(9) For the reasons recorded above, this appeal is accepted with costs. Counsel's fee Rs. 300. The award of the Tribunal is modified. The appellant is allowed a sum of Rs. 4,100 as compensation with 12 per cent per annum interest thereon from the date of institution of the claim petition i.e. March 8, 1983 till realisation.

P.C.G.

Before : I. S. Tiwana, J.

AMARJEET SINGH AND OTHERS,—*Appellants.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Regular First Appeal No. 923 of 1985

December 17, 1988.

Land Acquisition Act (1 of 1894)—Ss. 23 and 24—Determination of compensation for land acquired—Applicability of amended S. 24—Such amendment of later date—Effect of.

Held, that the very language of S. 24 of the Land Acquisition Act, 1894 suggests that it is more or less in the form of an exception to S. 23 of the Act which lays down the matters or factors which have to be taken into consideration for determining the amount of compensation payable to a person whose land is acquired under the Act. Whereas, S. 23 lays down the principles or the considerations that have to be taken notice of in determining the compensation for the land acquired, S. 24 enumerates the matters which the Court shall not take into consideration in determining the compensation. In other words, the combination of the two sections specifies the procedure as to how the market value and the compensation payable for the acquired land is to be determined. By now it is well laid down that normally alteration of procedural provisions is always retrospective unless there are good reasons to the contrary. In the instant case, clause Eightly which has recently been added to S. 24 (on 24th September, 1984) can also not be held to be retrospective merely because a part of the requisites for its operation is to be drawn from a time entecedent to its introduction.

(Para 4).

Regular First Appeal from the order of the Court of Shri Bari Ram Gupta, Addl. District Judge, Sirsa, dated 12th February, 1985

ordering that accept this petition with costs (Rs. 100), and allow compensation to the claimants at the following rates :—

(1) *For the first block of land on Sirsa Barnala Road upto depth of 60 yards at the rate of Rs. 605 per Marla.*

(2) *For the rest of the land in interior at the rate of Rs. 208 per Marla.*

These rates are, however, not applicable to the claimants who purchased plots within the disputed land before acquisition at the rate higher than the one allowed by him above for the two blocks of land. In their case they shall be paid the compensation in accordance with their purchase deeds, as they are entitled thereto, because it has not been shown that the title deeds in their favour were not genuine. The claimants shall also be paid solatium at the rate of 30 per cent on the enhanced compensation due to the compulsory acquisition and interest at the rate of 9 per cent per annum on the enhanced compensation from the date of taking possession till the date of actual payment, in view of the amendment of section 23(2) and 28 of the Principal Act, by the Land Acquisition (Amendment) Act, 1984. The claimants shall also be paid interest at the rate of 12 per cent per annum on the total compensation of the land acquired from the date of publication of notification under section 4 of the Act i.e., 30th June, 1981, till the delivery of award dated 7th March, 1983, in view of insertion of sub-section 1-A to Section 23 of the Principal Act by the amending Act 1984.

Claim:—Reference petition under section 18 of the Land Acquisition Act for enhancement of Compensation.

Claim in Appeal:—For enhancement of compensation.

K. S. Doad, Advocate with G. S. Doad, Advocate, *for the Appellants.*

S. C. Mohanta, A.G., Haryana with Abha Rathore, Advocate, V. K. Vashishat, Advocate, *for the Respondents.*

JUDGMENT

I. S. Tiwana, J.

(1) Concededly what needs to be determined in these eight Regular First Appeals Nos. 668, 712 to 714, 721, 923 to 925 of 1985 is as to what was the market value of the appellants' acquired land on 30th June, 1981, when the requisite notification under section 4 of the Land Acquisition Act (for short the 'Act') was published. For evaluating this land the Collector divided it (19A 7K 3M) into

three blocks and *vide* award dated 7th March, 1983, determined their value at rates varying from Rs. 10,400 to Rs. 17,200 per acre depending upon the location of a particular part of the land vis-a-vis the Sirsa-Barnala road and other surrounding constructions. Since the claimants, including the appellants, did not feel satisfied with the adequacy or fairness of the compensation awarded they sought their respective references under section 18 of the Act and as a result of the trial that followed, the lower Court while reducing the number of blocks to two has evaluated these in the following manner:—

(i) Land falling in Block I, i.e., upto a depth of 60 yards from Sirsa-Barnala Road.	... At Rs. 605/- per marla
(ii) The rest of the land	... At Rs. 208/- per marla

The appellants still not feeling satisfied with the quantum of compensation awarded have preferred these appeals.

(2) So far as the potentiality of the acquired land is concerned, the parties are hardly at variance. The Court after scrutinising the evidence in this regard has concluded the matter thus:

> "In the present case, as we have already seen above, the Northern boundary wall of Mini Secretariat adjoins the disputed land, Police Lines which was under construction in those days, was just opposite to the disputed land across the road, H.S.E.B. Colony and Power House were close to the disputed land towards its North and there were many residential colonies in that area, although no construction had yet come up in that area, nor the owners thereof have been shown to have taken permission for selling the land in small plots in those colonies, and the fact that the disputed land had been acquired for Housing Board Colony, so from all this one can safely hold that the disputed land had potentiality for being converted into building sites. Thus, treating the disputed land as agricultural land for assessing the market value thereof by the Land Acquisition Collector was not justified."

In the light of this conclusive finding what is seriously objected to by the learned counsel for the appellants is the following conclusion recorded by the lower Court for discarding certain sale instances which formed part and parcel of the acquired land itself :

> "Similarly, sale instances represented by Ex. P-93, P-94, P-87, Ex. P-70, Ex. P-6, Ex. P-67 (Ex. P-90), Ex. P-7, Ex. P. 45, Ex. P-51 and Ex. P-68, which relate to small plots sold out of the disputed land itself in between March, 1979, to October 1980, cannot be taken into consideration in view of the amendment of section 24 of the Act, where it has been provided *inter alia* that any increase to the value of the land on account of this being put to any use which is forbidden by law or opposed to public policy cannot be taken into consideration, because the evidence on record does not show that these plots were sold out of the disputed land, after getting necessary permission to carve out colony in accordance with the provisions of Haryana Development and Regulation of Urban Areas Act 1975 (for short Act of 1975)".

The stand of the learned counsel is that clause Eighthly of section 24, as recently added by Act No. 58 of 1984, is not attracted to the facts of this case; firstly it does not operate retrospectively secondly there is no material on record to hold that the sale of the above noted plots forming part of the acquired land was either violative of the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as the 1975 Act) or these were in any way opposed to any public policy.

(3) Having given my thoughtful consideration to the entire matter, I am of the opinion that whereas the first contention of the learned counsel is devoid of merit, the second does carry weight. The reasons are as follows:

(4) The very language of section 24 of the Land Acquisition Act suggests that it is more or less in the form of an exception to section 23 of the Act which was lays down the matters or factors which have to be taken into consideration for determining the amount of compensation payable to a person whose land is acquired under the Act. Whereas, section 23 lays down the principles or the considerations that have to be taken notice of in determining the compensation for the land acquired, section 24 enumerates the matters which

the Court shall not take into consideration in determining the compensation. In other words, the combination of the two sections specifies the procedure as to how the market value and the compensation payable for the acquired land is to be determined. By now it is well laid down that normally alteration of procedural provisions is always retrospective unless there are good reasons to the contrary. In the instant case, clause Eighthly which has recently been added to section 24 (on 24th September, 1984) can also not be held to be retrospective merely because a part of the requisites for its operation is to be drawn from a time entecedent to its introduction. In *Sajjan Singh* v. *State of Punjab* (1) the question that fell for consideration of their Lordships was as to recorded in section 5(3) of the prevention of Corruption whether the presumption-Act could be availed of to judge the misconduct of a person who had acquired assets or properties prior to the enforcement of the Act, i.e., 11th March, 1947, it was held that "we are unable to agree however, that to take into consideration the pecuniary resources of property in the possession of the accused or any other person on his behalf which are acquired before the date of the Act is in no way given the Act a retrospective effect." The learned Judges further opined that "the statute cannot be said to be retrospective because a part of the requisites for its actions is drawn from a time antecedent to its passing." Somewhat similar view was expressed in *The State of Bombay* v. *Vishnu Ramchandra* (2). Therefore, merely because the acquisition proceedings had been initiated before the addition of clause Eighthly to section 24 of the Act would not make its operation retrospective if the amount of compensation payable to the appellants is determined in the light of the principles or factors laid down in sections 23 and 24 of the Act, as these stand subsequent to the above noted date of addition, i.e., September 24, 1984.

(5) So far as the second aspect of the matter that no foundation for attracting this clause to the facts of the case has been laid is concerned, the appellants appear to be on a sound footing. A bare reading of the above quoted part of the impugned award very well indicates that the lower Court has approached the matter from an angle as if the onus of proving that the transactions specified therein were not violative of the 1975 Act was on the appellants. This is patently a wrong approach. It was for the acquiring authorities

(1) AIR 1964 SC 464.
(2) AIR 1961 SC 307.

to show that the said transactions, as relied upon by the appellants for the fixation of the market value of their acquired land, were in any way violative of any of the provisions of the 1975 Act or, in other words, the use to which the areas covered by those transactions had been put was in any way forbidden by law or opposed to public policy. In order to sustain the impugned award, Mrs. Abha Rathore, learned counsel for the respondent-authorities makes a reference to section 7 of the 1975 Act which reads as follows:—

> "7. Save as provided in section 9, no person shall,— agree to transfer in any manner plots in a colony or
>
> (i) without obtaining a licence under section 3, transfer or agree to transfer in any manner plots in a colony or make an advertisement or receive any amount in respect thereof;
>
> (ii) erect or re-erect any building in any colony in respect of which a licence under section 3 has not been granted."

She contends that neither the vendors of these transactions could transfer the plots in favour of the vendees nor could the vendees erect or re-erect any building in the absence of any licence issued in favour of the vendors under section 3 of the said Act. She, however, is not in a position to refer to any evidence on record to show that either on the dates of these transactions, i.e., the dates of sales, the area in question were part of an urban area of the plots concerned were parts of a colony as defined in the Act. She concedes that there is no indication from the record that any proceeding of any sort was taken against the said vendors under the provisions of the 1975 Act. Therefore, it cannot be held firmly that the abovenoted transactions sought to be relied upon by the learned counsel for the appellants were in any way violative of or forbidden by the provisions of the 1975 Act. I, therefore, accept the stand of the learned counsel for the appellants that some of the abovenoted transactions do furnish the best possible indicia or the basis for determining the market value of the acquired land. Further in view of the finding recorded by the lower Court with regard to the potentiality of this land, and more particularly, in the light of site plans Exhibit. P-3, which clearly depicts the surrounding developments, I am of the opinion that there was no justification with the lower Court to categorise the land into two blocks for purposes of its evaluation. Therefore, to me it appears reasonable

to take an average of the above-noted transactions except Exhibits P-93, P-94, P-87 and P-70 to fix the market value of the suit land. These four transactions have to be ruled out of consideration for the reason that these are not proximate to the date of notification as these are more than an year earlier to the notification. On the basis of this calculation the rate per square yard comes to Rs. 36.72. The appellants, however, cannot be compensated at this very rate in view of the extent or the smallness of the plots covered by these transactions. It is patent that had the appellants to sell their lands in the form of plots covered by these transactions, they would have lost one-third of their land for providing roads and other community amenities, etc. In the light of this, it appears fair to impose a cut of one-third to the above noted rate to determine the market value payable to the appellants. The rate thus comes to Rs. 24.48 per square yard. However, to make it a round figure, I fix the market value of the suit land at Rs. 25 per square yard. Besides this, the appellants are also held entitled to the benefits envisaged by sections 23(1-A), 23(2) and 28 of the Act as these stand after the enforcement of Act No. 68 of 1984. They are also made entitled to the proportionate costs of their appeals.

SCK.

Before G. R. *Majithia, J.*

SURJIT SINGH and another,—*Appellants.*

versus

SANTOSH KUMARI WD./O GURMUKH SINGH ETC.,—*Respondents.*

First Appeal from Order No. 324 *of* 1984

December 17, 1988.

Motor Vehicles Act (IV of 1939)—Ss. 95(2), 110-*A—Death of Pillion rider of motor cycle—Such rider not being covered in pursuance of any contract of employment—Liability of Insurance Company.*

Held, that sometimes a thing may take place in such circumstances as to render it practically impossible for any one to speak