
(2019) 01 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 2816 Of 2010 (O&M)

Ranvir Singh

APPELLANT

Vs

Land Acquisition Collector-Cumsdo (C), Gurgaon & Ors.

RESPONDENT

Date of Decision : 16-01-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 5A, 54
Code of Civil Procedure, 1908 — Order 41 Rule 27

Citation : (2019) 01 P&H CK 0067

Hon'ble Judges : G.S. Sandhawalia , J

Bench : Single Bench

Advocate : Puneet Bali, Ranjit Saini, Shailendra Jain, Harman Jivtesh Singh, J.P. Ahlawat, N.D. Achint, P.L. Verma, Sudeep Mahajan, Vibha Tewari

Final Decision : Allowed

Judgement

(1) This order shall dispose of RFA Nos.2816 of 2010 (O&M); RFA Nos. 2817, 2818, 2965, 2985, 2986 & 3479 of 2010; RFA Nos.681 & 2104 of 2014 filed by the landowners. For the sake of brevity, RFA No.2816 of 2010 is being treated as the lead case. The present set of 9 appeals filed by the landowners under Section 54 of the Land Acquisition Act, 1894 are directed against two awards of even date of the Reference Court, Gurgaon dated 15.01.2010 whereby the amount awarded as compensation @ Rs.20 lakhs per acre by the LAC has been upheld. Resultantly, aggrieved against the declining of the references vide the impugned award, the landowners are in appeal claiming enhancement.

(2) The land was acquired for the public purpose for completing and integrating the infrastructural facilities and other public utilities such as road, water supply, sewerage, electrification, drainage etc. and falls in village Dundahera, District Gurgaon measuring 15 acres, 4 kanals 13 marlas for which vide Award No.2 of 2002-2004 dated 03.02.2004, Rs.20,00,000/-per acre had been awarded by the Land Acquisition Collector as compensation.

(3) The reasoning given by the Reference Court is that at the time of notification

under Section 4 of the Act i.e. dated 13.05.2002 sale deeds Ex.PW1/A, Ex.PW1/C and Ex.PW1/D were of plots developed by HUDA and the same could not be taken into consideration. Similarly, sale deeds Ex.PW2/3 to Ex.PW2/30 were also taken into consideration and sale deed Ex.PW2/3 was dated 04.02.2007 was rejected on the ground that it was registered after the date of notification and also being relating to village Sikanderpur Ghosi. Similarly, sale deeds Ex.PW2/4 to Ex.PW2/11, Ex.PW2/12 to Ex.PW2/21 and Ex.PW2/22 to Ex.PW2/27 were also pertaining to different villages, namely, Sikanderpur Ghosi and Sirhaul and having been executed in the year 1996 to 1999. The land mentioned in sale deeds Ex.PW2/12 to Ex.PW2/21 had been purchased by Sahara India Financial Corporation Ltd. whereas Ex.PW2/22 to Ex.PW2/27 were the sale deeds pertaining to the purchase made by M/s Mediator Properties P.Ltd. (sic Mid Air) and the land mentioned in sale deeds Ex.PW2/29 and Ex.PW2/30 also pertained to village Sikanderpur Ghosi and had been purchased by another colonizer M/s Barmalt India Ltd. The sale deeds involving different colonizers were rejected on the ground that it did not affect the average sale consideration which a reasonable person would be readily agreeing to pay and therefore could not be taken into consideration for arriving at the market price for the acquired land. Ex.PW2/28 dealt with sale of land on 15.01.1999 of village Dundahera through public auction which was conducted on 18.11.1993 @ Rs.9300/- per sq.mtr in favour of Land Mark Builders P.Ltd. on 27.01.1994 and the said auction price was not held to be a price indicative only of the cost of land and on account of the prime speculative feature. Resultantly, the 17 references of the landowners were dismissed.

(4) On the same day another land reference i.e. LA Case No.438 of 24.11.2006 which is subject matter of RFA No.2965 of 2010 M/s Manushri Trading Pvt.Ltd. & Ors. vs. State of Haryana & Ors. pertaining to the same acquisition was also dismissed which is being referred to the second case. The plea that the acquired land had been purchased by the landowners in a public auction conducted on 15.01.1999 conducted by the Recovery Officer, Debt Recovery Tribunal, Delhi for Rs.3,17,34,375/- and the sale having been confirmed by Delhi High Court on 31.03.2000 which led to issuance of sale certificate which was registered before the Sub Registrar on 23.04.2001 (Ex.P3) was rejected on the ground that the auction price was not the price indicative only of the cost of land while placing reliance upon the judgment of this Court in State of Haryana vs. Rajinder Kumar, 2000(1) All India Land Acquisition and Compensation Cases, 360 (P&H).

(5) Senior counsels Mr. Puneet Bali and Mr. Shailendra Jain have argued that sufficient material was available in the form of sale deeds of the adjoining villages and, therefore, in view of the settled principles that the market value of adjoining village is to be taken into consideration, the Reference Court was not justified in rejecting the applications as sufficient material was on record to show the potentiality of land in question since industrialization and commercialization had already taken place around the area in question. It was further submitted that sale deeds should have been taken into consideration as the same were

purchased by the vendee from members of a single family and therefore a consolidated area of the sale deeds should be taken into consideration since the sale deeds were executed on the same date and the family members have sold their respective shares.

(6) Mr. Shailendra Jain, senior counsel, on the other hand, submitted that a part of the property which had been acquired had itself been auctioned in favour of the appellants and therefore, keeping in view the fact that the price of the acquired land would itself show the market value and it was a Court auction which had been duly confirmed, the same would show the true market value as such and therefore being a valid barometer, the same should have been taken into consideration.

(7) Mr. Sudeep Mahajan, Addl. AG Haryana and Mr. Pritam Saini, Advocate appearing on behalf of HSIIDC, on the other hand, defended the impugned award and submitted that the settled principle was not to bank upon the market value of the sale of allotment letters which were all developed plots and secondly, auction sales would not show the correct market value as such a willing purchaser would pay from a person who is interested in selling.

Evidence and pleadings of the first case:

(8) The record of the main case which was decided by the Reference Court would show that LAC No.413/06 Braham Prakash vs. LAC, reference was taken up which is being called the first case in which it had been pleaded that LAC award dated 03.02.2004 whereby a sum of Rs.20 lakhs was awarded was inadequate as Industrial Area Udyog Vihar, Gurgaon where the land was situated already existed. National Highway No.8, namely, Delhi-Jaipur road was near the land and the plots for Industrial Area Udyog Vihar were being sold @ more than Rs.15000/- per sq.yard. DLF Ltd. was at a small distance of 5 acres from the land in question.

(9) In the written statement filed by HSIIDC, the plea was taken that the land in question could neither be utilized nor converted for any other use except for agriculture purposes unless CLU was obtained/granted under the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act, 1963 and it was alleged that there was no development activities in the area where the land in question was acquired and no reputed, residential and commercial institute was existing there. The distance and proximity from Industrial Area, Udyog Vihar and NH-8, namely, Delhi-Jaipur road was denied and similar was the plea taken regarding distance from DLF Ltd. It was further claimed that the land was worth Rs.4 crores per acre.

(10) PW1 Jagdish in his affidavit stated that the land of the village had been acquired before 1974 and that the village was next to Delhi border. The land of Dundahera, Digar, Sirhaul, Mola Hera, Nathupur, Sikanderpur had already been acquired and the compensation had been given for the land which was left out vide award in question. The land had been acquired for industrial, residential and

commercial purposes and that a big company, namely, Maruti Udyog Ltd. had been functioning since years and claimed that the value was Rs.50,000/- per sq.yard. In cross-examination, he admitted that sale deeds Ex.PW1/A, Ex.PW1/C, Ex.PW1/D were of plots and Ex.PW1/C and Ex.PW1/D were of the plots developed by HUDA.

(11) Ranbir Singh who appeared as PW2 brought on record the certified copy of Shajra Aks of villages Dundahera, Shahpur, Sirhaul and Sikanderpur as Ex.PW2/1 whereas in PW2/2 the site plan location of the land was shown in green colour and Maruti Udyog Ltd was situated adjacent to the same and shown in yellow colour. The portion marked as Mark A to Mark D light green colour, brown colour, red colour and sky-blue colour was situated about 28 acres far away from the acquired land and the sale deeds Ex.PW2/3 to PW2/30 were exhibits which showed the value of the land given as Mark A to Mark D. Mark E shown in purple colour in the site plan was stated to be 4 acres from acquired land and the certified copy of the sale deed was Ex.PW2/2. It was further stated that the acquired land was situated 2kms away from Delhi-Gurgaon border and abutted Maruti Udyog Ltd. and was just adjoining rather in the heart of Phase-IV and V, Udyog Vihar, Gurgaon, Sectors 18, 19, 22, 23 and DLF City were also adjoining the land in question. Orbit Resort was also stated to be nearby. The land was situated only 500 meters away from National Highway No.8 and old Delhi-Gurgaon road. It had direct approach from Delhi and Indira Gandhi International Airport and was surrounded by world famous colonies. In cross-examination, he admitted that land mentioned in site plan Ex.PW2/2 Mark A to D were situated on the main Mehrauli road and did not belong to the acquired land and the same was 28 acres away from the acquired land and 9 acres away from NH-8. He denied the fact that the boundary of village Dundahera and Sirhaul were not adjoining each other and that Ex.PW2/2 was the colour map of Ex.PW2/1.

(12) RW1 Hambir Singh, Dy. General Manager, HSIIDC, Gurgaon stated that the land was in scattered and undulated pieces and at the time of acquisition, it was agricultural and fell in the industrial zone but the landowners had not got CLU of the land. Part of the land was acquired in 1981 but was released under Section 5A. The land was hampering the planning of area and there were slums in the village after it was released under Section 5A and therefore the Government had decided to acquire the land. He admitted that Maruti Udyog Limited was situated at the distance of half kilometer from the acquired land but denied the suggestion that the acquired land was abutting Maruti Udyog Limited. He denied that the land was situated within the well developed area for industrial area Phase IV and V and Maruti Udyog Limited was in existence prior to acquisition. Delhi-Gurgaon border was 3-4 km away from the acquired land and Indira Gandhi International Airport was 10kms away from the acquired land. The land was about 1-1/2-2 km from National Highway and that Phases IV and V were fully developed industrial areas at the time of acquisition. The commercial sites were auctioned and not the industrial sites and the commercial complexes fell in Phase V and were on the highway. He was not aware that the land was released

after acquisition and admitted that separate award had been passed regarding the structure in the acquired land and therefore award of structure was announced. These structures were created in the slums of area and it was part of the industrial land and not of heart of the industrial land.

(13) RW2 BB Mittal, Manager, HSIIDC, Udyog Vihar, Gurgaon submitted that the acquired land was adjoining nala coming from Nathupur village and land was uneven agricultural land in nature and had no potential value. The same area had been acquired earlier and compensation @ Rs.55000/- per acre was awarded by the Supreme Court vide judgment in Bharat Singh and other vs. State of Haryana on 13.09.1988. The land was uneven and undeveloped and also not used for agricultural land and was in the shape of nala. In cross-examination, he admitted that it was surrounded by Sector 18 and 19 Phase IV and V and was left out pocket of in Sector 18 & 19 and previously the land was acquired in the year 1981. The land was in pieces like half and one acre and spread over 10 pockets. The allotment of 315 acres was made by HSIIDC for industrial purposes since 1984 onwards till 2006 and the location was between NH-8 and the old National Highway. If one proceeds towards Jaipur side then on the national highway on the left side village Nathupur falls and on the right side village Dundahera falls. The difference between the two villages is 4 kms. The revenue estate of both the villages adjoin the national highway on two sides and commercial area had been developed in village Nathupur.

Evidence and pleading of the 2nd case:

(14) Similarly, the record in RFA No.2965 of 2010 would show that the appellant-companies claimed the ownership of 33 kanals 17 marlas on the basis of public auction on 15.01.1999 by the Recovery Officer, DRT, Delhi which had been confirmed on 31.03.2000 and the conveyance deed had been executed on 23.04.2001. The appellants applied for the Change of Land Use for the construction of industrial building over the said property for setting up IT Software Development Industrial Unit which was granted on 16.04.2002 and the site plans had been approved on 07.11.2002 but the property had been notified under Section 4 on 13.11.2004. Resultantly, the notification had challenged by filing the writ petition whereby dispossession had been stayed in CWP No.17265 of 2003. The construction was in progress and the land was surrounded by big industries and well connected having civic amenities. The location was very good and had immense potentiality for industrial and commercial purposes and the claim was sought @ Rs.70 to 80 lakhs per acres.

(15) The defence of HSIIDC was similar as in Braham Prakash's case and it was denied that there was any heavy expenditure and the award was sought to be justified.

(16) In the first case, the application bearing CM No.2462-CI-2018 in RFA-2816-2010 for additional evidence has been filed under Order 41 Rule 27 CPC for placing on record the copies of sale deeds executed on various dates and

the copy of the lay-out plan of the locality showing location of the land (A1). The said application was ordered to be heard along with the main case and accordingly whether the said application is liable to be allowed or not in the facts and circumstances is required to be considered.

(17) The appellants have relied upon sale deeds dated 24.05.2002, 21.08.2002, 29.05.2002, 18.05.2001, 29.05.2003 & 09.12.2002 which have been appended as Annexures A2 to A7. It has been pleaded in the application that the additional evidence sought to be placed on record is relevant and appropriate and goes to the root of the controversy involved in the said case and for determination of compensation, the certified copy of the sale deeds are per se admissible and there is no necessity for leading any evidence in case the additional evidence sought to be produced is allowed.

(18) A perusal of the sale deeds (A2 to A7) and layout plan (A1) would go on to show that the sale deeds/transfer deeds are of plots located at Udyog Vihar, Gurgaon which have been duly depicted in the layout plan (A1). Sale deed (A2) dated 24.05.2002 would show that the agreement was in respect of the plot situated at Udyog Vihar, Phase-I measuring 4000 sq.meters of built-up area and was also in respect of furniture, fixtures, fittings and equipments for a sum of Rs.15 crores and therefore the same cannot be taken into consideration as it is not the market value of the land in question but of the constructed plot and structures on it. Similarly, the sale deed dated 21.08.2002 (A3) would show that plot measuring 1000 sq.mtr. at Udyog Vihar allotted by HSIIDC which was also an incomplete structure consisting of basement, ground floor, first floor, second floor which has been transferred and for the same reason, the same cannot be taken into consideration. Sale deed dated 29.05.2002 (A4) also suffers from the same disability as a plot measuring 2100 sq.mtr situated at Udyog Vihar, Phase-I, Gurgaon was allotted by HSIIDC and after taking possession, the vendor constructed a building on the said plot on ground floor and first floor consisting of a total area of 2330 sq.ft. Similar is the position regarding sale deeds dated 18.05.2001 and 29.05.2003 (A5 & A6) and therefore the said allotment letter/transfer deeds would not help this Court in coming to the conclusion regarding the market value of the acquired land in question. Regarding sale deed dated 09.12.2002 (A7), the transfer deed of plot No.203 measuring 1000 sq.mtrs. situated at Udyog Vihar, Phase-I, Gurgaon is part of the development layout plan. The sale consideration displayed on 09.12.2002 of the said developed plot cannot be taken into consideration to assess the market value as per the settled principles laid down by the Apex Court.

(19) In *Bhim Sain Vs. State of Haryana* (2003) 10 SCC 529 it was held that the prices fetched after full development cannot be the basis for fixing compensation in respect of land which was agricultural in nature.

(20) In *Lal Chand Vs. Union of India* 2009 (15) SCC 769 the issue considered by the Apex Court was whether the DDA brochure was a relevant piece of evidence. Resultantly, it was held that development costs incurred by statutory agencies for

civic amenities and for providing parks and play grounds, the percentage of which may differ having regard to the size of the plots, width of the roads, extent of community facilities, parks and play grounds provided. Some of the layouts formed by statutory Development Authorities may have large areas earmarked for water/sewage treatment plants, water tanks, electrical sub-stations etc. in addition to the usual areas earmarked for roads, drains, parks, playgrounds and community/civic amenities and therefore it is not safe or advisable to rely upon the allotment rates/auction rates in regard to the plots formed by DDA in a developed layout, in determining the market value of the adjoining undeveloped freehold lands. Similarly on an earlier occasion in *Ranvir Singh & Anr. vs. Union of India* (2005) 12 SCC 59, the Apex Court came to the conclusion that the manifest error was committed in determining the market value by relying upon the fully developed land which was situated at a little distance. Resultantly, the matter was remanded for reconsideration to the High Court.

(21) It is settled principle that the burden is upon the landowners to show the market value and they have to bring on record the relevant sale instances and other evidence and once the said exercise was not done, there is no such valid reason to allow, at this stage, the application for additional evidence in the above facts and circumstances. A perusal of the record would show that issues were framed on 14.03.2008 and therefore the cases were consolidated and various opportunities were given to lead evidence from 04.04.2008. Cross-examination of PW2 was completed on 26.03.2009 and another opportunity was given for 08.04.2009. The evidence was closed in affirmative on 28.04.2009 and therefore the respondents also led their evidence which was concluded on 23.09.2009. The cases remained pending for rebuttal evidence from 14.10.2009 and no rebuttal evidence was presented till 07.01.2010. Eventually, the case was decided on 15.01.2010.

(22) Apparently, sufficient opportunities were given to the landowners to lead their evidence in support of the market value but apart from what has already come on record, nothing thereafter was brought on record by way of rebuttal and therefore the application is also not liable to be allowed on this count in view of the recent judgment of the Apex Court in *Satish Kumar Gupta vs. State of Haryana* 2017 AIR SC 1072 wherein it has been held that the application for additional evidence cannot be allowed to fill up the lacuna in the case or to patch up the weak points. It was neither pleaded in the application that whether the Reference Court has refused to admit evidence which ought to have been admitted nor such evidence was not within the knowledge of the party seeking to produce additional evidence despite the exercise of due diligence. Resultantly, no case is made out to allow the application for additional evidence. CM No.2462-CI-2018 in RFA-2816-2010 is accordingly dismissed.

(23) Sh. NK Mittal, PW1 submitted in his affidavit in support of reference petition whereby it was averred that the land described in para 6 had been ordered to be released comprising of rectangle No.63, Killa No.7(5-5), 8(4-9), 9/1(2-13),

13/1(2-4), 14/1(4-9) and the acquisition of the remaining land of 8976 sq.yards had been upheld. In cross-examination he admitted that the land was purchased by way of auction and denied that it did not have any potential value. It was clarified that the land belonged to M/s M.S. Shoes who had taken the loan and eventually led to the sale of the land.

(24) RW2 Kuldeep Kumar, Patwari stated that 19 kanal land was ordered to be released to petitioner No.2 M/s Comet Garments by the Special Committee.

(25) RW3 Hambir Singh, DGM, HSIIDC, admitted that the land had been released and the compensation awarded was quite justified because as per the CLU conditions the landowners were required to leave the portion of the land required for approach road. It was further alleged that the company is using the approach road of this unit also for which they had obtained CLU and that 8976 sq.yards had been left out by releasing the land. The land fell in the Udyog Vihar Phase IV and Phase V is adjacent to the Phase IV. Maruti Udyog Ltd. was one and half km far away from the acquired land and the land was fully developed. It was also admitted that the appellants had constructed the factory after acquisition of the land. He could not say when it was completed.

(26) From the above evidence as discussed above, one aspect is clear that the potentiality of the land in question as such cannot be denied. The location of the land is also prime in as much as it is sandwiched between the old Gurgaon road and the National Highway No.8 and just 2-3 km away from the Delhi Haryana border. The official witnesses themselves have admitted that it is falling in the developed portion and the purpose of acquisition as such is to supplement the developments which were to take place. It has already come on record that the industrial units were all around surrounding the land in question and acquisition had taken place on an earlier occasion in 1981 for proper utilization and to exploit and develop the land the present acquisition has taken place of the left out land. The basic principle to be kept in mind is the potentiality of the land which is the subject matter of acquisition and this aspect has not been taken into account by the Reference Court at all. The finding, however, recorded as such that the allotment letters and auction of the neighbourhood as such would be taken into consideration for the purposes of assessing the market value was correctly rejected as it is settled principle that such allotment letters do not depict the correct market price. Reference has already been made to various judgments of the Apex Court on this issue above while dismissing the application of additional evidence whereby the allotment letters/transfer of such plots was sought to be brought on record.

(27) A perusal of the six sale deeds Ex.PW2/24 to PW2/27 would show that they were all registered on 12.12.1996 and the purchaser was also the same. The land was sold by the sons of Prabhu Ram and Munshi Ram. The said six sale deeds if taken into consideration would show that the land measuring 1209.38 sq.yards was sold which works out to 2 kanals 7 marlas. The table showing the area of the land which is subject matter of sale deeds and the value which works

out per acre and per sq.yard is depicted below:-

A

Vasika

Date

Kila

Area in

Seller

Value

Per

No.

No.

Sq.Yard

sq.yard

1

PW2/24

12862

12/12/1996

68/49

161.25

Onkar Singh s/o

12,08,333.00

7,493.38

Prabhu Ram

2

PW2/27

12864

12/12/1996

68/49

161.25

Prausotam s/o

12,08,333.00

7,493.38

Prabhu

3

PW2/25

12866

12/12/1996

68/49

161.25

Sat Dev s/o

12,08,333.00

7,493.38

Prabhu Ram

4

PW2/23

12870

12/12/1996

68/49

241.88

Sat Prakesh s/o

18,12,500.00

7,493.38

Munsi Ram

5

PW2/22

12873

12/12/1996

68/49

241.88

Rajender Singh

18,12,500.00

7,493.38

s/o Munsu Ram

6

PW2/26

12876

12/12/1996

68/49

241.88

Lalla Ram s/o

18,12,500.00

7,493.38

Kripa Ram

1209.39

90,62,499.00

7,493.44

(28) The land as such was situated in village Sirhaul which is the adjoining village of Dundahera and has been shown on the site plan Ex.PW2/2 therefore the said sale deeds can be taken as a valid exemplar in as much as it is settled principle that the land of adjoining village can also be taken into consideration for the purposes of assessing the market value.

(29) As already discussed above from the evidence it would be clear that the land of village Dundahera already stood acquired and apart from the land of other adjoining villages, compensation had been given to the landowners at that point of time. The landowners were thus not in a position to get the relevant sale deeds of the said village in question from which the land which was acquired, namely, Dundahera due to non-availability of the same in the form of agricultural land. The allotment letters have now been sought to be placed on record which as discussed earlier, cannot be taken into consideration for assessing the market value of the agricultural land more-so when considerable expenses have gone into developing the plot and by alienating it by allotment letters which cannot depict the correct market price of the land which has now been acquired. In such circumstances, the fall back on the sale deeds of the adjoining village is liable to be accepted as it is settled principle that for assessing the market value, the value of the land situated in the adjoining village would be a relevant piece of evidence. Reliance can be placed on the judgment of the Apex Court in Union of

India vs. Harinderpal Singh (2005) 12 SCC 564 wherein the uniform value was given for the land falling in different villages by this Court while discarding the belting method which was duly upheld. In Charan Dass (dead) by LR vs. Himachal Pradesh Housing And Urban Development Authority & Ors. (2010) 13 SCC 398, it was held as under:-

"As already noted, the first step being the determination of the market value of the land on the date of publication of Notification under sub-Section (1) of Section 4 of the Act. One of the principles for determination of the market value of the acquired land would be the price that a willing purchaser would be willing to pay if it is sold in the open market at the time of issue of Notification under Section 4 of the Act. But finding direct evidence in this behalf is not an easy task and, therefore, the Court has to take recourse to other known methods for arriving at the market value of the land acquired. One of the preferred and well accepted methods adopted for ascertaining the market value of the land in acquisition cases is the sale transactions on or about the date of issue of Notification under Section 4 of the Act. But here again finding a transaction of sale on or a few days before the said Notification is not an easy exercise. In the absence of such evidence contemporaneous transactions in respect of the lands, which have similar advantages and disadvantages is considered as a good piece of evidence for determining the market value of the acquired land. It needs little emphasis that the contemporaneous transactions or the comparable sales have to be in respect of lands which are contiguous to the acquired land and are similar in nature and potentiality. Again, in the absence of sale deeds, the judgments and awards passed in respect of acquisition of lands, made in the same village and/or neighbouring villages can be accepted as valid piece of evidence and provide a sound basis to work out the market value of the land after suitable adjustments with regard to positive and negative factors enumerated in Sections 23 and 24 of the Act. Undoubtedly, an element of some guess work is involved in the entire exercise, yet the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard."

(30) In Printers House Pvt.Ltd. vs. Mst. Saiyadan (Deceased) by her LRs (1994) 2 SCC 133, it was held that the Court has to see that the sale must be genuine and must have taken place at a time proximate to the date of publication of the preliminary Notification under Section 4(1) of the Act and the land sold under the sale must be similar and in the vicinity of the acquired land. The existing advantages and potential possibilities and the principle that the market value means the price that a willing purchaser would pay to the willing seller for a property, having due regard to its existing condition, had to be kept in mind for comparable sales method for valuation of land. Thus while examining the site plan, the proximity of the land in question to the land of village Sirhaul which is adjoining the village Dundahera the sale deeds would necessarily have to be accepted as relevant piece of evidence.

(31) Similarly, a perusal of the site plan of Ex.PW2/2 would show that the land was also abutting the MUL and was close to the property which was auctioned by M/s MS Shoes and the appellants in RFA No.2965 of 2010 had purchased the same. It is also settled principle that if the sale deed of part of the land which is acquired is available, it would be the best piece of evidence. In the present case the appellants had themselves purchased the land vide the sale certificate dated 01.05.2000 and which had been brought on record after it was registered by the Sub Registrar on 23.04.2001 (Ex.P3) and the same cannot be brushed aside at the asking of the respondents.

(32) In the judgment relied upon by the Reference Court to not take into consideration the price of the public auction in State of Haryana vs. Rajinder Kumar (cited supra) would of no help to the State and is not applicable to the facts and circumstances of the present case. In the said case, reliance was placed on the auction sale as such for getting the market value assessed which was not subject matter of acquisition. In the present case, the land which had been auctioned itself had been acquired and the Reference Court was not correct in brushing aside the same on the ground that it was an auction sale and necessarily should have taken the same into consideration and erred in not doing so.

(33) In Gian Chand vs. State of Haryana 2009 (3) PLR 420, it was held that the sale deeds of the land which had been acquired is the best piece of evidence to assess the market value while relying upon Special Tehsildar Land Acquisition, Vishakapatnam vs. A. Mangala Gowri AIR 1992 SC 666. The same principle would be applicable in the present case. Eventually, the potentiality of the land has to be taken into consideration for assessing the market value. Once the land which was acquired had been auctioned itself and was a developed plot of land which had been mortgaged to the Bank by the industrial unit, the potentiality of the said piece of evidence cannot be lost sight of and was validly ignored by the Reference Court.

(34) A perusal of the sale deed would show that the land measuring 33 kanals 17 marlas in the revenue estate of village Dundahera had been auctioned for Rs.3,17,34,375/- which comes to 4.23 acres and market value as such would come to Rs.75,02,216/- per acre. The acquisition is part of the auction which had taken place in favour of the landowners and once they themselves have opted to purchase the land at the same price and if it is subject matter of acquisition, it cannot be discounted on the ground that it had been purchased by way of open auction. Therefore the Reference Court went astray in not examining the issue in detail and failed to take into consideration that the landowners themselves whose land was acquired were successful auction purchasers and therefore the said auction which had been done under the orders of Debt Recovery Tribunal could not be easily brushed aside and is relevant piece of evidence which is liable to be taken into consideration for assessing the market value.

(35) On the other hand, if the market value is assessed as per sale deed dated

12.12.1996 as per the table given above, the market price would come out to Rs.3,62,68,280/- and keeping in view the fact that the development cut has to be applied which can go upto 75% both on account of the smallness of the plot and the smallness of sale exemplar is taken into consideration and development costs as per the law laid down by the Apex Court in Chandrashekar (D) by LRs & Ors. vs. Land Acquisition Officer & Anr. (2012) 1 SCC 390, the cut would work out to Rs.2,72,01,210/- and therefore the market value would work out to Rs.90,67,070/-. If the average of both the sale certificates and the sale exemplar is taken into consideration the sum amount would work out to Rs.82,84,643/-.

(36) Another aspect which has to be kept in mind that the land is situated away from the highway and the location as such is of a low lying nature in as much as it is closer to nala which is running in the said area which has come from the evidence of the witnesses, namely, RW1 & RW2 discussed above in paras 12&13.

(37) It is settled principle that the market value is also subject matter of little guess work which has been acknowledged by the Apex Court also and therefore this Court is of the opinion that the location of the land as such which is in the interior and as noticed above, the slums had also come up on the land on account of being undulating and low lying and being away from the main road therefore the adequate market value as on 13.05.2002 would work out to Rs.75 lakhs per acre. In Kasturi vs. State of Haryana (2003)1 SCC 354, the factum that the land may be plain or uneven, the soil may be soft or hard bearing on the foundation for the purpose of making construction and may be the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches had to be kept in mind. It was held that merely because the area adjoining the land was developed area was not enough and the percentage of cut has to be applied keeping in view the various factors and merely because the area was adjacent to a developed area would not ipso facto make every land situated in the area also developed to be valued as a building site or plot having the same market value.

(38) This Court cannot lose sight of the fact that the land is situated right next to MUL which is already functioning and it has been set up much earlier in 1974. The land had been acquired earlier and had been released under Section 5A of the Act on an earlier occasion and therefore was only left out pocket which is the case of the Corporation also. It is peculiarly situated and sandwiched between two main roads streaming out of Delhi into Gurgaon and located between 2-3 km from Delhi-Haryana border. The land in Manesar which is more than 10 kms away which was acquired on the same highway leading to Jaipur on 07.03.2002 etc. which is in close proximity to the present acquisition of 13.05.2002 was already subject matter of consideration by this Court in RFA No.2373 of 2010 Madan Pal (III) vs. State of Haryana & Anr. decided on 09.03.2018 whereby a sum of Rs.62.10 lakhs per acre has been awarded as compensation for land falling in the village Manesar for developing the Industrial Model Township, Manesar. The same has been modified by the Apex Court in Civil Appeal

No.269-270 of 2019 Wazir Singh vs. State of Haryana and the market value of land falling in village Manesar on the National Highway No.8 has been fixed @ Rs.56.31 lakhs per acre.

(39) The location and potentiality of this land which is located further away from the Delhi Border after crossing Gurgaon and the present location is far superior in comparison. It cannot be ignored by this Court and therefore there can be no hesitation to come to the conclusion that the reference court was not justified in upholding the award of the Collector @ Rs.20 lakhs. It had wrongly not taken into consideration the sale deeds of the adjoining village Ex.PW2/22 to PW2/27 solely on this count and on account of the smallness and failing to take into account that the plots had been sold to a common vendee by closely related family members.

(40) In similar circumstances in RFA No.1824 of 2006 Sudama & Ors. vs. State of Haryana & Anr. decided on 01.10.2010 where there were number of sale transactions it was held that the transactions are not to be held individually but collectively as the buyer and seller are same persons and different sale deeds were registered for small portions. In the said case out of 30 sale deeds, in 14 the vendor was common and whereas in the other 16 the vendor was also common whereas the vendee was a group of companies. Relevant portion reads as under:-

"44. In view of the aforesaid evidence, I do not find any reason not to consider the aforesaid sale deeds as reliable piece of evidence for the purpose of assessment of fair value of the acquired land. However, still considering the fact that the land pertains to four different villages though acquired for the purpose of development of Sectors 51 and 52, Gurgaon, the sale deeds have been produced pertaining to land of two villages and there is small difference in the consideration paid therein, in my opinion, it would be appropriate to average sale consideration in both the sale deeds and determine the same as compensation payable to the land owners for the acquired land. I do not find any reason to apply any cut therefrom, the reasons for which have already been mentioned in the preceding paragraphs of the judgment and to repeat, it may be added that the sale transactions produced on record are not pertaining to small plots, as in the facts and circumstances of the present case, the transactions are not to be considered individually but collectively as the buyer and the seller are same persons, though different sale deeds were got registered for small portions of land."

(41) In RFA No.103 of 2003 SDO (Civil) Ajnala acting as Land Acquisition Collector, Ajnala & Anr. vs. Rajiv Puri & Ors. decided on 11.05.2018, this Court also applied the same principle wherein 5 sale deeds were executed for 1 kanal 18 marlas each. It was held that it would come to approximately 10 kanals of land which is slightly over 1 acre and the combined area would be taken into consideration. Similarly, another chunk of land whereby 4 kanals 19 marlas each was subject matter of 5 sale deeds were also kept in mind that the area would

come to of around 3 acres and the combined sale deeds should have been taken into consideration for the purpose of putting the cut and therefore the Reference Court was not justified in rejecting the said sale deeds solely on this account.

(42) The argument, however, of the landowners that the sale deeds of the village Sikanderpur Ex.PW2/12 to PW2/21 should be taken into consideration whereby the land was sold to M/s Sahara India Financial Corporation Ltd is not liable to be accepted. The said village is not the adjoining village and village Nathupur intervenes between two revenue estates and the location of Sikanderpur is also on old Mehrauli road leading to Delhi and therefore the potentiality of those sale deeds is different and cannot be equated with the land in question and therefore cannot be taken as a valid barometer for assessing the market value.

(43) Resultantly, this Court is of the opinion that a sum of Rs.75 lakhs per acre would be the adequate market value along with all statutory benefits on 13.05.2002. Resultantly, the appeals of the landowners are allowed.

(44) The State shall also comply with the directions laid down by the Apex Court in HSIIDC vs. Pran Sukh, (2010) 11 SCC 175.