biswas was sold @ Rs. 5,31,000/- per acre, because of which the landowners would not be entitled for any further enhancement.

46. Having considered rival contentions raised by learned counsel for the parties and after going through the record of the case, this Court is of the considered opinion that landowners of village Manauli are also entitled for the benefit of same sale instance Ex.P4, which was made the basis for assessing the market value of village Kambala, however, with a further reasonable percentage of cut on the market value at which land of village Kambala was assessed. The argument raised on behalf of the beneficiary department has been found wholly misplaced for the reason that sale deed Ex.R3 was ignored by LAC himself, while awarding Rs. 6 lacs per acre. In this view of the matter, sale deed Ex.R-3 is not being discarded only on the ground that it was hit by the provisions of Section 25 of the Act but on its own individual merits as well. It is so said because sale deed Ex.R3 was either an undervalued transaction or was a result of distress sale. In either of these two situations, this sale deed Ex. R3 has to be excluded from consideration, as per law laid down by the Hon"ble Supreme Court in Lal Chand v. Union of India and another 2010 (3) RCR (Civil) 172.

47. In this regard, relevant observations made by the Hon"ble Supreme Court in para 32 of its judgment in Lal Chand's case (supra), which can be gainfully followed in the present case, read as under:-

"The existence of several other sale deeds showing a much higher value and the fact that the Land Acquisition Collector chose to award a higher rate in regard to some of the acquired lands, leads to an inevitable inference that Ex.R3 to R7 were either undervalued or were distress sales. Whatever be the reason, they are liable to be excluded from consideration."

48. Keeping in view the totality of facts and circumstances of the case noted hereinabove, it is held that since village Manauli was adjoining village Chilla but away from Chandigarh, further cut of 10% would be reasonable on the market value of Rs. 1,36,43,704/- at which the land of village Chilla has been assessed. After applying 10% more cut on the abovesaid market value, amount comes to Rs. 1,22,79,333.6/- per acre which is rounded off to Rs. 1,22,79,334/- per acre. Accordingly, the landowners of village Manauli are held entitled to receive the compensation @ Rs. 1,22,79,334/- per acre, from the date of notification under Section 4 of the Act.

Village Raipur Khurd

49. For the purpose of deciding the cases pertaining to village Raipur Khurd, facts are being culled out from RFA No. 1772 of 2008 (Balbir Singh v. State of Punjab and others).

50. Land measuring 21 bigha 4 biswa was sought to be acquired by way of notification dated 6.2.2001 under Section 4 of the Act which was followed by notification dated 31.1.2002 under Section 6 of the Act. Purpose of the acquisition was same. LAC, vide his award No. 15 dated 19.3.2002, assessed the market value of the acquired land @ Rs. 6 lacs per acre. Learned reference court, vide impugned award dated 13.9.2007, assessed the market value of the acquired land @ Rs. 19,04,000/- per acre and also granted 50% of the abovesaid market value, as compensation, on account of severance charges. In this case, learned reference court followed its own earlier award and granted 12% annual increase for the time gap between two acquisitions.

51. Learned counsel for the landowners submits that since village Raipur Khurd was adjoining village Manauli, let landowners of village Raipur Khurd be treated at par with the landowners of village Manauli. On the other hand, learned senior counsel for the beneficiary department submits that as per sale exemplars available on record in the form of Ex. R4 to Ex.R7 in the connected matter and Ex.R7 to Ex. R15 in the present case, market price disclosed therein was @ Rs. 3,45,000/- per acre, at the time of acquisition. In this view of the matter, the landowners would not be entitled for any further enhancement.

52. A bare perusal of sale deeds referred by the learned for the beneficiary department shows that these sale deeds were disclosing much less market price than the amount awarded by the LAC. In this view of the matter, all these sale deeds relied upon by the learned counsel for the beneficiary department have to be ignored not only because these were hit by Section 25 of the Act but also on the basis of their individual merits. It is so said because these sale deeds were either under valued transactions or distress sales, which have to be kept out of consideration in view of the law laid down by the Hon''ble Supreme Court in Lal Chand's case (supra).

53. Considering the abovesaid fact situation obtaining in the cases in hand, this Court is of the considered view that landowners of this village are entitled to be treated at par with the landowners of village Manauli, however, after applying further cut of 10% on the market value at which the land of village Manauli was assessed. The land of village Manauli has been assessed at rate of Rs. 1,22,79,334/- and after applying further 10% cut on the said market value, amount comes to Rs. 1,10,51,400.24/- per acre, which is rounded off to Rs. 1,10,51,400/-. Accordingly, landowners of village Raipur Khurd are held entitled to receive the compensation at the uniform rate of Rs. 1,10,51,400/- per acre, from the date of notification under Section 4 of the Act.

Villages Sawara, Landran, Kailon, Tole Majra, Khooni Majra and Badala

Nayashahar (Block C)

54. Learned counsel for the parties are ad idem that land out of revenue estates of abovesaid villages was acquired vide same notification dated 28.11.2000 and for the same purpose. It is also not in dispute that the revenue estates of all these villages were adjoining with each other. Land out of the revenue estates of some villages was falling within the municipal limits of Kharar. It is also very pertinent to note here that the railway line between Railway Station Mohali and Railway Station Kharar is forming the curve at about 60 degree. When for the purpose of considering the distance of these villages from other villages namely Chilla, Manauli and Raipur Khurd, this line is put straight, it would be crystal clear that all these villages would be adjoining the revenue estate of each other particularly up to village Badala Nayashahar. Villages beyond this village Badala Nayashahar were either situated within the municipal limits of Kharar or on the outskirts thereof.

55. A combined perusal of different awards passed by the learned reference Court qua the land of these villages would show that some sale instances were disclosing the market price as high as Rs. 66.00 lacs per acre. Further, learned counsel for the parties are ad idem that very small pieces of land were acquired from the revenue estates of all the abovesaid villages. However, in the very nature of things, some distance was bound to be there between all these villages. In this regard, reliance can be safely placed on the law laid down by the Hon'ble Supreme Court in Ashrafi" case (supra), Kashmir Singh" case (supra) and Thakarsibhai Devjibhai"s case (supra), which clearly supports the claim of the landowners of these villages.

56. It is also true that although all these villages can be and have been put together for the purpose of assessing the market value of their land acquired from their revenue estates, yet same amount of compensation cannot be granted to the landowners of these villages, which had been granted to the landowners of village Raipur Khurd. A further reasonable cut has to be applied on the market value at which the land of village Raipur Khurd has been assessed in the foregoing paragraphs of this order. In fact, to be more realistic and also with a view to strike a balance between the parties, it would be appropriate to put the villages from Sawara to Badala Nayashahar in one block because of their close proximity with each other. These villages have been put in Block C shown on Index Plan Mark A. Remaining villages beyond village Balada Nayashahar can be put together in another block i.e. Block D shown on abovesaid Index Plan, because these were situated on the straight railway line between Railway Stations of Kharar and Morinda.

57. To arrive at just compensation for the land acquired out of the revenue estates of villages put in Block C, 25% further cut would be justified on the market value at which the land of village Raipur Khurd has been assessed. After applying 25% cut, the amount comes to Rs. 82, 88, 550/- per acre and the landowners of all the villages of Block C are held entitled to receive the

compensation for their acquired land at the uniform rate of Rs. 82, 88, 550/- per acre from the date of notification under Section 4 of the Act.

Villages Khanpur, Bhagomajra, Badali, Peer Sohana, Simbal Majra, Gharuan, Shukrullapur, Marauli Kalan, Marauli Khurd and Ramgarh Manda (Block D)

58. Coming to the next block of villages from village Khanpur to village Ramgarh Manda (Block D), another 25% cut on the market value at which the abovesaid block of villages (Block C) upto village Badala Nayashahar has been assessed, would meet the ends of justice. After applying 25% cut on the market value at which the land of villages of Block C has been assessed, amount comes to Rs. 62,16,415/-.

59. Accordingly, landowners of villages of Block D are held entitled to receive the compensation for their acquired land at the uniform rate of Rs. 62,16,415/-, per acre from the date of notification under Section 4 of the Act.

60. The abovesaid view that has been taken by this Court finds further support from another material fact that after issuance of initial notification in the year 1999 with a view to acquire the land for construction of railway line between Chandigarh to Ludhiana, potentiality of land of all these villages adjoining with each other would certainly go higher and higher. In fact, this railway line is going through such an area, which was situated either very close to Chandigarh or nearby towns like Mohali, Sohana, Kharar and Morinda or were situated in one or the other municipal area.

61. It is equally true that in the cases like the present one, no definite figure can be arrived at but with a view to arrive at just conclusion, some guess work would always be involved in such matters. Following the law laid down by the Hon'ble Supreme Court in *Viluben Jhalejar Contractor (D) by LRs v. State of Gujarat*, 2005 (4) SCC 789 and other judgments referred to hereinabove, this Court is of the considered opinion that granting any lesser amount of compensation to the land owners of these villages would be unjust, because their land has been found situated at a prime location and was having immense potentiality.

62. Coming to the next equally important question of law regarding just compensation on account of severance charges, learned reference court has granted either 50% or 20% of the market value assessed to the landowners on account of severance charges. To be precise, learned reference court granted 20% as severance charges qua the land of some of the villages of Block A and 50% qua the land of some of the villages of Block C and D, whereas 40% was granted qua some of the villages of Block B. So far as the purpose of acquisition is concerned, it is not in dispute that purpose was the same, i.e. laying down railway line from Chandigarh to Ludhiana. In the very nature of things, bifurcation of land has to take place. Neither it would be feasible nor practically possible for the beneficiary-department to provide underpasses or over-bridges at short distances. In the absence of underpasses or fly-overs at short distances, landowners will have to cover long distances to approach their unacquired land,

for the purpose of its use including putting it to agricultural use. The landowners will face this disadvantageous position for all times to come and that too for none of their fault. Covering long distances by the landowners will add to the expenses to be incurred by them for putting their unacquired land to any use including transportation charges which will substantially reduce the net income from the unacquired land.

63. Keeping in view that abovesaid peculiar fact situation obtaining in the instant set of appeals, this Court is of the considered opinion that 50% of the respective market value assessed by this Court, for the land of abovesaid villages, put in different four blocks, would be just and reasonable compensation to the landowners, on account of severance charges.

64. The abovesaid view taken by this Court also finds support from the following judgments of Hon''ble Supreme court as well as this Court in the cases :-

- (1) Smt. Tribeni Devi and others v. The Collector, Ranchi, 1972 (1) SCC 480 (SC).
- (2) Prem Nath Kapur v. National Fertilizers Corporation, 1996 (2) SCC 71, (SC)
- (3) State of Haryana v. Gurbax Singh (Dead) by LRs and another Etc., 2008 (11) SCC 65 (SC)
- (4) IVO Agnelo Santimano Fernandes and others v. Government of Goa and Another, 2011 (11) SCC 506 (SC)
- (5) Himmat Singh and others v. State of M.P. and another, 2015 (1) SCC (Civil) 351 (SC).
- (6) Smt. Bindu Garg v. State of Haryana, 1999 (2) RCR (C) 26 (P&H)
- (7) State of Haryana v. Kartar Singh, 2010 (2) RCR (C) 443 (P&H) Chanan Singh v. State of Punjab, 2010 (5) RCR (C) 283 (P&H)
- (8) State of Punjab and another v. Ishar Singh, 2010 (5) RCR (C) 239 (P&H).

65. The relevant observations made by this Court in para Nos. 14 and 15 of its judgment in Chanan Singh's case (supra), which aptly apply in the present case, read as under:-

"Reverting back to the second argument of the learned counsel for the appellant that severance charges allowed by the learned Reference Court @ 25% of the market value of the un-acquired land should have been 50%. I am in full agreement with the argument raised by the learned counsel for the appellants that in view of the decision of this Court rendered in the cases of State of Haryana v. Rajinder Kumar, 2000(1) All India Land Acquisition & Compensation Cases 360, Punjab State v. Gurbachan Singh and others, 1988 PLJ 490, Smt. Narinder Kaur v. The State of Punjab and others, 1980 PLR 473, State of Punjab through Collector, Hoshiarpur and another v. Gopal Singh, (2002-2) PLR 843 and State of Punjab through Collector, Hoshiarpur v. Radha Krishan, 1989 All India Land Acquisition and compensation Cases 667, Tehal Singh and others v. The

State of Punjab and another, 1987 All India Land Acquisition & Compensation Cases 491 and Bishan Dass v. State of Punjab, 1997(2) PLJ 416. (supra), severance charges has to be awarded @ 50% of the market value of the unacquired land instead of 25%. In view of above, the finding of the learned Reference Court on issue No. 2 is modified and the appellants are held entitled to the severance charges @ 50% instead of 25% as given by the learned Reference Court.

15. With this modification in the judgment of the learned Reference Court, the appeals filed by the landowners/claimants are allowed. They are held entitled to compensation @ Rs. 64,000/- per acres from the date of issuance of notification under Section 4 of the Act, besides all the statutory benefits in terms of the provisions of the Amended Act. They shall also be entitled to severance charges @ 50% instead of 25% of the land which has been severed to due to acquisition. The appellants are also held entitled to the costs of the appeals.

In this regard, argument raised by learned senior counsel for the beneficiary department is to be noticed. Placing reliance on the judgments of the Hon'ble Supreme Court in Balammal and others v. State of Madras and others, 1968 AIR (SC) 1425, Manipur Tea Co. Pvt. Ltd. v. Collector Hailakandi, 1997 AIR (SC) 1779, Periyar and Pareekanni Rubbers Ltd. v. State of Kerala, 1990 AIR (SC) 2192 and judgments of this Court in Amin Lal and others v. State of Haryana and others, 2014 (1) RCR (Civil) 928, Hazura Singh and others v. State of Punjab and others, 2004 (2) RCR (civil), 226 and Bhoop Singh v. State of Haryana and others, 2015 (2) RCR (Civil) 252, learned senior counsel for the beneficiary department submits that the landowners are not entitled for the compensation on account of severance charges. However, contention raised by learned senior counsel for the beneficiary department is only to be noted to be rejected for the reason that same has been found to be wholly misplaced. The view already expressed by this Court in the foregoing paragraphs is reiterated with particular reference to the judgment of the Hon'ble Supreme Court in Padmausundara Rao's case (supra). It so said because laying down the railway line cannot avoid bifurcation of land under any circumstances. In this view of the material fact, landowners would certainly be entitled for a reasonable compensation on account of severance charges. They cannot be made to suffer for all times to come and that too, for none of their fault.

66. At this stage, learned counsel for the landowners have pointed out that some landowners were having very small pieces of land. They further submit that since the landowners have received meagre amount of compensation for their small pieces of land, they were unable to approach this Court for the bonafide reasons which were beyond their control. They concluded by submitting that in such a situation, the cases in hand are fit for invoking the powers under Order 41, Rule 33 of the Code of Civil Procedure, at the hands of this Court, so that substantial justice is done to those marginal landowners who could not approach this Court, for want of sufficient means at their disposal.

67. When confronted with this factual as well as legal aspect of the matter, learned counsel for the beneficiary-department had no answer and rightly so, it being a matter of record.

68. After giving anxious consideration to the contentions raised by learned counsel for the landowners, this Court has found it to be just and expedient to invoke its power under Order 41, Rule 33 CPC, so that poor landowners who could not come to this Court may also get their due, failing which, a glaring injustice would be caused to such landowners. Keeping in view the abovesaid peculiar facts and circumstances of the case and while invoking the powers under Order 41, Rule 33 CPC, it is ordered that benefit of instant judgment would be available even to those landowners who could not come to this Court. This direction is being issued only because of the peculiar facts and circumstances of the case referred to hereinabove.

69. The view that has been taken by this Court also finds support from the judgments of the Hon''ble Supreme Court in *Pralhad and others v. State of Maharashtra* and another, 2010 (10) SCC 458, *K.S. Paripoornan v. State of Kerala*, (1994) 5 SCC 593, *Union of India v. Zora Singh*, (1992) 1 SCC 673, *Prem Chand v. Union of India*, 2010 (2) RCR (Civil) 622, *Vanarsi v. Ramphal*, AIR 2004 SC 1989 and *Samundra Devi v. Narendra Kaur*, (2008) 9 SCC 100.

70. The relevant observations made by the Hon''ble Supreme Court in para Nos. 17 to 19 of its judgment in *Pralhad's* case (*supra*), read as under:-

"Now, the only question which remains is whether the landowners, without filing an appeal before the High Court from the order of the Reference Court, are entitled to the aforesaid benefit on the basis of their application under Order 41, Rule 33 of CPC.

The provision of Order 41, Rule 33 of CPC is clearly an enabling provision, whereby the Appellate Court is empowered to pass any decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case may require. Therefore, the power is very wide and in this enabling provision, the crucial words are that the Appellate Court is empowered to pass any Order which ought to have been made as the case may require. The expression 'Order ought to have been made' would obviously mean an Order which justice of the case requires to be made. This is made clear from the expression used in the said Rule by saying 'the court may pass such further or other Order as the case may require.' This expression 'case' would mean the justice of the case. Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law.

In fact, the ambit of this provision has come up for consideration in several decisions of this Court. Commenting on this power, Mulla (CPC, 15th Edition, pg. 2647) observed that this Rule is modelled on Order 59, Rule 10 (4) of the Supreme Court of Judicature of England, and Mulla further opined that the purpose of this rule is to do complete justice between the parties."

Let it be specifically recorded here that no other better evidence or judicial precedents were pressed into service, nor any other argument was raised on behalf of either of the parties.

71. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that appeals filed by the Railway Department have been found wholly misconceived, bereft of merit and without any substance, thus, these must fail and the same are hereby dismissed.

72. Appeals filed by the landowners deserve to be partly accepted and the same are allowed to the extent indicated above. The landowners are held entitled to receive the compensation for their acquired land, as assessed regarding each village, from the date of notification under Section 4 of the Act. Further, the landowners are also held entitled to receive 50% of the abovesaid market value, as compensation, on account of severance charges. Besides this, the land owners shall be entitled for all the statutory benefits available to them under the relevant provisions of the Act.

73. Resultantly, with the observations made above, all these appeals and cross objections stand disposed of in the abovesaid terms, however, with no order as to costs.