
(2015) 08 P&H CK 0138

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1496 of 1991 (O&M)

Karam Devi and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23(1), 24, 4, 4(1)

Citation : (2015) 08 P&H CK 0138

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Ashok Aggarwal, Puneet Bali, Senior Advocates, Sudhir Mittal, Mukul Aggarwal, Ajay Jain, Anurag Jain, Rose Gupta, Amit Jain and Arvind Rajotia, for the Appellant; Deepak Balyan, Additional Advocate General and Abhinash Jain, Assistant Advocate General, Ad

Final Decision : Dismissed

Judgement

Rajesh Bindal, J—This order will dispose of a bunch of appeals bearing RFA Nos. 1496, 1604, 1630, 1631 and 1691 of 1991; RFA Nos. 1406 and 1407 of 1992; RFA Nos. 1517 to 1527 of 1994; RFA Nos. 380 and 893 of 1998; RFA No. 5454 of 2011; RFA Nos. 1211, 1427 to 1433, 1874 to 1879, 2739 and 5791 of 2012; RFA Nos. 4139 to 4143, 5874 to 5886 of 2013 and Cross Objections No. 101-CI of 2014, as the same arise out of common acquisition.

2. In the appeals and cross-objections filed by the landowners, they are seeking further enhancement of compensation for the acquired land, whereas in the appeals filed by the State, the prayer is for reduction thereof.

FACTS

3. Briefly, the facts of the case are that vide notification dated 15.5.1979, issued under Section 4 of the Land Acquisition Act, 1894 (for short, "the Act"), State of Haryana sought to acquire 142.38 acres of land in village Hisar for development and utilization thereof as residential area in Sector 15-A, Hisar. The same was

followed by notification dated 21.12.1979, issued under Section 6 of the Act. The Land Acquisition Collector (for short, "the Collector"), vide award dated 11.6.1981, categorised the land into three blocks, namely, "A", "B" and "C and awarded Rs. 9/-, Rs. 8/- and Rs. 6/- per square yard, respectively as compensation. Aggrieved against the award of the Collector, the land owners filed objections which were referred to the learned court below, who keeping in view the material placed on record by the parties, determined the fair value of the acquired land @ Rs. 11.25 per square yard.

4. It was submitted by learned counsel for the landowners that 96 cases were referred to the court below by the Collector, out of which 95 references were decided together assessing compensation @ Rs. 11.25 per square yard. Reference bearing LAC No. 57 of 1983-- titled as "Mulakh Raj v. Haryana State and another" was separated, which was decided later on.

5. In the first round of litigation, the State as well as the landowners preferred appeals before this court, which were disposed of on 11.8.1988, vide detailed judgment in RFA No. 605 of 1986-Chuna v. Haryana State, assessing compensation for the entire land @ Rs. 23/- per square yard.

6. Still aggrieved, both the parties preferred Letters Patent Appeals. After the aforesaid judgment in Chuna's case (supra), pending reference in Mulakh Raj's case (supra) was decided separately by the court below vide award dated 5.2.1991 assessing the compensation @ Rs. 400/- per square yard.

7. As the reference in the case of Mulakh Raj's case (supra) was decided by the learned court below after the Regular First Appeals in the cases of other landowners had been decided and the Letters Patent Appeals were pending in this court, the Regular First Appeals, filed by him and the State, arising out of the reference in Mulakh Raj's case (supra), were also directed to be listed along with the Letters Patent Appeals. The same were disposed of on 17.9.2001 vide detailed judgment in LPA No. 110 of 1989-Smt. Phuli Devi v. The State of Haryana, upholding the amount of compensation @ Rs. 23/- per square yard. The appeal filed by the State seeking reduction in the compensation in Mulakh Raj's case (supra) was allowed and even in his appeal, the amount of compensation was reduced from Rs. 400/- per square yard to Rs. 23/- per square yard.

8. Both the parties preferred Special Leave Petitions before Hon''ble the Supreme Court. Vide order dated 16.7.2008 in Civil Appeal Nos. 6960-6961 of 2003-Mulakh Raj Sapra v. State of Haryana and another, while setting aside the judgment of this Court, Hon''ble the Supreme Court remitted the matter back to this court to be heard by a Division Bench. Thereafter, vide judgment dated 23.10.2009 in RFA No. 1286 of 1991-Shri Mulakh Raj Sapra (dead) through LRs v. State of Haryana and another, this court remitted the matters back to the Reference Court. After remand, the learned Reference Court first decided Mulakh Raj Sapra's case (supra) and assessed the compensation @ Rs. 365/- per square

yard vide award dated 31.3.2011. Placing reliance thereupon, the compensation in all other cases was assessed at the same rate vide award dated 3.1.2012. Both the parties are in appeals before this Court.

ARGUMENTS

9. Learned counsel for the landowners submitted that location of the land is quite evident from the site plan (Ex. P1) produced on record by the landowners after the cases were remanded back. This plan shows that the area around the acquired land was already well developed before acquisition. It is surrounded by Rajgarh Road, Kaimeri Road, Defence Colony, Bishnoi Colony, Jawahar Nagar and Patel Nagar. Further, Agriculture University at Hissar was located just across the road. Police Lines, Civil Secretariat and new Court Complex were also close by. The acquired land was a compact block, which was fit for residential and commercial use. At the time the land in question was acquired, close thereto there had been number of acquisitions in the area and one of them being in the case of Miss Nirupama Jain, which was located just a kilometer away from the acquired land, wherein this court in RFA No. 2019 of 1979 -Miss Nirupama Jain v. The State of Haryana and another, vide judgment dated 31.10.1989 had assessed the compensation @ Rs. 800/- per square yard. Notification under Section 4 of the Act therein was issued on 20.8.1975. There being a difference of three years and nine months between the two acquisitions, the landowners in the present appeals deserve to be granted even increase for the aforesaid period @ 12% per annum. Considering the fact that acquisition of land in Miss Nirupama Jain's case (supra) was for a big chunk, no cut is required to be applied and if necessary, cut of 10% to 20% can be applied. The land measuring 1.71 acres owned by M.D. Jain was also acquired for the same purpose. However, he did not dispute the fact that judgment in M.D. Jain's case is not on record to link the two acquisitions. The award of the court below assessing the compensation while averaging three different awards and thereafter applying cut of 60% thereon is totally erroneous as the best of them should have been considered. The land had great potential for development as residential and commercial areas.

10. Learned counsel for the landowners in RFA No. 5454 of 2011 submitted that after the matters were remitted back by Hon'ble the Supreme Court to this Court for consideration of the fresh evidence permitted to be produced, this court vide judgment dated 23.10.2009 in RFA No. 1286 of 1991-Shri Mulakh Raj Sapra (dead) through LRs's case (supra) had remitted the matters back to the Reference Court permitting the parties to lead further evidence and for de novo assessment of compensation, hence, any findings recorded in the earlier litigation was washed off and entire material produced on record was to be considered afresh. He further submitted that the case in hand was special and segregated for the reason that the acquired land was being used by the appellant for commercial purpose. He had already set up a hospital way back in the year 1971, hence, the land of the appellant was comparable with that of Miss Nirupama Jain's case (supra), which was also acquired for commercial purpose

and the appellant herein is entitled to receive compensation on the basis thereof.

11. As regards sale deed dated 14.4.1978 (Ex. R1 in LAC No. 25 of 1985) is concerned, learned counsel for the appellant submitted that the value shown therein cannot be said to be the fair market value of the acquired land as it was a distress sale. The land was under tenancy. Otherwise, there were other sale transactions produced on record, which clearly established fair value of the land. However, he did not refer to any evidence produced on record by the appellant in the form of revenue record showing as to for what period the land purchased by the appellant was under tenancy and under whom and further what steps were taken by the appellant to get possession of the land from the tenant. Though the court below had relied upon awards pertaining to the acquisitions of land in the cases of Miss Nirupama Jain, Ravi Kant and Baldev Tayal, however, he was unable to point out from any site plan on record the location of the land pertaining to the aforesaid acquisitions except that in the case of Miss Nirupama Jain's case (supra).

12. He further submitted that the award passed by the court pertaining to neighbouring land, which is comparable, is always safe for reliance. He further submitted that in fact, no cut is required to be applied considering the fact that the entire land was within municipal limits of Hisar. In support of his arguments, reliance was placed upon *Himmat Singh and Others Vs. State of M.P. and Another*, (2014) 1 RCR(Civil) 629 : (2013) 14 SCALE 267 and *Union of India (UOI) Vs. Raj Kumar Baghal Singh*, (2014) AIRSCW 5720 : (2014) 10 SCALE 365 .

13. On the other hand, learned counsel for the State submitted that it is a case in which the Collector awarded compensation to the landowners while carving out three belts, namely, "A", "B" and "C. The compensation was assessed @ Rs. 9/-, Rs. 8/- and Rs. 6/- per square yard for the aforesaid three blocks, respectively. The court below has failed to consider one important piece of evidence produced on record by the State in the form of sale deed dated 14.4.1978 (Ex. R1 in LAC No. 25 of 1985), vide which 14 kanals and 4 marlas of land was purchased by Mulakh Raj Sapra for a total sale consideration of Rs. 21,000/- at an average price of Rs. 2.44 per square yard. Part of the aforesaid piece of land was acquired. The notification under Section 4 of the Act was issued one year thereafter. The contention sought to be raised by Mulakh Raj Sapra and other landowners is that there was so much increase in the land in the area within a span of one year.

14. He further submitted that such a claim is not tenable even if considered in the light of other sale deeds produced by the landowners, two of which pertained to the acquired land and were for small plots of land. In fact, the acquired land was not abutting Hissar-Rajgarh road, rather, on the main road there were constructions and very small passage to approach the rear acquired portion. On one side, there was Rajbaha, whereas on the other side is Bhakra Canal. On one side is Kaimeri Road. From the city side, the area could be approached only

through Rajgarh road as because of Rajbaha, link with the city was broken as there were no bridges at that time. He further submitted that in the first round of litigation as well as in the second round of litigation, the court below failed to appreciate the evidence produced on record. The assessment of compensation has been made in Mulakh Raj Sapra's case (supra) by averaging the assessment of compensation pertaining to three different acquisitions and thereafter applying the cut of 60%. In fact, location of the land pertaining to two acquisitions is not even marked on any site plan. Merely it is mentioned that these pertained to Hisar city. Even reliance on the compensation awarded for acquisition of land in Miss Nirupama Jain's case (supra) is totally uncalled for as a small plot therein was located in busy commercial area in the city abutting NH-10 (Delhi-Hisar road), which was acquired for the purpose of commercial use. The distance thereof from the acquired land was 1.70 kilometers. The land in question was located away from the city.

15. In the first round of litigation, the learned court below in the case of all other landowners except Mulakh Raj Sapra found that none of the sale-transactions was relevant but still considering the fact that the land has potential for being used as residential area, increase of 25% was awarded on the maximum amount assessed by the Collector and as a result, compensation of Rs. 11.25 per square yard was assessed. This Court assessed the compensation placing reliance upon earlier award pertaining to acquisition, which was carried out about six years back, where the compensation was assessed @ Rs. 16/- per square yard. Increase of Rs. 7/- per square yard was granted for the time-gap and compensation was assessed @ Rs. 23/- per square yard. While assessing the compensation in Mulakh Raj Sapra's case (supra), the Reference Court in the first round of litigation had merely referred to some sale transactions pertaining to auction of small commercial plots and award pertaining to acquisition of land at Adampur, which was located 38 kilometers away from the land in question and thereafter by applying a thumb rule, determined Rs. 400/- per square yard as the compensation. The court at no stage had recorded a finding that the land in question was fit for commercial use. It merely opined that it could be used for residential purposes.

16. He further submitted that though Hon''ble the Supreme Court permitted the State to produce sale deed dated 14.4.1978, vide which the land was purchased by Mulakh Raj Sapra one year before the acquisition of land, part of which was acquired also, but the court below after remand has failed to consider the same. He further submitted that even the sale deed (Ex. R2 in LAC No. 25 of 1985), registered on 24.3.1975, vide which 8 kanals and 13 marlas of land was sold for a total sale consideration of Rs. 1,500/- at an average price of 29 paise per square yard was also not considered. The land pertaining to the aforesaid sale deed was also part of the acquired land. The entire acquired land even as per the admitted case of the landowners was agricultural when the same was acquired.

17. Prayer in CM No. 3244-CI of 2014 in RFA No. 1427 of 2014 filed by Residents

Welfare Association has been made for being impleaded as a party to the appeal. Mr. Ashish Gupta, learned counsel for the applicant submitted that in the acquired land, plots were carved out by Haryana Urban Development Authority and sold to various persons, who had constructed their houses way back. With the assessment of compensation by the court below @ Rs. 365/- per square yard, they have been issued notices seeking to recover lacs of rupees, whereas value of the land was not more than what was assessed by the Collector at that time. It is evident from the record itself that the case was badly conducted by the State from the very beginning. The sale deed pertaining to the acquired land, which was just one year old, reference of which was made by Mulakh Raj Sapra in his objections, was not produced in evidence. The plot holders are the interested parties for the reason that in terms of the conditions of allotment, the amount of enhanced compensation on account of acquisition of land has to be paid by them. He referred to the order dated 15.7.2004 passed by Hon'ble the Supreme Court during the pendency of appeals, whereby the application filed by the plot holders for intervention was allowed, hence, they are necessary parties.

18. Assailing the award on merits, while adopting the contentions raised by learned counsel for the State, learned counsel appearing for the applicant-Residents Welfare Association submitted that a perusal of the award of the Collector shows that the land was merely being used for agricultural purposes at the time of acquisition, as it records that there were crops standing on part of the acquired land and compensation was paid for wells, tubewells, trees etc. Without there being any good reason, reference of Mulakh Raj Sapra's case (supra) was separated from other cases. Even the award in Miss Nirupama Jain's case (supra) was already before the court below, when the cases were decided in the first round of litigation, still the court did not place reliance thereupon as the location of the acquired land was not comparable with that. In fact, during hearing of Letters Patent Appeals in the first round of litigation, a site plan was produced before the court which clearly specifies the distance of the acquired land from the land in Miss Nirupama Jain's case (supra). In the aforesaid case, the land was acquired for commercial purposes being located in already developed commercial area in the heart of the city on NH-10. The acquired land in question had very narrow approach even from Rajgarh road.

19. He further submitted that even in the original claims filed by the landowners, compensation of Rs. 150/- per square yard only was claimed. Later on, the claims were amended to seek compensation of Rs. 1,500/- per square yard. The awards, which have been relied upon by the court below now for assessing the compensation for the acquired land, were already there but were discarded, not only by the court below but even by this court. Before Hon'ble the Supreme Court also, the matter was remitted back as the sale deed dated 14.4.1978 registered just one year prior to the date of acquisition, part of which was acquired also, was permitted to be produced in additional evidence. The same only was required to be seen with an object to consider as to whether the compensation was to be reduced from Rs. 23/- per square yard granted by this

court earlier as other evidence had already been considered. Even other sale deeds produced by the landowners themselves where even small plots were sold were ignored by the court below, some of which were pertaining to the acquired land. Any sale transaction close to the acquisition, which is part of the acquired land is the best evidence as compared to award in the cases of other portions of land located at a distance.

20. He further referred to the judgment of this Court in RFA No. 1785 of 1997-State of Haryana and others v. Sudhir Kumar and others, decided on 4.4.2011, whereby compensation for acquisition of land for Sector 13, Hisar, where notification under Section 4 of the Act was issued on 23.5.1983, was assessed @ Rs. 120/- per square yard. The aforesaid land is located on Delhi Road. He further referred to the judgments of Hon'ble the Supreme Court in Raj Kumar and others v. Haryana State and others, 2007 (4) RCR (Civil) 175 and Ashrafi and Others Vs. State of Haryana and Others, AIR 2013 SC 3654 : (2013) 116 CLT 369 : (2013) 4 CTC 228 : (2013) 5 JT 643 : (2013) 2 RCR(Civil) 856 : (2013) 5 SCALE 686 : (2013) 5 SCC 527 . In Raj Kumar's case (supra), compensation for acquisition of land for Sectors 9 and 11, Hisar, where notification under Section 4 of the Act was issued on 19.5.1992, was assessed @ Rs. 235/- per square yard. In Ashrafi's case (supra), compensation for acquisition of land for Sectors 11, 13, 15, 16 and 17, Hisar, where notification under Section 4 of the Act was issued on 21.3.1991, was assessed @ Rs. 325/- per square yard. The aforesaid judgments have been referred to in support of the argument that even for the land acquired much after acquisition of the land in question and which was having better location, the compensation was not assessed at the rate, as was assessed in the case in hand.

21. Learned counsel further submitted that in the sale deed dated 14.4.1978 (Ex. R1 in LAC No. 25 of 1985), not a single word has been mentioned regarding the land being under tenancy, which was purchased by the predecessor-in-interest of the appellant, rather, it was mentioned therein that possession is being handed over to the buyer. It is merely an afterthought of the appellant to come out of the sale transaction. He further submitted that regarding construction, it has come in evidence produced by the State that when the officials had gone for assessment, the boundary wall was being constructed.

22. Further reliance was placed upon T.S. Ramachandra Shetty Vs. Chairman, Karnataka Housing Board and Another, (2009) 4 JT 363 : (2009) 3 SCALE 333 : (2009) 14 SCC 334 ; Charan Dass (Dead) by L.Rs. Vs. Himachal Pradesh Housing and Urban Development Authority and Others, (2009) 11 JT 692 : (2009) 12 SCALE 293 : (2010) 13 SCC 398 and Pehlad Ram and Others Vs. Haryana Urban Development Authority and Others, AIR 2014 SC 793 : (2014) 1 RCR(Civil) 316 : (2013) 14 SCALE 543 : (2014) 1 SCJ 651 .

DISCUSSION

23. Heard learned counsel for the parties and perused the paper book and the

relevant referred record.

24. The bunch of cases in hand has a chequered history. Though for acquisition of land, notification under Section 4 of the Act was issued on 15.5.1979, but the parties are still litigating. Ninety-six references were there before the Reference Court, out of which, apparently without there being any valid reason, one reference pertaining to Mulakh Raj Sapra's case (supra) was separated. Ninety-five references were decided vide award dated 4.11.1985 whereby the compensation was assessed @ Rs. 11.25 per square yard. The Reference Court, while assessing the compensation did not find that any of the sale deed or award produced on record was relevant. While noticing the evidence produced by the landowners, whereby the witnesses produced by the landowners themselves admitted that the acquired land was not developed at all at the time of acquisition and there were no roads, electric installation etc. on the acquired land. One of the witnesses, namely, PW6-Smt. Menno Devi (LAC No. 40 of 1985) stated that part of the acquired land was banjar at the time of acquisition. It further came in evidence that construction activities started in the area only in the year 1980 and the land was not even fit for agriculture as there were no irrigation facilities. It could, at the most, be used for residential purposes. PW9-Deep Kishore (LAC No. 40 of 1985) stated that price of the land at the time of acquisition was about Rs. 2.20 to Rs. 2.50 per square yard. All the sale deeds were discarded. It is important to note here that though the State is custodian of record pertaining to all the sale deeds registered and in the case in hand, one of the sale transactions pertaining to part of the acquired land was registered just one year prior to the date of notification under Section 4 of the Act, whereby Mulakh Raj Sapra had purchased 14 kanals and 4 marlas of land. He had even referred to that in his objections, but still the State did not consider it appropriate to produce that sale transaction in its evidence. This is how the cases are conducted by the State.

25. The learned Reference Court, while observing that the land is located within the municipal limits, though at the time of acquisition it was being used for agricultural purposes, but still could be used for residential purposes once the city expands, hence, taking the base at maximum amount of compensation awarded by the Collector, treating the entire land as one block, 25% increase was granted thereon and the compensation was assessed @ Rs. 11.25 per square yard.

26. The reference in Mulakh Raj Sapra's case (supra) was still pending. The landowners, in whose cases, the references had been decided preferred appeals before this court, which were taken up and disposed of in Chuna's case (supra), whereby Single Judge of this court discarded the award in Nirupama Jain's case (supra), considering the same to be not relevant on the ground that location of both the lands is not comparable. This Court referred to an earlier judgment in RFA No. 595 of 1979-Sheo Lal and others v. The State of Haryana and another, decided on 12.10.1981 pertaining to acquisition of land for development as

commercial and residential area in Hisar city, where notification under Section 4 of the Act was issued on 30.1.1973. For the aforesaid acquisition, this court had assessed the compensation dividing the acquired land into two blocks, @ Rs. 23/- and Rs. 16/- per square yard, respectively. The acquired land in the present case was found to be comparable with second block. While granting increase @ Rs. 1/- per square yard per year for the time gap of 7 years in two acquisitions, compensation was assessed @ Rs. 23/- per square yard vide judgment dated 11.8.1988 in Chuna's case (supra). Both the parties preferred LPAs.

27. After the aforesaid judgment, pending reference in Mulakh Raj's case (supra) was decided by the court below vide award dated 5.2.1991, assessing the compensation in his case @ Rs. 400/- per square yard. The assessment was made after this court had already determined compensation for the land acquired vide same notification. It was even referred to by the court below. For the purpose of assessment, reference was made to certain auction sales, which were later in time and an award pertaining to acquisition of land at Adampur, located at a distance of 38 kilometers from the acquired land. Thereafter, by applying a thumb rule Rs. 400/- per square yard was assessed as the compensation. The referred transactions were not even shown on any site plan.

28. The appeals filed by the State as well as claimant against the award in Mulakh Raj's case (supra) were clubbed with Letters Patent Appeals filed against the earlier judgment of this court in the case of other landowners, whereby the assessment of compensation @ Rs. 23/- per square yard was upheld by this court in Smt. Phuli Devi's case (supra). The compensation awarded by the Reference Court in Mulakh Raj Sapra's case (supra) was reduced from Rs. 400/- to Rs. 23/- per square yard. The observations made by this Court regarding location of the land, while deciding the Letters Patent Appeals, are extracted below:

"Admittedly, the entire land, subject matter of acquisition is within the municipal limits of Hisar. On the extreme left of the lay out plan, there exists Delhi Hisar highway. From the intersection of Delhi Hisar road and Rajgarh road, Hisar town extends towards North. Jhambeshwar Market, subject matter of acquisition in Ravi Kanta's case (supra) is in the heart of Hisar town at a distance of 1.30 kms. from the fountain chowk which is inter-section of these two roads. The land, subject matter of acquisition belonging to Mulakh Raj Sapra is at a distance of 1.70 Kms from the fountain chowk on Rajgarh road which is towards South of the said chowk. The land of Mr. Sapra is comprised in Khasra Nos. 857/1 measuring 2 kanals 10 marlas, 459 measuring 18 marlas and 460 measuring 10 kanals 6 marlas. This land is not a compact block and is located at two different places. Whereas, khasra No. 460 is located 175 meters deep from Rajgarh road, other two khasra numbers are farther at a distance of about 200 meters towards left hand side of khasra No. 460. These two places of land have been shown in red colour in the lay out plan. Insofar as award Ex. A1, that has been relied upon by learned District Judge, is concerned, same is at a distance of

about 25 km from the fountain chowk and once again is in thick of the commercial area. The old Court complex, office of D.I.G., residence of Superintending Engineer, H.S.E.B., office of H.S.E.B. and a colony, known as Lajpat Nagar, are in the very close vicinity of the land, subject matter of award, Ex. A1 and the same is also bang on Rajgarh road. A portion of it touches the Rajgarh road itself. Insofar as land, subject matter of award, Ex. AZ is concerned, same has naturally not been shown in the lay out plan as the same is located at the distance of 38 Kms. from the land, subject matter of acquisition. It is significant to note that all the constructions, be it in the shape of Defence Colony, Secretariat or other buildings, or for that matter, Haryana Agricultural University, are on Rajgarh road itself. Insofar as land, subject matter of acquisition is concerned, same being at least 175 meters deep from the road, was lying vacant and was being used for agricultural purposes at the time when notification under Section 4 was issued. Sapra Hospital itself is at a distance of 124 meters deep from the aforesaid road. It is, however true, that Bishnoi Colony, Mini Secretariat and Haryana Agricultural University were in the close vicinity of the land in question and all these buildings had come up before notification under Section 4 was issued. However, but for Bishnoi Colony, all colonies are located right on the side of the road. It is clear from a bare look of lay out plan that the construction in the shape of various buildings, right on the road is thicker near the town and keeps on tapering and becoming thin and thin farther from the main town. A usual pattern of buildings along the main road, thicker near the town and thinner away from the town is quite decipherable from the aforesaid lay out plan."

29. The award of compensation in Mulakh Raj Sapra's case (supra) was not considered to be relevant evidence for the purpose of assessment of compensation in other cases.

30. The landowners as well as State went in appeal before Hon"ble the Supreme Court. Vide order dated 15.7.2004, passed in Civil Appeal Nos. 6960-6961 of 2003-Mulakh Raj Sapra v. State of Haryana and another and other connected appeals, Hon"ble the Supreme Court, while allowing the application filed by Residents Welfare Association for seeking permission to intervene in the matter. The application filed by the State seeking permission to lead additional evidence in the form of sale deed dated 14.4.1978, vide which the land was purchased by Mulakh Raj Sapra, part of which was acquired was also allowed. The Reference Court was directed to permit both the parties to lead evidence in relation to the aforesaid sale deed. The report was to be submitted to Hon"ble the Supreme Court.

31. Vide order dated 16.7.2008, Hon"ble the Supreme Court remitted the matters back to this court considering that fresh evidence had come on record and it would be appropriate if the High Court re-considers the matter on the basis of evidence already on record as well as fresh evidence recorded. From the statement made by learned counsel appearing for Mulakh Raj Sapra, it was

noticed that in case the facts in that case are different, the High Court may segregate the appeal filed by Mulakh Raj Sapra. The relevant part of the order is extracted below:

"The additional evidence adduced on behalf of the parties in terms of the aforesaid order, has been duly forwarded by the Additional District and Sessions Judge, Hissar, which form part of this record. In view of the fresh evidence on record, we think it appropriate that the High Court should reconsider the matter on the basis of evidence already on record as well as the fresh evidence recorded. We accordingly set aside the order of the High Court and remand these appeals to the High Court for fresh decision on the basis of the evidence already on record as also fresh evidence. We make it clear that in the meantime since the jurisdiction of the High Court to hear Letters Patent Appeals in these matter is no longer available, the pending LPAs as well as Regular First Appeals are to be heard together by the Division Bench which will thereafter be required to take a fresh decision in the matter."

32. Thereafter, the matters were placed before a Division Bench of this Court. Learned counsel appearing for Mulakh Raj Sapra finding it difficult to defend the award in the light of fresh evidence, stated before the court that the award of the Reference Court assessing compensation in favour of Mulakh Raj Sapra @ Rs. 400/- per square yard be set aside and the matter be remitted back to the Reference Court with a direction that the parties be allowed to adduce such further evidence as may be available with them in support of their cases. Considering the statement made by learned counsel appearing for Mulakh Raj Sapra, learned counsel for the landowners in other appeals also adopted the same course as their reliance was also primarily on the award passed in Mulakh Raj Sapra's case (supra). This Court, vide order dated 23.10.2009, set aside the awards passed in all the cases and the matters were remitted back for fresh determination of the amount of compensation payable to the landowners after affording the parties further opportunity to lead evidence.

33. After remand by this court, the learned Reference Court again instead of taking up all the matters remanded together, first considered the case of Mulakh Raj Sapra and vide award dated 31.3.2011 assessed the compensation therein @ Rs. 365/- per square yard. For the purpose of assessment of compensation, the learned court below first averaged the compensation awarded in Nirupama Jain's case (supra) @ Rs. 800/- per square yard, Rs. 900/- per square yard awarded in Ravi Kant's case and Rs. 1,231/- per square yard awarded in Baldev Tayal v. State of Haryana. The average of the aforesaid transactions relied upon was taken as Rs. 976/- per square yard. Noticing that those acquisitions were earlier in time, the amount was increased from Rs. 976/- per square yard to Rs. 1,000/- per square yard. Thereafter, a cut of 60% was applied to reach a figure of Rs. 400/- per square yard. Still thereafter, the compensation was assessed @ Rs. 365/- per square yard with the observation that the amount is being granted to maintain the scales of justice between the parties and to grant more rebate to

the State. The interesting aspect is that though location of the land pertaining to the award in favour of Nirupama Jain's case (supra) was marked on a site plan, however, the other two portions of land, the awards of which were relied upon, were not even pointed out on any site plan by learned counsel for the landowners even at the time of hearing before this court. Merely it was mentioned that the same pertained to city of Hisar. If earlier awards are to be relied upon or the compensation awarded in case of other acquisition has to be relied upon, the same has to be a comparable transaction in the sense that location of the land vis-?-vis the acquired land, only then the principle of application of cut applies.

34. The important aspect to be noticed is that the sale deed, which was permitted to be produced by way of additional evidence by Hon''ble the Supreme Court was not even considered by the Reference Court. Vide aforesaid sale deed dated 14.4.1978, the land was purchased by Mulakh Raj Sapra @ Rs. 2.44 per square yard just one year prior to the acquisition in question, part of which was acquired.

35. Hon''ble the Supreme Court, while recording the statement made by learned counsel appearing for Mulakh Raj Sapra observed for segregating his case as he claimed that his facts were different, but I do not find any good reason for that. His land is also part of the compact block acquired. There was nothing special about this land.

36. To avoid creation of anomalous situation, whereby different awards are given by the Reference Court pertaining to acquisition of land vide same notification, merely because those are decided separately, this Court in Smt. Maya and Others Vs. State of Haryana and Others, (2012) 168 PLR 747 : (2013) 2 RCR(Civil) 518 , directed as under:

"16. To streamline the dealing of cases under the Land Acquisition Act, with a view to ensure their expeditious disposal, this Court deems it appropriate to issue the following directions:

(1) The Land Acquisition Collector shall ensure that all the land owners who file objections furnish their complete addresses.

(2) All the objections received by the Collector in land acquisition cases shall be referred to the court for adjudication maximum within three months after receipt thereof. Along with the objections or bunch of objections, a certificate shall be annexed by the Collector to the effect that all the objections received upto that date for the acquisition in question have been sent to the court.

(3) Whenever a land reference is put up before the learned court below, to which it is entrusted, it shall ensure from the District Attorney/Assistant District Attorney and/or the Collector that all the objections received by the Collector upto date have been sent to the court for adjudication. A certificate to the effect has to be placed on record. In case the land references were received on

different dates and were put up on different dates either for first hearing or for hearing after notice, the learned court below shall club all the land references arising out of the same acquisition to be heard on one date of hearing before it proceeds further in the matter. Assistance of the office of District Attorney is most relevant on this aspect.

(4) In case some objections are received late by the Collector for any reason whatsoever, he shall be duty-bound to refer the same to the court immediately after its receipt so that the same is clubbed with the cases already pending and are disposed of along with that. Information about the cases already sent to the court shall also be furnished by the Collector.

(5) In case any objection is received after the disposal of the land references by the learned Reference Court, the Collector while sending the same to the court for adjudication shall annex a copy of the award/judgment of the court along with that, pertaining to the acquisition in question.

(6) The decision of the land references arising out of the same acquisition in piece-meal on different dates has to be avoided at all cost unless the reference is received late.

(7) The learned courts below to keep in view the directions issued by Hon^{ble} Supreme Court in Mangat Ram Tanwar's case (supra) pertaining to disposal of land acquisition cases which are extracted below:

"6. We are aware of the problem of back log in most of the Courts. The references under Section 18 should be treated as a class by themselves entitled to priority attention. If care and attention are devoted at the appropriate time, these cases can be easily disposed of by clubbing them groupwise and recording evidence after taking the consent of counsel for the parties. Most of the acquisitions these days relate to large patches of land and ordinarily they are covered under one notification. Cases which are covered by a common notification should be clubbed together for which a statutory foundation is available in the Amending Act of 1984 in extending the benefit of higher compensation to all lands covered by a common notification even if dispute is not raised. If that is done the total number of cases where evidence would be necessary is likely to be reduced and better attention can perhaps be given. The High Courts should take special note of the pendency of land acquisition references and where it is possible a Court may be set apart for those cases.

7. We expect every referee court to dispose of the references ordinarily within one year of receipt of the reference and the outer limit should be the end of the second year. The High Courts in exercise of their controlling powers should ensure enforcement of this position so that all pending references in the subordinate courts at the original stage may be disposed of within time frame indicated above."

(8) The cases pertaining to acquisition of land for a canal/drain/road/channel/

distributory or of similar nature, where the acquired land passes through different villages in the form of a strip, endeavour should always be made to entrust the cases to one court. Even if the same arise out of different notifications, though issued close in time, the learned courts below should also make efforts to decide these cases collectively after perusing site plan for the entire acquired land. It would be in the interest of all the parties concerned that a site plan showing location of the entire acquired land and also the surrounding area is produced by the State in court. The learned courts below to keep in view the observations made by this court in R.F.A. No. 686 of 1991 -Lokeshwar Dutt v. The State of Haryana and another, decided on 16.8.2010, pertaining to the same issue, which are extracted below:

"However, finding that number of cases are coming before this court, where this type of situation is being repeated on account of which the court finds it difficult to determine the fair value of the acquired land, which may result in injustice to either of the party. Not only that, in number of cases, the applications are filed by the land owners for producing additional evidence, which, in fact, should be part of the evidence to be led by the land owners/State at the very first instance. In many cases, the court, in the interest of justice, had to ask the State or the party to produce on record the site plan showing the exact location of the acquired land, sale deeds etc. to avoid injustice to either of the party. This unnecessarily delays the disposal of cases. The basic things, which should be brought on record to enable the court to determine fair value of the acquired land is the notification under Section 4 of the Act, copy of the award, site plan to the scale, showing the acquired boundary vis-?-vis its location such as its closeness to the city, village, highway, internal road with all its positive and negative factors. Another important fact is that such a plan should have the status as on the date of issuance of notification under Section 4 of the Act, the date being crucial for the purpose of determination of fair value of the acquired land. It would be appropriate if the sale instances sought to be produced by the land owners or the State are pointed out on the site plan to be produced on record by either of the party. In the absence of which it is difficult to locate the same and consider its true value. The site plan, which should be taken on record, should be on butter paper or cloth, as it is seen in a number of cases that when the appeals are heard after 15-20 years, the site plans, which are quite big and may be on thin tracing paper, are torn out making it difficult for the parties to refer to the same and also for the court to consider."

(9) At the time of filing of appeals against the awards of the learned Reference Court pertaining to an acquisition, the Collector/Land Acquisition Officer shall file an affidavit that appeals against all the awards of the learned Reference Court pertaining to the particular acquisition, have been filed.

(10) This court in R.F.A. No. 4742 of 2010-The State of Haryana and another v. Sh. Tek Chand and others, decided on 11.10.2010, wherein the appeal was filed by the State against award of the learned court below despite the fact that the

earlier award of the Reference Court, which had been relied upon for the purpose of determination of compensation in that case had already been upheld by this court and there was no merit in the appeal even on the date of filing thereof, had issued following directions:

"To avoid unnecessary adjournments of the cases, I deem it appropriate to direct that in all appeals filed by the land owners or the State following information must be furnished in the appeal itself:

(i) In case the learned Reference Court had relied upon any earlier award pertaining to same or any other acquisition, the fact as to whether any appeal against the same is pending or not, should be mentioned in the grounds of appeal. The number of such appeal and status thereof be also mentioned.

(ii) In case no earlier award is relied upon by the Reference Court, it should be mentioned that the Reference Court has not relied upon any earlier award.

The aforesaid facts should be mentioned in the last para of the grounds of appeal before the prayer clause. The Registry is directed to ensure compliance of the requirement. This may be brought to the notice of the Bar Association for notifying to the learned members of the Bar."

(11) In case the State fails to file appeals in all the cases decided by the Reference Court and ultimately the amount of compensation is reduced by the higher court, the State shall be duty-bound to fix the responsibility of the person(s) concerned for the lapse and also recover the amount of loss suffered from the guilty officer(s)/official (s).

(12) The learned Reference Court should also ensure from the Collector and/or the District Attorney that no land reference pertaining to the acquisition of land in the area, which is prior in time, is pending for adjudication and in case there was any acquisition of land in the area prior in time, the award passed by the Reference Court or the higher court therein should always be brought to the notice of the court concerned.

(13) It should be ensured by the court that the land references pertaining to acquisition of land, which is prior in time, are decided first before taking up the cases of the acquisition carried out subsequently."

37. The principles of law laid down for assessment of compensation for acquisition of land are well-settled and have been reiterated by Hon"ble the Supreme Court in *Union of India v. Raj Kumar Baghal Singh (Dead)* (supra). Relevant paragraph thereof is extracted below:

"10. It is well settled in determining compensation for the acquired land, price paid in a bona fide transaction of sale by a willing seller to a willing buyer is adopted subject to such transaction being for land adjacent to acquired land, proximate to the date of acquisition and possessing similar advantages. Of course, there are other well-known methods of valuation like opinion of experts

and yield method. In absence of any evidence of a similar transaction, it is permissible to take into account transaction of nearest land around the date of notification under Section 4 of the Act by making a suitable allowance. There can be no fixed criteria as to what would be the suitable addition or subtraction from the value of the relied upon transaction. In *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, AIR 1988 SC 1652 : (1988) 3 JT 106 : (1988) 2 SCALE 43 : (1988) 3 SCC 751 : (1988) 1 SCR 531 Supp : (1988) 2 UJ 318 , this Court summed up the principle as follows:--

"4. The following factors must be etched on the mental screen:

(1) -(4)

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of notifications under Sections 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of acquisition of land.)

(9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-?-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard-and-fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds. cannot be compared with a large tract or block of land of say 10,000 sq. yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a layout, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approximately between 20 per cent to 50 per cent to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense."

Again in *Viluben Jhalejar Contractor (D) by LR. Vs. State of Gujarat*, AIR 2005 SC 2214 : (2005) 4 CTC 71 : (2005) 4 JT 282 : (2005) 4 SCC 789 : (2005) 1 SCR 542 : (2005) 1 UJ 716 , it was observed:--

"24. The purpose for which acquisition is made is also a relevant factor for determining the market value. In *Smt. Basavva and others Vs. Special Land Acquisition Officer and others*, (1996) 4 AD 426 : AIR 1996 SC 3168 : (1996) 5 JT 580 : (1996) 3 SCALE 299 : (1996) 9 SCC 640 : (1996) 3 SCR 500 , deduction to the extent of 65% was made towards development charges.

25. In *Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality*, AIR 1992 SC 2298 : (1991) 4 JT 56 : (1991) 2 SCALE 613 : (1991) 4 SCC 506 : (1991) 1 SCR 172 Supp : (1992) 1 UJ 1 , it has been held: (SCC pp. 510-11, para 11)

"11. The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land. In

applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition which is the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications, etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified."

26. In *The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others*, (1998) 1 AD 424 : AIR 1998 SC 781 : (1998) 1 JT 141 : (1998) 1 SCALE 133 : (1998) 2 SCC 385 : (1998) 1 UJ 365 : (1998) AIRSCW 497 : (1998) 1 Supreme 251 , this Court held: (SCC p. 387, para 6)

"6. Ext. B-30 is a sale deed dated 9-8-1976, the transaction having taken place prior to eight months from the issue of the preliminary notification for acquisition of land in the present case. Having found that the piece of land referred in Ext. B-30 is situated very close to the lands that are acquired under the notification in question the Reference Court and the High Court relied upon the said document and, in our view, rightly. Further when no sales of comparable land were available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a layout, lump sum payment as also the waiting period required for selling the sites that would be formed."

27. In *Administrator General of West Bengal Vs. Collector, Varanasi*, AIR 1988 SC 943 : (1988) 1 JT 529 : (1988) 1 SCALE 484 : (1988) 2 SCC 150 : (1988) 2 SCR 1025 : (1988) 1 UJ 642 , deduction to the extent of 53% was allowed.

28. In *K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another*, AIR 1996 SC 2886 : (1995) 9 JT 501 : (1996) 1 SCALE 118 : (1996) 2 SCC 62 : (1995) 6 SCR 364 Supp

"10. It is then contended that 53% is not automatic but depends upon the nature of the development and the stage of development. We are inclined to agree with the learned counsel that the extent of deduction depends upon development need in each case. Under the Building Rules 53% of land is required to be left out. This Court has laid as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted. Where the development has already taken place, appropriate deduction needs to be made. In this case, we do not find any development had taken place as on that date. When we are determining compensation under Section 23(1), as on the date of notification under Section 4(1), we have to consider the situation of the land development, if

already made, and other relevant facts as on that date. No doubt, the land possessed potential value, but no development had taken place as on the date. In view of the obligation on the part of the owner to hand over the land to the City Improvement Trust for roads and for other amenities and his requirement to expend money for laying the roads, water supply mains, electricity etc., the deduction of 53% and further deduction towards development charges @ 33-1/3%, as ordered by the High Court, was not illegal."

29. In *Hasanali Khanbhai and Sons and Others Vs. State of Gujarat*, (1995) 6 JT 92 : (1995) 4 SCALE 786 : (1995) 5 SCC 422 : (1995) 2 SCR 363 Supp and *Land Acquisition Officer Vs. Nookala Rajamallu and Others*, it has been noticed that where lands are acquired for specific purposes deduction by way of development charges is permissible.

30. We are not, however, oblivious of the fact that normally one-third deduction of further amount of compensation has been directed in some cases. (See *Kasturi and Others Vs. State of Haryana*, AIR 2003 SC 202 : (2002) 9 JT 299 : (2003) 1 SCC 354 : (2003) 1 UJ 197, *Tejumaal Bhojwani (Dead) through Lrs. and Others Vs. State of U.P.*, AIR 2003 SC 3791 : (2003) 2 JT 194 Supp : (2003) 7 SCALE 38 : (2003) 10 SCC 525 : (2003) 2 SCR 1044 Supp : (2003) AIRSCW 4335 : (2003) 6 Supreme 538, *V. Hanumantha Reddy (Dead) by Lrs. Vs. The Land Acquisition Officer and Mandal R. Officer*, (2003) 10 SCALE 874 : (2003) 12 SCC 642 : (2004) AIRSCW 75 : (2003) 8 Supreme 734, *H.P. Housing Board Vs. Bharat S. Negi and Others*, AIR 2004 SC 1800 : (2004) 2 SCALE 99 : (2004) 2 SCC 184 : (2004) AIRSCW 797 : (2004) 1 Supreme 770 and *Kiran Tandon Vs. Allahabad Development Authority and Another*, AIR 2004 SC 2006 : (2004) 3 JT 579 : (2004) 3 SCALE 691 : (2004) 10 SCC 745 : (2004) 3 SCR 467

31. In *University of Agricultural Sciences v. Balanagouda*, Civil Appeals Nos. 62-65, decided on 10.12.2003 (SC) whereupon Mr. Ranjit Kumar placed strong reliance, the Court noticed that if the acquisition is made for agricultural purpose, question of development thereof would not arise; but if the sale instance was in respect of a small piece of land whereas the acquisition is for a large piece of land, although development cost may not be deducted, there has to be deduction for largeness of the land and also for the fact that these are agricultural lands. In that view of the matter, deduction at the rate of 33% made by the High Court was upheld. It may not, therefore, be correct to contend, as has been submitted by Mr. Ranjit Kumar, that there cannot be different deductions, one for the largeness of the land and another for development costs."

38. The principles regarding determination of market value of the acquired land were gone into by Hon'ble the Supreme Court earlier in *Himmat Singh's* case (supra). Relevant paras thereof are extracted below:

"21. Before considering the respective arguments, we may notice the principles laid down by this Court for determination of market value of the acquired land. In *Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others*, (2001) 6 AD

403 : AIR 2001 SC 3341 : (2001) 7 JT 4 : (2001) 5 SCALE 367 : (2001) 7 SCC 650 : (2001) AIRSCW 3186 : (2001) 6 Supreme 243 , this Court held:

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

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23. In Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another, AIR 2008 SC 709 : (2008) 2 CLT 723 : (2007) 13 JT 473 : (2007) 14 SCALE 109 : (2008) 2 SCC 568 : (2007) 12 SCR 1120 , the Court held:

"4. In order to determine the compensation which the tenure-holders are entitled to get for their land which has been acquired, the main question to be considered is what is the market value of the land. Section 23(1) of the Act lays down what the court has to take into consideration while Section 24 lays down what the court shall not take into consideration and have to be neglected. The main object of the enquiry before the court is to determine the market value of the land acquired. The expression "market value" has been the subject-matter of consideration by this Court in several cases. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his

land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm's length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz. A price outcome of hypothetical sale expressed in terms of probabilities. See *Thakur Kamta Prasad Singh (Dead) by Lrs. Vs. The State of Bihar*, AIR 1976 SC 2219 : (1967) CriLJ 1380 : (1976) 3 SCC 772 : (1976) 3 SCR 585 : (1976) 8 UJ 326 , *Prithvi Raj Taneja (Dead) by Lrs. Vs. The State of Madhya Pradesh and Another*, AIR 1977 SC 1560 : (1977) 79 PLR 478 : (1977) 1 SCC 684 : (1977) 2 SCR 633 , *Administrator General of West Bengal Vs. Collector, Varanasi*, AIR 1988 SC 943 : (1988) 1 JT 529 : (1988) 1 SCALE 484 : (1988) 2 SCC 150 : (1988) 2 SCR 1025 : (1988) 1 UJ 642 and *Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala*, AIR 1990 SC 2192 : (1991) 1 JT 450 : (1990) 2 SCALE 525 : (1991) 4 SCC 195 : (1990) 1 SCR 362 Supp .

5. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about a town is developing or has prospect of development have to be taken into consideration. See *The Collector, Raigarh Vs. Harisingh Thakur and Another*, AIR 1979 SC 472 : (1979) 1 SCC 236 : (1979) 2 SCR 183 : (1979) 11 UJ 41 , *Raghubans Narain Singh Vs. The Uttar Pradesh Government Through Collector of Bijnor*, AIR 1967 SC 465 : (1967) 1 SCR 489 and *Administrator General of West Bengal Vs. Collector, Varanasi*, AIR 1988 SC 943 : (1988) 1 JT 529 : (1988) 1 SCALE 484 : (1988) 2 SCC 150 : (1988) 2 SCR 1025 : (1988) 1 UJ 642 . It has been held in *Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another*, AIR 1984 SC 892 : (1984) 1 SCALE 304 : (1984) 2 SCC 324 : (1984) 2 SCR 900 : (1984) 16 UJ 429 and *Suresh Kumar Vs. Town Improvement Trust, Bhopal*, AIR 1989 SC 1222 : (1989) 1 JT 439 : (1989) 1 SCALE 534 : (1989) 2 SCC 329 : (1989) 1 SCR 908 : (1989) 1 UJ 650 that failing to consider potential value of the acquired land is an error of principle."

39. A perusal of the aforesaid judgments shows that bona fide sale transaction of the land adjacent to the acquired land, proximate to the date of acquisition and possessing similar advantages, is the best evidence. The size of the land dealt

with in the sale deed is also relevant. If all these factors are satisfied, there is no reason for not placing reliance on those sale transactions. Certain negative factors have also been specified besides the location of the land dealt with in the sale transactions.

40. In Pehlad Ram and others" case (supra), Hon"ble the Supreme Court, while referring to an earlier judgment of Hon"ble the Supreme Court in The Dollar Company, Madras Vs. Collector of Madras, AIR 1975 SC 1670 : (1975) 2 SCC 730 : (1975) SCR 403 Supp : (1975) 7 UJ 462 , opined as under:

"13. This Court in The Dollar Company (Supra) has categorically laid down that in case the land of the claimant has been acquired in close vicinity of the purchase, the consideration paid by such claimant to the vendor is the best evidence of the market value of the land. The court should not award more unless it is possible to reach a different conclusion. Even the appellate court should not interfere in such a fact situation unless the judgment is based on wrong application of principle or because some important point affecting valuation has been overlooked or misapplied. The consideration paid by the owner only a few months ago presents bonafide evidence of value subject to certain exceptions such as relationship of the parties, market conditions and terms of sale and the date of sale."

41. Firstly coming to the issue of assessment of compensation by the court below placing reliance upon three awards, namely, Miss Nirupama Jain's case (supra), Ravi Kant's case and Baldev Tayal's case. It is not in dispute that the land pertaining to the award in the case of Miss Nirupama Jain's case (supra) has been marked on the site plan produced, whereas the lands pertaining to other two awards have not been pointed out. Meaning thereby, the same could not be compared with the acquired land, hence, reliance thereupon was totally misconceived. Even the award in the case of acquisition of land in Miss Nirupama Jain's case (supra) also could not be relied upon for the reason that location thereof is just close to NH-10 and in thickly populated residential and commercial area. It was not only acquired for commercial purpose but was located in a thickly populated commercial area. The same was shown in between Commercial Urban Estate No. 1 and commercial Complex in Defence Colony. Commercial Estate Scheme No. 5"A" is further away towards the North-eastern side and towards the extreme North-Western side. The entire area around Urban Estate No. 1 had already been acquired and developed by the time the land in Miss Nirupama Jain's case (supra) was acquired. Undisputedly, the acquired land is located at a distance of 1.75 kilometers from the land acquired in Miss Nirupama Jain's case (supra). There was a rajbaha in between in populated city area. The area on the other side had some small residential establishments, however, the acquired land was lying vacant. As per the evidence produced by the landowners, part of the acquired land was barren as there were no irrigation facilities available. On the other end of the acquired land is Bhakhra Canal. Defence Colony was located just on the road. The entire acquired land is behind that. The

depth of the acquired land from the main road is more than 175 meters. At the time of issuance of notification under Section 4 of the Act on 15.5.1979, distance of 1.75 kilometers was too much to consider comparability of two portions of land. In the last 35 years, with lot of development activities and increase in population, distance of 1.75 kilometers may be of less consequence, but still the value of the land while moving away from the city always reduces. This coupled with the fact that there are sale transactions pertaining to the acquired land and one of them being just one year prior to the date of issuance of notification under Section 4 of the Act, in my opinion, the assessment of compensation by the court below cannot be sustained in judicial scrutiny, hence, the same deserves to be set aside.

42. Now the question comes as to what should be the fair value of the acquired land. For the purpose, certain facts are required to be noticed, which are undisputed. It is claimed by the appellant in RFA No. 5454 of 2001 that Sapra Hospital was already existing since 1971 when the land in question was acquired. Defence Colony had also been developed. Meaning thereby, when Mulakh Raj Sapra had purchased the land measuring 14 kanals 4 marlas vide registered sale deed dated 14.4.1978 for a total sale consideration of Rs. 21,000/-, at an average price of Rs. 2.44 per square yard, the development, which is sought to be compared with the land pertaining to Miss Nirupama Jain's case (supra) was already there. Still the sale consideration paid therein was far less. In the case of Miss Nirupama Jain's case (supra), even the Collector had awarded the compensation @ Rs. 65/- per square yard for "A" category and Rs. 41/- per square yard for "B" category of land, even though notification under Section 4 of the Act therein was issued about four years prior in time.

43. The landowners had produced on record, though not relied upon at the time of hearing, sale of small commercial plots by way of auction in Defence Colony, which are extracted below:

44. All the abovesaid auction sales had been conducted about 3 years after the issuance of notification under Section 4 of the Act in the case in hand. Meaning thereby, at that time, the residents of the area had come to know that the land behind Defence Colony Market had already been acquired for development as Sector 15-A, hence, the value of the land appreciated on main road.

45. There is another sale deed (Ex. R2) produced by the State on record, which was registered on 24.3.1975, whereby 8 kanals and 13 marlas of land was sold for a total sale consideration of Rs. 1,500/-, at an average price of 29 paise per square yard. The said land was also acquired. The aforesaid fact establishes that from 1975 till 1978, there had been some increase in the prices of the land in the area and that too for the reason that Defence Colony had been developed. It had come in the evidence of witnesses that construction activities in the area started in the year 1980.

46. In the first round of litigation, when the matter went upto Hon''ble the

Supreme Court, the State filed application seeking permission to lead additional evidence. The sale deed dated 14.4.1978, vide which land was purchased by Mulakh Raj Sapra, was sought to be produced, part of which was acquired. After the report was received from the Reference Court, the matters were remitted back by Hon''ble the Supreme Court to this Court and on a statement made by learned counsel for the landowners, the matters were remitted back to the Reference Court permitting the parties to lead further evidence. It is relevant to add here that neither at the first stage when Hon''ble the Supreme Court permitted leading of additional evidence nor at the second stage, when the matters were remitted back by this court to the Reference Court, the landowners led any evidence. The only evidence produced on record by the State was the sale deed dated 14.4.1978. This sale deed was even pleaded by Mulakh Raj Sapra in the objections filed by him. He never pleaded that it was a distress sale or that the land was under tenancy, when he purchased the same. This is the plea sought to be raised now after the aforesaid sale deed had been proved on record by the State. The recitals in the sale-deed dated 14.4.1978 clearly show that the land sold was owned and possessed by the vendor and the possession thereof was handed over to the buyer at the time of registration of the sale deed, hence, to claim that the land was under tenancy and on account of that, it being a distress sale is not worth reliance for assessment of compensation for the acquired land, is totally misconceived. Had there been any such ground, the landowners had ample opportunity to lead evidence in support of that claim. None has been referred to.

47. According to the appellant, in the initial objections filed by Mulakh Raj Sapra, compensation of Rs. 150/- per square yard was claimed. The value of the land, which was purchased by Mulakh Raj Sapra @ Rs. 2.44 per square yard just one year prior to the date of issuance of notification under Section 4 of the Act, increased by 60 times within one year. This may not have much relevance for the reason that while claiming compensation in case of acquisition of land, always exorbitant claims are made so that later on the compensation is not restricted to the claim made in the appeal. At that time, even court fee was payable while filing appeals seeking enhancement of compensation before this court. However, later on, the claim was amended from Rs. 150/- to Rs. 1,500/- per square yard, which was permitted. Meaning thereby, according to the landowners, the value of the land in the area increased 326 times within a period of one year or even to the extent of 327 times in case the claim made by them seeking enhancement of compensation placing reliance upon the award in the case of Miss Nirupama Jain's case (supra) is accepted, even without granting any increase for the time gap. Increase at such a pace in short span is next to impossible.

48. It is not in dispute that part of the land purchased by Mulakh Raj Sapra was acquired. Major portion of the land owned by him was released, as he claimed that Hospital had been set up there. It is also evident from the site plan that the land owned by Mulakh Raj Sapra was not in compact block, rather, it was at three places.

49. In view of my aforesaid discussions, in my opinion, the sale deed (Ex. R1) dated 14.4.1978 produced by the State, which was registered just one year prior to the date of issuance of notification under Section 4 of the Act, is the best evidence to be relied upon for the purpose of assessment of compensation. The sale consideration paid therein was Rs. 2.44 per square yard. The Collector had awarded compensation for the acquired land dividing the same in three blocks @ Rs. 9/-, Rs. 8/- and Rs. 6/- per square yard. It was claimed that the acquired land was within municipal limits of Hisar as it had potential for being used as residential area. The assessment thereof on the basis of categorisation was not proper. The learned Reference Court in the first round of litigation had assessed the value of the entire land at flat rate of Rs. 11.25 per square yard while taking the maximum rate granted by the Collector and granting 25% increase thereon. That would be the appropriate amount of compensation for the entire chunk of land. It not only adds margin for one year difference in date of sale deed and the date of issuance of notification under Section 4 of the Act, but also takes care of the fact, as is usually argued, that sale transactions are under-valued.

50. For the reasons mentioned above, the appeals filed by the State are allowed, whereas that of the landowners are dismissed. The compensation for the acquired land is determined @ Rs. 11.25 per square yard. The landowners shall also be entitled to all statutory benefits available under the Act.