(2009) 07 SHI CK 0022

In the High Court Of Himachal Pradesh

Surinder Kumar and Others APPELLANT

Vs

Land Acquisition Collector, HP PWD Central Zone and Another RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:
Land Acquisition Act, 1894 — Section 4

Citation : (2009) 07 SHI CK 0022

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Karol, J.—The present appeals arise out of common impugned award as such are being heard and decided together.

2. For the public purpose namely construction of Hamirpur bye- pass road land was acquired by the State Government. The notification dated 7.10.2002, issued u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was published in the H.P. Rajpatra on 20.12.2002. The award No. 45 dated 19.3.2004 was passed by the Collector u/s 11 of the Act. In terms of the award the Collector determined the market value of the acquired land to be Rs. 15,000/- per marla for Barani Abbal and Barani Doam and Rs. 10,000/- per marla for Gair Mumkin category of land. The compensation amount being not acceptable, the claimants filed land reference petitions u/s 18 of the Act seeking enhancement of the same.

3. The Court below, based on the pleadings of the parties framed the following issues:

1. Whether Collector Land Acquisition had inadequately assessed the market value of the land under acquisition? OPP

2. Relief.

4. Opportunity to adduce evidence was afforded to the parties and based on the

material on record, the Court below enhanced the compensation awarded by the Collector by determining the market value of the acquired land to be Rs. 18,000/- per marla, irrespective of the classification/category of the land.

5. The State has accepted the award and the claimants have challenged the same in these appeals on the ground that the Court below has failed to appreciate the material (oral and documentary evidence) placed on the record, in its entirety and has passed the award on the basis of presumptions, conjectures and surmises. The material on record proved that the market value of the land was much more, hence the amount of compensation was required to be enhanced.

6. Mr. Bhupender Gupta, learned Senior Counsel while arguing for the claimants has invited my attention to the impugned award and pointed out the following findings which according to him, are either erroneous or not borne out from the record:

Para 10 I find that the petitioners are not entitled to any relief on the strength of sale deed Ext.P1.

There is no definite evidence for establishing the location, shape, size, use and potentiality of the land under acquisition for comparison with the land purchased by PW.2

The sale consideration recorded in the sale deed, copy Ext.P1, did not appear to be based on facts. Undoubtedly, PW-2 had purchased land of high commercial importance. Such sale transaction did not furnish correct price basis for determination of the market value of the land under acquisition.

Sale deed, copy Ex. P.2, also did not furnish correct price basis for determination of the market value of the land under acquisition.

In his evidence, on 9.1.2006, PW.4 had admitted that matter of construction of the highway in question had been in circulation in the area for 4-5 years. This clearly established that the petitioners and other proprietors had been aware of the proposed construction of the bye-pass through Revenue Estate Chaula Kalan w.e.f. 2000-2001.

The possibility of sale deed, coy Ext.P2, having been executed with a view to create evidence could not at all be ruled out.

Para 11 On the basis of available evidence on record bonafide character of sale dated 12.9.2000 is doubtful.

The vendor is close relative of the vendee. Also location, shape, size, user and potentiality of the land covered by sale deed, copy Ext.P3, were not favourably comparable with the location, shape, size, user and potentiality of the land under acquisition.

The land under acquisition is away from the existing National Highway and the public street. PW-3 and his daughter had purchased the land for commercial purpose.

Para 12 The possibility of sale deed, copy Ext.P4, having been executed with a view to collect evidence for claiming higher compensation for acquisition of the land, could not be ruled out.

Para 13 Sale deed, copy Ext. R.2 is admissible in evidence u/s 51-A of the Act. There is nothing to suggest doubtful character of the sale of land measuring 954.72 Sq. meters by Shri Atul Kumar in favour of Smt. Swaran Kanta for Rs. 1,10,000/Notification under Sect. 4 of the Act had been issued on 7.10.2002.

Para 14 The petitioners had produced evidence of sale of four small pieces of land of Revenue Estate Chaula Kalan with a view to determine the market value of the land under acquisition. The respondent State had acquired large tract of land for construction of bye-pass. Also the land covered by the sale deeds tendered in evidence by the petitioners was of commercial importance. It was well settled that the market value of a small piece of land could not be made basis for determination of market value of a large chunk of land. Also the petitioners had not produced evidence of sufficient number of bonafide sales of land of Revenue Estate Chaula Kalan at the time of issue of Notification u/s 4 of the Act.

Area of Chaula Kalan of the township of the District Headquarter is not commercial centre. In any case the State would not have constructed highway/ bye-pass through the commercial centre of the town.

Para 15 There is nothing to suggest doubtful character of the sale deed, copy Ext.R.2. As per sale deed, copy Ext.R.2, the market value of 1 Marla of land of Revenue Estate Chaula Kalan worked out to Rs. 3000/- approximate.

7. I have heard learned Counsel for the parties and have also perused the record.

8. The claimants land is situate in revenue estate Chaula Kalan, mouja Bajuri, Tehsil Hamirpur, H.P. The land is within the municipal limits of the township of Hamirpur, where district headquarters are located. The extent of land, the purpose of acquisition and the relevant dates as noticed hereinabove are not in dispute.

9. The Chart depicting particulars of each claimants/appellants is reproduced as under:

Sr. No.

RFA No.

Name

L. Ref No.

Khasra No

Area

1.

379/2006

Surinder Kumar

6/ 2004

78/2 & 115/1

458.40 Sq. meters.

2.

380/2006

Savitri Devi

7/2004

287, 394/ 290, 402/291 & 407/295

480.71 Sq. meters.

3.

381/2006

Parkash Chand & others

8/2004

58/1,69/2, 71/2,166/1, 167/1, 83/1, 165/1 & 171/1

2005.26 Sq. meters.

4.

382/2006

Laturia Ram

9/2004

383/353/1

102.00 Sq. meters.

5.

383/2006

Roshan Lal & others.

10/2004

34/1, 57/1

501.80 Sq. meters.

6.

384/2006

Dwarka Nath and another

11/2004

284/1, 288/1, 297/1

374.00 Sq. meters, 304.00 Sq. meters.

7.

437/2006

Kewal Krishan

13/2004

78/2, 115/1

917.85 Sq. meters.

8.

385/2006

Bhram Dass and another

16/2004

174/1

128.00 Sq. meters.

9.

446/2006

Rajinder Nath

4/2005

75/1, 77/1, 282/1, 75/2

1256.65 Sq. meters.

10. From the record it is evident that all these claim petitions were listed together before the Court below and vide order dated 21.6.2005, passed in Land Reference Petition No. 6 of 2004, the petitions were clubbed and consolidated together for the purposes of framing of issues and leading evidence. The Court clarified that the evidence recorded in the said petition shall be read in all the connected land reference petitions.

11. In Land Reference Petition No. 6 of 2004 the claimants examined the following witnesses:

12. Shri Jagan Nath (PW-1), Shri. Sumati Parkash (PW-2), Shri Jai Chand (PW-3), Shri. Surinder Kumar (PW-4), Shri Kewal Krishan (PW-5), Shri Dwarika Nath, (PW-6), Shri Anil Kumar (PW-7), Shri Parkash Chand (PW-8), Shri Braham Dass (PW-9), Shri Lagan Nath (PW-10), Shri Laturia (PW-11).

13. In rebuttal the respondents examined only one witness namely Shri. Ranbir Singh (RW-1).

14. The claimants proved on record sale deeds (i) Ext.P1, dated 25.3.1997 whereby 5.85 Sq. Mts. of land was sold for a sum of Rs. 22,500/-. In terms of the said sale transaction the market value of the land comes to approximately Rs. 73,808/- per marla; (ii) Ext.P-2, dated 20.1.2004 whereby 21.25 Sq. Mts. of land stood sold; (iii) Ext.P-3, dated 12.9.2000 whereby 118.24 Sq. Mts. of land stood sold for a sum of Rs. 2,36,000/- and the market value in terms thereof works out to be Rs. 38380/- per marla; (iv) Ext.P-4, dated 21.1.2004 whereby 20.62 Sq. Mts. of land stood sold for Rs. 30,000/- and the market value in terms of which works out to be Rs. 28,471/- per marla and (v) Ext. P-5, dated 19.1.2004 whereby 2 marlas of land was sold for a sum of Rs. 80,000/- depicting the market value to be Rs. 40,000/- per marla.

15. On the other hand the respondent/state placed on record two sale deeds being sale deed Ext. R-1 dated 26.11.2002 depicting sale of nine marlas of land for a sum of Rs. 36,000/-. In terms of the said sale transaction the market value of the land situate in Tikka Lohara, a different revenue village, comes to Rs. 4000/- per marla. The same cannot be made basis for determining the market value as it pertains to different revenue village and there is other contemporaneous material on record to prove the market value of the acquired land. Sale deed Ext. R-2, dated 20.4.2002 evidencing sale of 954.72 Sq. Mts. of land for a sum of Rs. 1,10,000/-, depicting the market value to be Rs. 2210/- (approx) per marla.

16. Sale deeds Ext.P-1, Ext.P-2, Ext.P-3, Ext.P-4, Ext.P-5 and Ext. R-2 pertain to the very same revenue village where the acquired land is situated. For the purposes of determining the market value of the acquired land, in my view, sale deeds Ext.P-3 and Ext.R-2, being more proximate to the time of initiation of the acquisition proceedings needs to be considered.

17. Undisputedly the acquired land is situated in the municipal limits of the Hamirpur Township and the land is acquired for the purposes of construction of bye-pass of the main town.

18. For determining the controversy in issue the statements of PW-2, PW-3, PW-4 and RW-1 needs to be examined.

19. PW-2 is the purchaser of the land sold in terms of sale deed Ext.P1. His statement is relevant for the purpose of proving that the said exemplar sale land

and the acquired land are situated in village Chaula and are part of Ward No. 10, of municipal area Hamirpur. However the findings of the Court below, to the effect that this witness had bought land in terms of sale deed Ext.P-1, for high commercial importance is not borne out from the record. This witness has neither deposed nor has he been cross examined by the State to the said effect. There is no material on record to prove the findings that The sale consideration recorded in the sale deed, copy Ext.P1, did not appear to be based on facts. Undoubtedly, PW-2 had purchased land of high commercial importance. Such sale transaction did not furnish correct price basis for determination of the market value of the land under acquisition as held by the Court below. The learned Judge has been too presumptuous.

20. PW-3 is the purchaser of land sold vide sale deed Ext.P-3. He has proved the factum of the sale and the location of the exemplar land which is also situated in village Chaula, and is part of Ward No. 10 of municipal area Hamirpur. From his deposition it is evident that the constructed bye-pass road is at a distance of 50 100 meters from the exemplar sale land and the land of claimants Sh. Rajinder Kumar and Sh. Surinder is just at a distance of 150 yards and 10 yards respectively, from his exemplar sale land. The said land is also at a distance of half kilometer from the National Highway-88. On part of his land he has constructed a school by the name of Hamirpur Public School and the remaining land is lying vacant. Adjoining to his land there is a building in which College of B.Ed. and S.C.V.T. School is being run. There is also a Chakki (flour mill) in close vicinity. Land in the entire area has commercial value and use. This witness has been cross examined extensively. Importantly there is no cross examination with regard to the commercial use and the identification and location of the exemplar land with that of the acquired land. No doubt he has deposed that the land belonging to the claimant Sh. Surinder is of category Banjar but however, in my considered view, it would be of no consequence as the nature and category of land, when put to commercial use is immaterial. His statement that with the construction of bye-pass road the overall prices of the area have increased to be Rs. 1 lac per bigha, may not be of much significance for the reason that the relevant date for determining the market value of the acquired land is the date of commencement of the acquisition proceedings.

21. No doubt that the seller of the said exemplar land is his relative but however the genuineness of the said sale transaction cannot be doubted for this reason. It is nobodies case, that the price of this sale transaction was inflated only to create evidence by the claimant. Importantly PW-3 is neither related nor is close to the claimants. He is just a neighbour, who having bought land two years prior to the initiation of the acquisition proceedings put it to commercial use. He has no reason to falsely depose in favour of the claimants. In any event, his statement on most of the points stands unrebutted.

22. The findings returned by the Court below that the said sale transaction does not record bonafide character of sale is not borne out from the record. The

witness has categorically deposed that a sum of Rs. 1,36,000/- was paid by him to the seller at his house and the balance payment of Rs. 1 lac was paid at the time of registration of the sale deed. Importantly in his cross examination he has clarified that payment was made in the presence of one Sh. Ajit. Sh. Ajit was not a necessary witness to prove the factum of exchange of payment as the statement of PW-3 is clear, convincing and reliable. Simply because the vendor is a close relative of the vendee that by itself would not be a reason to disregard the sale transaction and more particularly when there is nothing on record to prove the fact that in the year 2002 the survey for construction of the bye-pass road had been carried out and it was in the knowledge of the vendor, vendee or the claimants that the claimants land was to be necessarily acquired. That the sale transaction took place between relatives itself raises presumption that the transaction is bonafide and no effort was made by the parties to undervalue the transaction for the purpose of saving the stamp duty. Hence the Court below has been too presumptuous and has committed an error in recording the findings that the said transaction is of a doubtful nature.

23. Similarly the findings that the location, shape, size, use and potentiality of the exemplar land with that of the acquired land is not favourably comparable is contrary to the record. PW-3 has categorically deposed that the land of the claimant is just at a distance of 150 yards from his land and half a kilometer from the National Highway. As noticed above land in the entire area can and in fact, has been put to commercial use.

24. Claimant Sh. Surinder Kumar (PW-4) has deposed that the acquired land situated in village Chaula Kalan, is part of Ward No. 10 of the Hamirpur Township. According to him the entire acquired land is in the Municipal Committee area and in the area there is school, B. Ed. College, Chakki and private buildings have been put to commercial use. According to him the market value of the land at the time of acquisition was Rs. 50,000 to Rs. 60,000 per marla whereas with the passage of time it has increased to Rs. 60,000 to Rs. 70,000 per marla. His land is of category khadetta. Due to the acquisition, his land has been severed into two portions. Vide sale deed Ext.P-2, he sold land to his brother. No doubt he has admitted that 4-5 years prior to the initiation of the acquisition proceedings there was a rumor that the bye-pass of Hamirpur National Highway is to be constructed, but however, this statement of his would have no bearing at all as there is nothing on the record to prove that either the survey had been carried out by the State or that the claimants land had been identified for the purposes of acquisition. Nothing has been placed on record to even show that the State Government had taken a policy decision of constructing a bye-pass road. Public announcements, if any, made by politicians or State except, in exercise of their constitutional or legislative powers are not of binding nature and no notice thereof can be taken. Further, nothing has been suggested to this witness, that he had the knowledge of the fact that the bye-pass road was to be constructed either through his land or through village Chaula Kalan, where the entire acquired land of the claimants is situated.

25. Sale deed Ext. P-2 depicts sale of land by PW-4 to his brother. It pertains to the year 2004. Keeping in view that there is other contemporaneous material on record the same need not be relevant for determining the market value of the acquired land. But however, the findings of the Court below that the said sale does not furnish correct price basis for determining the market value of the land under acquisition is evident on record that as a result of construction of the bye-pass tremendous activity had taken place in the area of revenue estate Chaula Kalan is perverse.

26. PW-3 has also proved that prior to the initiation of the acquisition proceedings the land in close proximity of the acquired land had already been put to commercial use. With the construction of the bye-pass road the developmental activity is bound to take place. The Court below has discarded Ext.P-2 for the reason that The possibility of sale deed, copy Ext.P2, having been executed with a view to create evidence could not at all be ruled out is absolutely presumptuous and not borne out from the record.

27. The other remaining witnesses as claimants, have also deposed with regard to the value, use, extent, potentiality of the acquired land with that of the exemplar lands.

28. As against this evidence of the claimants, RW-1 the solitary witness of the State, being the Registration Clerk in the office of the Tehsildar has proved the execution of the sale deed Ext. R-1 and Ext. R-2. Importantly this witness, except for proving the aforesaid sale deeds has deposed nothing with regard to the nature, location, shape, size, use and potentiality of the land sold in terms of the said exemplar sale deeds. The Court below has accepted the same to be the basis for determining the market value of the acquired land, keeping in view the provisions of Section 51-A of the Act. Importantly no witness connected with the said sale transaction was examined to prove the aforesaid facts.

29. The Apex Court in Cement Corporation of India Ltd. Vs. Purya and Others, after referring to and relying upon its earlier decisions in: M.S. Madhusoodhanan and Another Vs. Kerala Kaumudi Pvt. Ltd. and Others, ; Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, ; A.P. State Road Transport Corporation, Hyderabad Vs. P. Venkaiah and others, ; Meharban and others etc. etc. Vs. State of U.P. and others, ; Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., ; Indore Development Authority Vs. Satyabhama Bai (Smt) and Others, ; Kummari Veeraiah and Others Vs. State of A.P., ; P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, ; Inder Singh and Others Vs. Union of India (UOI) and Others, ; Mangaldas Raghavji Ruparel and Another Vs. The State of Maharashtra and Another, and Madamanchi Ramappa and Another Vs. Muthalur Bojjappa, wherein conflict of the issue in question had arisen, has held as under:

30. Kurra Sambasiva Rao case (supra) and other cases which fall in line with the

view taken therein proceeded on the basis that prior to the insertion of Section 51-A in the LA Act, the Evidence Act did not permit the production of a certified copy of the registered sale transaction in evidence. Therefore, by the insertion of Section 51-A the legislature merely enabled a party to get over that problem and thereafter, according to the said judgment, the party concerned had to prove the contents of the document by adducing oral evidence separately. The said view is not the correct position in law. Even prior to the insertion of Section 51-A of the Act the provisions of the Evidence Act and the Registration Act did permit the production of a certified copy in evidence. This has been clearly noticed in the judgment in Narasaiah case (supra)

31. Whenever a transaction evidenced by a sale deed is required to be brought on record, the execution thereof has to be proved in accordance with law. For proving such transaction, the original sale deed is required to be brought on record by way of primary evidence. Only when primary evidence is not available, a certified copy of the sale deed can be taken on record. Such certified copies evidencing any transaction are admissible in evidence, if the conditions precedent therefore in terms of Section 75 of the Evidence Act are fulfilled. Evidences are of different types. They may be direct, indirect or real evidence. The existence of a given thing or fact is proved either by its actual production or by the testimony or admissible declaration of someone who has himself perceived it. Such evidence would be direct evidence. Presumptive evidence which is an indirect evidence would mean that when other facts are, thus, proved, the existence of the given fact may be logically inferred. Although the factum probandum and the factum probantia connote direct evidence, the former is superior in nature. The terms primary and secondary evidence apply to the kinds of proof that may be given to the contents of a document, irrespective of the purpose for which such contents, when proved, may be received. Primary evidence is an evidence which the law requires to be given first; secondary evidence is evidence which may be given in the absence of that better evidence when a proper explanation of its absence has been given. Section 51-A of the Land Acquisition Act seeks to make an exception to the aforementioned rule.

32. In the acquisition proceedings, sale deeds are required to be brought on record for the purpose of determining market value payable to the owner of the land. In terms of Section 51-A the certified copies may be brought on record evidencing a transaction and may be accepted as evidence thereof. Acceptance of an evidence is not a term of Article It has an etymological meaning. It envisages exercise of judicial mind to the materials on record. Acceptance of evidence by a court would be dependent upon the facts of the case and other relevant factors. A piece of evidence in a given situation may be accepted by a court of law but in another it may not be.

33. Section 51-A of the LA Act may be read literally and having regard to the ordinary meaning which can be attributed to the term acceptance of evidence relating to transaction evidenced by a sale deed, its admissibility in evidence

would be beyond any question. For bringing a documentary evidence on the record, the same must not only be admissible but the contents thereof must be proved in accordance with law. But when the stature enables a court to accept a sale deed on the records evidencing a transaction, nothing further is required to be done. Even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that the contents of the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature advisedly has used the work may. A discretion, therefore, has been conferred upon a court to be exercised judicially i.e. upon taking into consideration the relevant factors.

34. The reasoning in Narasaiah case (supra) that Section 51-A enables the party producing the certified copy of a sale transaction to rely on the contents of the document without having to examine the vendee or the vendor of that document, is the correct position in law.

35. However, the respondents contention that the contents of a sale deed should be a conclusive proof as regards the transaction contained therein or the court must raise a mandatory presumption in relation thereto in terms of Section 51-A of the Act cannot be accepted as the court may or may not receive a certified copy of sale deed in evidence. It is discretionary in nature. Only because a document is admissible in evidence, the same by itself would not mean that the contents thereof stand proved. Secondly, having regard to the other materials brought on record, the court may not accept the evidence contained in a deed of sale. When materials are brought on record by the parties to the lis, the court is entitled to appreciate the evidence brought on record for determining the issues raised before it and in the said process, may accept one piece of evidence and reject the other.

36. Although u/s 51-A a presumption as to the genuineness of the contents of the document is permitted to be raised, the same can be relied upon only if the said presumption is not rebutted by other evidence.

37. While the certified copies of the sale transactions produced by the respondent should be looked into as evidence produced by a party the evaluation of such evidence should be made taking into consideration other evidence if available on record like other sale transactions that may be produced, the comparative nature of the location, suitability, marketability, etc. to fix the market value of the land acquired.

38. Thus, the reliance by the Court below on sale deed Ext. R-2 was misconceived in law. Infact for the very same reason for which the Court had considered sale deed Ext. R-2, it ought to have considered all the sale transactions proved on record by the claimants. Simply because sale transaction was proved by a Clerk of the office of the Registrar, that fact by itself, could not lead to a presumption that the sale transaction is bonafide, reflecting the true market value of the acquired land. The Court below erred in holding that there is

nothing to suggest the doubtful character of Ext. R-2. Importantly even the Collector while passing the award has not taken into account sale transactions Ext. R-1 and Ext. R-2. Had they reflected the true and genuine market value the Collector would have definitely taken the same into account. There is not even an iota of evidence to prove the location, shape, size, use, potentiality of the acquired land with that of the said exemplar sale land.

39. The Court below also rejected the sale transactions proved by the claimants for the reason that it pertained to small parcels of land. Importantly the Court lost sight of the fact that sale transaction Ext. P-2 also pertains to small piece of land. That apart the Apex Court in Thakarsibhai Devjibhai and Others Vs. Executive Engineer, Gujarat and Another, has held that share holding of each individual is to be considered while determining the largeness of the acquired land.

40. Noticeably the individual share of each claimant is small. Hence the extent of the land covered by acquisition proceedings would be immaterial and irrelevant.

41. The findings of the Court below that the area of Chaula Kalan of the township of district headquarters is not commercial centre as the State would not have constructed the bye-pass through commercial centre of the town is not only presumptuous, erroneous but is based on surmises and conjectures. The suitability of the road taking into account the public convenience is a policy decision of the State based on various factors. The reasoning, suggestive of the fact that no land can be acquired for the construction of road in a commercial area is faulty and misconceived.

42. The Court below has not assigned any reasons for determining the market value of the acquired land to be Rs. 18,000/- per marla.

43. The petitioners are therefore right in contending that the impugned award is based on conjectures and surmises and while passing the same, the Court has misappreciated, misconstrued and ignored the material and the law of the land.

44. With the construction of the bye-pass road the claimants land has resulted into severance and division into two parts. The State has enacted the Himachal Pradesh Roadside Land Control Act, 1968. Under the said Act, construction activity to the extent of five meters width from the edge of the road has been prohibited. Hence the value of the claimants unacquired land, due to its diminishing utility has been reduced. It cannot be said that with the severance of land the value is not depleted as with the construction of road there is appreciation of market value of the land.

45. Why sale transactions proved by the claimants has been rendered doubtful is not evident from the impugned award. There is no effective or material cross examination of the witnesses which would even cast a doubt about the genuineness of the sale transactions.

46. From the sale transactions Ext.P-1 to Ext.P-4, no doubt it can be argued that

there is downward trend of prices in the area but noticeably this may not be true for the reason that sale transaction Ext.P-1 pertains to only 5 Sq. Mts. of land which evidently fetched higher price.

47. The area in question was fully developed and therefore it would not be true to contend that it was not a developed area. Importantly sale transactions pertain to very small area. No doubt Hamirpur is a fast developing town having high commercial value and prices can vary from place to place, but however in the instant case the claimants have proved the sale transactions pertaining to the land adjacent to the acquired land.

48. The contention that all the claimants as witnesses have differently deposed with respect to the exact value of the acquired land, in my view cannot be the basis for disbelieving their statements. Each claimant values his land in a different manner. It is a settled position of law that the market value to be determined is such, as that a willing seller is ready to sell the land which the purchaser is willing to purchase at the agreeable price. Be that as it may be, none of the claimants have deposed the market value to be less than Rs. 40,000/- per marla.

49. From the record it is evident that the sale transactions in question are genuine and have been sufficiently proved by the claimants. It has proved on record by clear and cogent evidence that entire land was put to commercial use. The Himachal Pradesh Roadside Land Control Act, 1968 is an impediment in the enjoyment of complete use of remaining unacquired land. The entire land is situated within the municipal limits and the sale transaction Ext.P -3.

50. From the material on record, in my considered view the sale deed Ext.P3 can be safely considered and relied upon for determining the market value of the acquired land. In terms of the said sale the market value comes to Rs. 38,380/- or say Rs. 38,400/per marla. The claimants thus would be entitled to the same. The compensation shall be paid to the claimants by taking the same into account. The impugned award is modified to the aforesaid extent. It is clarified that the claimants shall be entitled to statutory compensation and entitlements as held by the Court below and more particularly keeping in view the ratio of law laid down by the Apex Court in Sunder Vs. Union of India,

51. For the aforesaid reasons the appeals are allowed.

