

(1998) 12 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 716 of 1995

State of Haryana and another

APPELLANT

Vs

Jagir Kaur and others

RESPONDENT

Date of Decision : 24-12-1998

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (1999) 122 PLR 259 : (1999) 3 RCR(Civil) 135

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : H.S. Hooda, A.G., Haryana and Mr. R.K. Arora, for the Appellant; Sardara Singh, K.S. Sidhu, Hemant Sarin, Vimal Kumar, Jasmer Singh, Pritam Saini, Dr. Mrs. Jivan Lata and Mr. Vimal Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—Award No. 8 of 1990-91 announced by the Land Acquisition Collector, Urban Estate, Panchkula gave rise to 96(sic) references u/s 18 of the Land Acquisition Act (for the purposes of brevity hereinafter referred to the "the Act"). All these references were disposed of by the learned Additional District Judge, Ambala upon consolidation in L.A.C. No. 33 of 1991/1992 vide its decision dated 6.10.1994. The judgment of the learned Court was not acceptable to either of the parties to the proceedings. Consequently, the State of Haryana preferred 90 Regular First Appeals being dissatisfied with the extent of compensation awarded, it being on higher side, while the land owners/claimants filed other 91 Regular First Appeals compensation awarded being on the much lower side than that claimed by the claimants.

2. For pervasive discussion of the matters falling for determination in these appeals references to basic facts, as they emerge from the record, would be necessary with its intention to acquire land for development and utilisation of tend as residential and commercial area for Sector 10, Ambala under the Haryana Urban Development Authority Act, 1977, the State of Haryana issued a

notification u/s 4 of the Land Acquisition Act on 2.2.1989. Vide this notification the State of Haryana had decided to acquire land measuring 190.79 acres for the revenue estate of village Sounda and land measuring 44.45 acres in revenue estate of village Jandli in District Ambala. In furtherance thereto notification u/s 6 of the Act was issued on 10.1.1990 and the Government actually acquired the entire land except 0.15 marlas, which was a result of arithmetical measurement mistake. Resultantly, the possession of the entire land was taken. At the out set it needs to be mentioned that an area of 6.9 acres was a low lying area in the revenue estate of village Sounda which was part of this acquisition.

3. The claimants filed objections and claimed compensation at the rate of Rs. 20 lacs per acre. The Land Acquisition Collector, Urban Estates, Panchkula, awarded the following compensation:

a) for the entire land acquired in: Rs. 1,01,376/- per acre villages Sounda and Jandli except to the extent indicated hereinafter.

b) For the low lying area: Rs. 0,51,376/- per acre (6.9 acres in Village Souonda)

4. At the request of claimant land-owners references u/s 18 of the Act were made by the Collector to the learned District Judge, Ambala. Learned Additional District Judge, Ambala consolidated all the 98 references as already noticed and by a common judgment dated 6.10.1994 awarded a universal rate of compensation payable to the claimants for the entire land under this notification at the rate of Rs. 1,41,000/- per acre. Dissatisfied with this, the State of Haryana as well as the claimants have come up in above 185 appeals before this Court. As all these appeals raises common question of law based upon common facts, while reference of the same evidence is required to be appreciated for considering the contentions raised, thus it will be appropriate to dispose of all these appeals by a common judgment.

5. All the learned Counsel appearing for the claimants and the learned Advocate General, Haryana, for the State of Haryana were heard at great length.

6. At the out set reference to the evidence led by the parties before the learned Additional District Judge, would be proper. The claimants examined 14 witnesses and produced number of sale deeds to prove their case. PW1, PW3, PW5 to PW7 and PW10 to PW14 were examined by the claimants to prove the sale deeds, letters of allotment and the copies of the awards/judgments rendered in the cases of the nearby lands. These witnesses were the purchasers of the land in village Sounda, Jandli and other surrounding areas. The sale deeds have been exhibited on record. Out of the sale deeds produced and proved on record by the claimants learned Counsel appearing for the claimants have mainly relied upon Ex.P10, P11, P18, PX and PAA. While relying upon these sale instances/judgments to claim higher compensation, specific emphasis was applied to brochure Ex.PLL issued by the Haryana Urban Development Authority in relation to the value of the land in question and surrounding developed sectors.

7. On the other hand, the Respondents examined only one witness i.e. RW1 Mr. Bhoop Singh Patwari from the office of the Land Acquisition Collector, Panchkula. This witness proved the documents Ex.RW1/A to Ex.RW1/H. These documents included the site plan Ex.RW1/A based upon Akshijra of the area, while EX.RW1/B to Ex.RW1/G are the sale instances and Ex.RW1/H is the judgment of the learned Additional District Judge, Ambala dated 9.10.1991 regarding land acquired in all these three villages i.e., Patti Mehar, Jandhi(sic) and Sounda vide notification dated 26.5.1981 u/s 4 of the Land Acquisition Act. Ex.RX to Ex.RZ which are the judgments of the Court were tendered in evidence and Respondents closed their evidence. The sale instances Ex.RW1/B to Ex.RW1/G cannot be looked into evidence by this Court as neither the vendor nor vendee was examined in Court. Further more, even the Clerk from the Registrar's Office was not called to prove the genuineness and content of these sale deeds. As such the documents would become inadmissible in evidence.

8. In other words, all the sale instance brought on record by the Respondents are inadmissible in evidence and cannot form the basis for awarding the amount of compensation to the claimants. This question is no more *res integra* and stands fully covered by the judgment of the Supreme Court in the case of *A.P. State Road Transport Corporation, Hyderabad Vs. P. Venkaiah and others*, . *Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc.*, , *Baldev Singh and Anr. v. State of Punjab*, AIR 1996 SC 498 and *Meharban and others etc. etc. Vs. State of U.P. and others*,

9. In the case of *P. Venkaiah and Ors. (supra)* the Hon''ble Supreme Court held as under:

Admittedly, none of the persons connected with the documents, namely, neither the vendee nor the vendor has been examined. This Court in *Kummari Veeraiah and Others Vs. State of A.P.*, held that in the absence of adduction of any evidence through the vendor or the vendee, the documents *per se* cannot be relied upon. This was reiterated in *State of Bihar v. Madheshwar Prasad*, (1996)6 S.C.C. 1997. Acceptance of certified copy of the sale deed u/s 51-A relates only to the production of the original sale deeds but it does not dispense with proof of the contents of the documents, relative features vis-a-vis 193, the land under acquisition. All is needed to be proved by examining the persons connected with the same and parties to the document. Following the above ratio we hold that the view taken by the High Court and that of the reference Court is entirely illegal.

The appeal is accordingly allowed. The judgment and award of the reference Court as modified stand set aside. The matter is remitted to the reference Court for disposal of the matter afresh after an opportunity is given to adduce evidence afresh and the same is considered. No costs.

Consequently, I hold that sale deeds produced on behalf of the Respondent Ex.RW1/B to Ex.RW1/G are not admissible and cannot be looked into by this

Court for the purpose of determining the compensation payable to the claimants.

10. There is sufficient material on record produced by the claimants in the form of sale-deeds and judgments of the Court, as well as by the Respondents in the form of judgments of the Court which can form substantial and reasonable basis for determination of a fair market value of the land in question in consonance with the intent of the Legislature behind the provisions of Section 23 of the Act.

11. As noticed during the course of hearing, the learned Counsel appearing for the claimants placed great emphasis on Ex.P.18, Ex.PX and Ex.PAA. The basic contention that all these exhibits clearly indicate that compensation awarded by the learned Additional District Judge is neither adequate nor is based upon any settled methods or computation which ought to be adopted for such purpose. Ex.P. 18 is copy of the judgment of the High Court in RFA No. 755 of 1992 which has already become final. In this case the notification u/s 4 of the Act is dated 4.3.1983. The land was acquired for development of Sector 8 of the same colony. The land was within Municipal limits. According to the learned Counsel for the claimants Ex. P18 would form a fair basis for the purposes of computation of compensation awardable to the claimants with 12% increase for a period of 6 years as the land in question was acquired in the year 1989. Compensation awarded under Ex.P.18 was Rs. 5,42,080/-. Reliance on Ex. PAA has been placed because the acquisition in that case is of 1987 of the land in Sounda village itself and a sum of Rs. 5,80,800/- was awarded by the award of 1992. The claimants claim element of increase at the rate of 12% per year on the awarded amount.

12. Ex.PAA is the subject matter of six Regular First Appeals, three by the State and three by the claimants, before the High Court. Ex.PAA is based upon another judgment of the Court Ex.PX in the case of Pala Singh. The claimants have placed heavy reliance on this document to justify their claim for increase of compensation. In the case of Pala Singh land of village Patti Mehar, the boundaries of which are common with village Sounda, was acquired vide notification dated 30.5.1978 and a sum of Rs. 4,84,000/- per acre was awarded by the High Court. However, while applying the belting system, different compensation was awarded to different lands at the rate of Rs. 100/- per square yard and Rs. 70/- per square yard to the other kind. The judgment of the learned Single Judge of this Hon'ble Court Ex.PX was affirmed in Letters Patent Appeal. It is further conceded position that SLP preferred against that order stands dismissed. As such the compensation awarded in Pala Singh's case is stated to have become final.

13. In addition to placing reliance upon the afore stated documents claimants also rely upon Ex.P.11 the site plan and Ex.PLL the brochure issued by the Haryana Urban Development Authority as afore indicated. According to the claimants these two documents would clinch the issue and would leave no doubt as to the correctness of the claimed amounts.

14. The learned Advocate General has basically placed reliance on three

documents. Ex.PX is the award of the land acquired in villages Patti Mehar, Jandli and Sounda vide notification dated 26.5.1981 and where an amount of Rs. 57,000/- per acre was awarded vide award dated 17.3.1987. Thus, giving benefit of increase of 12% per year to the claimants for the period of eight years, the compensation payable to the claimants would be Rs. 1,11,720/-. He then relied upon another award Ex.RW 1/H arising out of the same notification and award dated 19.10.1991 where identical sum was awarded by the learned Additional District Judge, Ambala. Finally, he placed reliance upon Ex.RZ which is a judgment of the High Court dated 4.6.1986 where an amount of Rs. 30,000/- per acre was awarded for the acquisition of the land in village Sounda and Section 4 notification was of 23.5.1978 and award was dated 4.8.1986. According to the learned Advocate General, Haryana, if Ex.RZ and Ex.RY are made the basis for awarding the amount of compensation with 12% increase per year, the claimants would get nearly Rs. 69,000/- per acre. Ex.RZ is the copy of the judgment of the High Court pronounced in R.F.A. No. 1136 of 1984 titled as State of Haryana v. Joginder Singh arising from Ex.RY which was the award pronounced by the learned Additional District Judge, Ambala. Thus, this judgment has attained finality because the claimants never challenged the award of Additional District Judge.

15. Ex.RX is the copy of the judgment dated 17.3.1987 pronounced by the Additional District Judge, Ambala awarding Rs. 57,000/- per acre of the adjoining land. Appeal against this award is pending before the High Court.

16. Ex. P. 10 is the sale instance proved by the claimants vide statement of PW5, who is the purchaser of the said land. Vide this sale-deed land measuring 4 marlas was purchased for Rs. 4,000/- in the year 1980. Ex.P.5 has been proved by the PW3 as another sale instance. This witness is a property dealer and a land measuring 3 kanals 16 marlas was purchased for a sum of Rs. 84,000/- at the rate of Rs. 1,76,000/- per killa.

17. Both these sale instances are neither relevant nor reliable because Ex.P. 10 relates to the year 1980 that is nearly 9 years prior to the acquisition of the land in the present case. PW3 cannot be taken to be a reliable witness because his purchase and sale is for commercial activity which cannot be taken to be a parameter for measuring the fair market value of the land in question at the relevant time. Thus, I would discard these sale instances for the parties have fairly conceded that for any instance of sale or judgment to be adopted as a criteria for determination of fair market value to the acquired land, its comparability is a condition precedent. In other words, any evidence which is treated as a direct evidence for the purpose of determination of compensation must be of a comparable instance in relation to the land in question. Thus, the court must look at the very outset for a legal evidence which would give comparable instances.

18. As already noticed the lands acquired at villages Patti Mehar, Jandli and Sounda for the development of the same residential and commercial complexes would certainly be a comparable instance for the Court. In this regard reference

can be made to Ex.P.11, which is the site plan. In Ex.P.11, Khasra No. 26/4 was acquired by the State for the construction of water works for the benefit of the residential and commercial complexes built and to be built in different sectors for which even the present land was acquired. Land measuring 5 acres and 5 kanals was acquired for this purpose in Section 9 i.e., the Sector adjacent to Sector 10. The notification in relation to this was issued in the year 1987 i.e. just two years prior to the acquisition of the land in question. A sum of Rs. 5,80,800/- was awarded as compensation under Ex. PAA. Ex. P. 11 is a composite site plan which clearly shows all the developed sectors till Sector 13, Sector 8 and 9 of Haryana Urban Development Authority have been shown adjacent to the acquired land while Sector 9 falls on South-East of the acquired land, Sector 8 falls on North and the land subject matter of Ex. PAA falls towards North-West in the map. The acquired land has been shown in yellow colour. According to the learned Counsel for the claimants there could be no difference of any kind between the land acquired under Ex.PAA and the land acquired under the present notification. It is further pointed out by the learned Counsel for the claimants that the land is surrounded by fully developed areas i.e., Sector 8 and 9. The colonies are nearly 20 yards to 300 yards away from the land in question. The land has residential and commercial potential. The water works have been developed in Sector 9. Ultimately, the land of Sectors 9 and 10 would not be differentiated.

19. However, according to learned Advocate General, Ex.P.11 cannot be relied upon for the reasons that it has not been proved by PW7 and his statement completely destroys the evidentiary value of Ex.P.11. It is also contended on behalf of the State that statement of PW14 itself justifies that these lands cannot be awarded the same compensation in the sale instances and awards produced by the claimants in support of their case as the land is at quite a distance.

20. I am unable to find merit in this contention raised on behalf of the State. I cannot see anything so damaging in the statement of PW7 so as to completely reject Ex.P.11 from being read in evidence. This witness has stated that he had prepared the map in his office but he had done so after visiting the site on 6-7 occasions. Preparation of the map in question with its intricacies of colours and dimensions could hardly be prepared at the site in question. According to the statement of this witness he had prepared Ex.P.11 on the basis of the rough notes prepared by him and Akshijra prepared by the Patwari. He took 2-3 days in preparing the site plan. Nothing material has been pointed out by the said witness in his cross examination which would destroy the evidentiary value of Ex.P.11. The State had given Ex.RW1/A, site plan, which nowhere reflects anything materially different than the site plan Ex.P.11 submitted by the claimants. Ex.RW1/A also shows the acquired land in yellow colour. It must be noticed that in Ex.RW1/A it is specifically recorded that under Award No. 4 dated 27.6.1984 compensation was paid at the rate of Rs. 57,000/- per acre on the notification dated 25.6.1981. This acquired land even in Ex.RW1/A is adjacent to the acquired land. As such the doubt on the correctness of Ex.P.11 is not at all well founded.

21. Another document which the Court must take serious note of is Ex.PLL. This is the brochure issued by Haryana Urban Development Authority. It contains the detailed map showing the location of Sector 10 for which the present land was acquired as well as the other developed sectors adjacent to Sector 10. A separate sketch giving "lay out plan of Sector 10" is also shown in this brochure. The details of the plots available in Sector 10 and the rates of the residential and commercial plots have also been shown. The plots intended to be sold are varying from 4 marlas to 1 kanal i.e. 99 square meters to 420 square meters and the rates vary from Rs. 627/- per square meter to Rs. 822/- per square meter. This document has not been rebutted and in fact could not be rebutted by the State. Thus a clear comparable instance which has been proved in accordance with law and is otherwise reliable is Ex.PAA on behalf of the claimants. This instance has to be seen in the light of Ex.P11 and Ex.PLL the basic documents, which have complete reflection of the potentiality, location and utility of the acquired land.

22. Determination of fair market value of the land on the date of notification u/s 4 of the Act is the relevant date for determining the amount of compensation payable to the claimants as subsequent interest thereto of the claimants is safe guarded by the statutory provisions under the Act itself. This legislation acts more as a linch-pin to the wheel of progress and development of different areas through the Government or its instrumentalities for larger interests of the Society.

23. The ambit, scope and effect of the six criteria indicated under Sub-section (1) of Section 23 of the Act has been subject matter of discussion with some elucidation in the various judgments pronounced by the Hon"ble Apex Court from time to time. The benefits which are to accrue to the claimants have been provided in various provisions of the Statute. For determination of rival contentions raised in this case the Court must settle the ingredients of dual component i.e. the market value of the land and amount of compensation payable to the claimants on fair and just basis. It is primarily satisfaction of judicial conscious of the Court which would finally draw a curtain on such determination. This determination inevitably will have an element of guess work and general computation. However, again such determination must be founded as far as possible on a definite piece of evidence, which is legally admissible and provides a discern into such determination. At this stage it may be relevant to refer to the case of Rajashekar Sankappa Taradandi and others Vs. Asstt. Commissioner and Land Acquisition Officer and others, , where the Court observed as under:

It is settled law that the Court has the duty to carefully evaluate the evidence and determine the compensation which is just and adequate for the lands acquired under compulsory acquisition. It is also settled law that the Court has to sit in the arm chair of a willing purchaser in an open market with prevailing market conditions as on the date of publication of Section 4(1) notification and to determine whether a willing purchaser, if offered the lands in an open market for

sale, would be prepared to purchase the land at the rate at which the court is called upon to determine compensation on the basis of evidence on record.

24. On the basis of the aforestated discussion only two instances appear to be fairly relevant for the purposes of determining the market value of the land on the date of notification u/s 4 of the Act i.e. 2.2.1989. One would be Ex.18 and the other would be Ex.PAA. Again, much reliance cannot be placed on Ex.P.18 because the notification u/s 4 of the Act was issued in that case on 4.3.1983 nearly six years prior to the notification in question. There the compensation of Rs. 5,42,080/- was awarded. Ex.PAA can be safely relied upon by this Court because this is based upon Ex.PX which has already attained finality. The judgment of the High Court awarding compensation of Rs. 4,84,000/-has been upheld by the Hon'ble Apex Court. The compensation awarded in Ex.PAA is Rs. 5,80,800/- per acre. The location of the land under Ex.PAA is similar if not identical to the land under acquisition in the present case.

25. The mere fact that Ex.PAA is subject matter of another appeal before this Court per se would not take away the evidentiary value of this judgment specially when as aforesaid it is following the valuation of the land which has been even affirmed even by the Apex Court. The notification u/s 4 resulting in Ex.PAA was issued on 31.8.1987 while the notification in question was issued in the year 1989 and as such is the closest instance available on record in terms of period. I have already discussed that on the basis of Ex.P.11 and Ex.PLL the location indicated in Ex.PAA is more or less similar to that of the land in question. Ex.PLL indicates quite high price of the same land when developed. But that price cannot determine the market value in retrospect.

26. Particularly founding the judgment on Ex.PAA it has to be noticed that land under acquisition in the present case is similarly situated, it has been acquired for the same purpose i.e., development of various sectors and providing of amenities thereto. It will be proper at this juncture to refer to the judgment of this Court delivered in the case of Ved Parkash v. Union of India and others, R.F.A. No. 306 of 1996, decided on 17.12.1998, where the Court considered in detail payment of somewhat similar amount of compensation to the equi-located lands. The relevant part reads as under:

27. "A Division Bench of this Court in the case of Surinder Singh v. The Punjab State through the Secretary to Government Punjab, Colonization Department, Chandigarh and another, (1995) 1 109 P.L.R. 533, where the Court held as under:

Learned Counsel for the Appellant further submits that admittedly the entire land acquired is in one block though it is situated in two villages viz. Nawanshahar and Karyam no reason has been given to reduce the market value of Rs. 1,100/- per marla in respect of the land in village Karyam. We are of the considered view that a small chunk of 25 acres was acquired as one block for extension of Mandi. This block fall in two revenue estates. Merely because a part of the land acquired falls in another village the same cannot be assessed at a different rate. Thus, the

award of the learned Single Judge is modified to the extent that the market value of the land acquired of the village Karyam would also be Rs. 1,267/- per marla.

28. Further, Division Bench of Delhi High Court in the case of Ram Mehar v. Union of India, AIR 1987 Del 130, while commenting upon the underlining principles of awarding compensation equally to the lands acquired at the same time on the basis of the notifications of the same dates and specially when such lands are contiguous and adjoining to each other, observed to pay equal amount of compensation. The court held as under:

The Petitioner cannot be deprived of his land without payment of true market value of the land which has been differently determined in R.F.A. 522/71. The qualification of the market value of the land as true compensation is Rs. 10,000/- per bigha in R.F.A. 522/71 whereas in this case it is assessed at Rs. 3,500/-. It may be that this Court determined compensation differently because of the evidence placed on the record in each case and did not commit any error itself. But the mandate is to pay true value of the acquired land particularly when the other owners of the adjoining and contiguous land have been paid the true value of the land quantified in R.F.A. No. 522/71.

The right to receive compensation arises when the land of a person is acquired. The determination of the compensation for the acquired land is the duty of the Court under the Act. The Court is required to compute and quantify the true market value of the acquired land on the principles enacted in the Act. This Court has determined the market value, differently in two cases. Section 28-A of the Act gives a mandate to give and pay equal compensation to all persons whose land has been compulsorily acquired by the Government under the same Award and same notification u/s 4 of the Act. The intention is to remove inequality in the payment of compensation for similar quality of land to different interested person."

29. Reference to the judgment of the Hon"ble Supreme Court in the case of Raja Srivalgoti Sarvagna Kumara Krishna Yachandra Bachadurvaru Vs. Special Land Acquisition Officer, City Improvement Trust Board, Bangalore and Others, would also be relevant at this stage where the Supreme Court applying the method of averages emphasised the need of some conjecture or guess for determination of market value and the Court held as under: -

We are concerned with the 2nd and the 3rd acquisitions which were made under the respective notifications dated 30th October, 1951 and 26th January, 1954. But the District Court and the High Court proceeded on the basis that the rate of compensation in respect of both these acquisitions would be the same because there was hardly any difference in the market value of the land comprised in Survey Nos. 6, 9, 10 and 11 between 30th October, 1951 and 28th January, 1954. It was also not disputed on behalf of the State Government - at least it so appears from the judgment of High Court -- that the quality of the land acquired under the notifications dated 30th October, 1951 and 28th January, 1954 was not

different from that of the land acquired under the notifications dated 18th April, 1946 and 2nd April, 1956. Now, if the market value of the same quality of land in the same area was Rs. 6/- per sq. yard on 18th April, 1946 and Rs. 12/- per sq. yard on 2nd April, 1956, it would be reasonable to take the market value on 30th October, 1951 and 28th January, 1954 at Rs. 9/- per sq. yard being the mean between Rs. 6/- and Rs. 12/- per sq. yard. We are conscious that this process of determination of market value adopted by us may savour of conjecture or guess, but the estimation of market value in many cases must depend largely on evaluation of many imponderables and hence it must necessarily be to some extent a matter of conjecture or guess. We do not, therefore, think that we would be unjustified in taking the market value of the land acquired under the notifications dated 30th October, 1951 and 28th January, 1954 at Rs. 9/- per sq. yard.

30. The mere fact that the exhibit produced and proved by either party to those proceedings are subject matter of appeal before this Court, per se would not be a ground for not considering such instances. Where the judgments have attained finality, the Court would be obliged to give greater importance to such documents. As already noticed all the afore stated exhibits are judgments of the Court and some of them have already attained finality. All these instances/exhibits are relevant as they relate to the acquisition of the land in the same villages or immediately adjacent to them. Even the points of time of acquisition of lands, subject matter of these exhibits are relevant and are not so old so as to be totally ignored by the Court.

31. The ancillary question that arises there from is whether this Court should consider the judgments and awards produced by the parties within the past reasonable time with or without the element of increase. Addition of the element of increase at the rate of 12% per annum which has even been suggested by the learned Advocate General cannot be considered a sound criteria for determining the market value of the land in question. Without entering into any further discussion on this aspect of the matter, it will be appropriate to refer to recent judgment of the Hon"ble Supreme Court of India in the case of Mehtab Singh and others etc. etc. Vs. State of Haryana, . The Hon"ble" Apex Court while disapproving such progress in its universal application observed as under:

No occasion arose to take judicial notice of the inflation and high rise of prices. It must be borne in mind that from the date of award, interest becomes due to the claimant land owner, for thenceforth the land ceases to be his and while so the question of price rise does not arise when he is compensated for the deprival by payment of interest. That apart we have our strongest reservations to the rule evolved by the High Court in Maya Devi's case as also in Inder Singh's case afore-quoted. The Amendment Act of 1984 is explicit in terms. The limited retrospectivity provided in the amending provisions do not permit adoption of 12% increase in price in each and every acquisition. If it was so intended the legislature would have expressly provided so. We would decry that rule and

express our disapproval for its universal application or for all acquisition.

From the above detailed discussion three exhibits produced and proved by the claimants which are comparable instances are Ex.PX, Ex.PAA and Ex.P.18. These instances are not only comparable in terms of location, and potentiality but are also relevant in relation to proximity of time of acquisition of land.

32. In view of the mandate of the Supreme Court, the Court has to consider the values reflected in these exhibits without the element of increase. Further more, to obviate the possibility of any prejudice to the parties, it will not be fair for this Court also to rely on a single instance of sale, specially when all the above instances relate to the three villages i.e., Patti Mehar, Sounda and Jandli, the boundaries of which are common. The land for development of various sectors, water works and over-bridge have been acquired out of the lands of these villages only. The present land has also been acquired in the villages Sounda and Jandli.

33. In a very recent judgment the Hon''ble Supreme Court enunciated the principle that compensation in respect of the land of one village in comparison to compensation granted in adjoining village may necessarily not form the basis for such final determination. While placing of reliance upon sale instances even four years prior to the date of acquisition in a given case by the High Courts Their Lordships of the Supreme Court held that the value of the land reflected in the adjoining villages may not be the real market value of the lands of other villages though adjacent to those villages (Refer Kanwar Singh and Others Vs. Union of India, .

34. From the above detailed discussion three exhibits produced and proved by the claimants which are comparable instances i.e. Ex.PX, Ex.PAA and Ex.P.18. These instances are not only comparable in terms of location, and potentiality but are also relevant in relation to proximity of time of acquisition of land.

35. In addition, to the above exhibits produced by the Petitioners, the Court would have to take into consideration the exhibits produced by the Respondents. Ex.RW1/H, Ex.RX and Ex.RZ are the documents which have been proved in accordance with law and relate to the lands in or around the same villages. Though they cannot be made the sole basis for determination, but they cannot also be excluded. The fact that the notification in those cases is of the years 1978 and 1981 per se would not be sufficient to ignore these instances.

36. The principle of determination of market value of the land by applying the principle of averages of the sale instances proved on record and which are admissible would be a safe measure to arrive at a figure which should finally be paid to the claimants. Application of principle of average is no where an innovative application, but is a mere reiteration of a well accepted norm and principle which has been approved by the Hon''ble Supreme Court in the case of Rajashekhar Sankappa Taradandi (supra). This principle was also fully accepted by a Division Bench of this Court in the case of Khushi Ram and Anr. v. The State

of Haryana, 1988 I.A.C.C. 653.

37. To arrive at a fair computation on average basis, valuation of the following exhibits proved in accordance with law and relevant and comparable instances afore-stated would be proper:

Exhibit

Date of notification u/S. 4

Amount of compensation Remarks awarded by High Court/ District Judge

A. CLAIMANTS INSTANCES:-

Rs. (Per Acre)

PAA

31.8.1997

5,80,800/- by A.D.J.

PX

30.5.1978

4,84,000/- by High Court (has attained finality)

P.18

19.4.1983

5,42,000/- by High Court (has attained finality) -

B. RESPONDENTS INSTANCES:-

RW-1/H

26.5.1981

57,000/-

RX.

26.5.1981

57,000/-

RZ.

23.5.1978

30,000/-

Therefore, the amount of compensation payable to the claimants would come to Rs. 2,91,800.00 (Total of the figures "A" and "B" Rs. 17,50,800 X 6 = Rs. 2,91,800.00 per acre.

38. It is true that the instances proved on record by the Respondents are judgments of the Court, but all of them have not still attained finality. While from the instances proved by the claimants, two of them have already attained finality. As judgments and awards of considerably variable amounts of compensation have been proved on record, this Court would not be in a position to ignore either of them. Thus, the only principle applicable would be that of computing the average of such instances. All these instances are otherwise relevant keeping in view the location, potentiality of the land and the purpose for which such lands are acquired. The increase in the value of the lands of the claimants is also for the reason that the surrounding areas around the acquired land have been developed in furtherance to welfare activities carried out by the State or its instrumentalities. The yardstick of judicial decisions and the parameter governing the subject would certainly call for payment of fair compensation to the land owners.

39. The only other acceptable method for computing the market value of the land in question would be taking one sale instance/judgment which is most relevant and has a direct bearing on the controversy in issue in the present case. Ex.PAA can be that instance. This judgment of the learned Additional District Judge relates to acquisition of land in village Sounda for construction of Water works in Sector 9. The notification u/s 4 is dated 31.8.1987. The compensation awarded is Rs. 5,80,000/- per acre. Applying a 50% cut on account of development and welfare activity carried out by the State which has resulted in increase of the value of the land in Sector 9 and other surrounding areas of the acquired land in the present case on the one hand, while margin has to be provided for the development activity to be carried out by the State in the acquired land. On these counts element of cut has to be applied at a higher rate (refer Administrator General of West Bengal Vs. Collector, Varanasi, . Thus, applying the 50% cut, the compensation payable even on this basis would be Rs. 2,90,400/- per acre.

40. The claimants would be entitled to the higher value determined by this Court. Consequently, they should be entitled to the compensation at the rate of Rs. 2,91,800.00 per acre.

41. For the reasons afore-stated I am of the considered view that the land owners claimants should be entitled to get a compensation of Rs. 2,91,800.00 per acre as uniform compensation payable for the lands acquired under the notification dated 2.2.1989.

42. Resultantly, the appeals preferred by the State of Haryana are dismissed while the appeals preferred by the land owners are accepted awarding them the afore state compensation with statutory benefits provided u/s 23(1-A), 23(2) and 28 of the Act. However, in the facts and circumstances of the case, there would be no order as to costs.