

*Before Anil Kshetarpal, J.*

**HARYANA STATE INDUSTRIAL AND INFRASTRUCTURE  
DEVELOPMENT CORPORATION LIMITED—Appellant**

*versus*

**MAHENDER SINGH AND OTHERS—Respondents**

**RFA No.684 of 2021 (O&M)**

October 14, 2021

*Constitution of India, 1950—Land acquisition Act, 1894—S.4, 18, 23, 24 and 25—Assessment of the market value of different parcels of land in a village, acquired subsequent to different parcels of land in the same village acquired previously—The market value of previously acquired land had been assessed by the Hon’ble Supreme Court—Held, the assessment made by the Supreme Court previously would not affect the market value of the land acquired subsequently—Market value is determined on the date of issuance of notification under Section 4—The decision of the Supreme Court cannot be applied ipso facto to the facts of the subsequent cases neglecting the other evidence. Once the comparable sale deeds of contemporaneous period are available, it is not safe to rely upon previous judicial assessments of market value ignoring the sale deeds which give the most accurate value of the property.*

*Held*, that the Supreme Court has held that while assessing the market value, the Court is required to evaluate the various factors which goes to impact such a determination depending upon the peculiar facts governing each case. There cannot be any hard or fast rule for assessment of the market value. Common sense is the best and most reliable guide. While denouncing the practice of the courts to place an outright reliance on the previous judgments, the Supreme Court has declared that the decision cannot be applied ipso facto to the facts of the subsequent cases neglecting the other evidence.

(Para 9.14)

*Further held*, that in the considered view of this Court, the determination of the market value of the land on the basis of comparable sale exemplars of the contemporaneous period is the most preferred and logical method to arrive at a fair and true market value. While deciding such cases, the Court is required to adopt a holistic approach. The Court is expected to assess a just and appropriate market

value on the basis of the evidence produced. In such circumstances, comparable sale deeds offer a good solution to the problem. They are considered as the best evidence to prove a fact being in the nature of direct evidence and help the Court to assess the market value more accurately and realistically. Once comparable sale deeds of the contemporaneous period are available to guide the court, it is not safe to rely upon a previous judicial assessment of the market value while ignoring the sale deeds which reflect the most accurate market value of the property on which a seller voluntarily offers to sell the property on receipt of the amount from a willing purchaser. Unless the correctness of the price, reflected in these sale deeds, is disputed on any ground duly proved, the court can safely rely upon the same for assessing the market value. If there are a large number of comparable sale deeds of the contemporaneous period, the Court can, with reasonable certainty, assess the market value while relying upon such sale instances.

(Para 9.15)

*Further held*, that while assessing the market value of the acquired land under the 1894 Act, the Court is required to apply the test of preponderance of probabilities. Thus, the Court assesses the market value on the basis of the evidence produced.

(Para 9.16)

B.R. Mahajan, Senior Advocate with Pritam Singh Saini, Advocate, for HSIIDC.

Pawan Kumar, Senior Advocate with Surya Kumar, Advocate Amit Jain, Advocate, Nitin Jain, Advocate, G.C.Shahpuri, Advocate, Vikrant Rana, Advocate, Gaurav Aggarwal, Advocate, for the landowners.

Shivendra Swaroop, AAG, Haryana.

### **ANIL KSHETARPAL, J.**

By this order a bunch of 50 appeals, (the details whereof are on the foot of the judgment), shall stand disposed of.

(1) Through this batch of appeals filed under Section 54 of the Land Acquisition Act, 1894, (hereinafter referred to as 'the 1894 Act'), the Haryana State Industrial and Infrastructure Development Corporation Limited (hereinafter referred to as 'HSIIDC') (the beneficiary of the acquisition) as well as the landowners who stand deprived of their land due to the compulsory acquisition, located in Village Kasan assail the correctness of a common award dated

10.01.2020 passed by the Reference Court while deciding 50 Reference petitions filed under Section 18 of the 1894 Act. HSIIDC prays for the reduction of the assessed market value of the acquired land whereas the landowners pray for enhancement thereof. The learned counsel representing the parties are ad idem that these appeals can be conveniently disposed of by a common judgment.

**(2) Issues which require adjudication**

(2.1) In the considered opinion of the Court, the issues which arises for consideration are:-

1. "Whether an assessment of the market value of the different parcels of acquired land in the village in question made by the Hon'ble Supreme Court acquired previously under a different notification, is binding while making an assessment of the market value of different parcels of land in the same village acquired subsequently, while ignoring the comparable sale exemplar of the acquired land and the nearby land, which are available and have been produced and proved in the evidence, for the contemporaneous period?"
2. Whether the Reference court is required to assess the compensation on account of bisection of the unacquired/remaining pieces of land left with the owner after the compulsory acquisition of land?

**(3) Facts**

(3.1) Some facts are required to be noticed. The State of Haryana in order to utilize the land for developing and constructing Kundali -Manesar Express Highway Phase VII connecting NH no.1, 10, 8 and 2 issued notification under Section 4 on 11.01.2005 proposing to acquire land measuring 520 acres 2 kanals and 30.5 marlas spread over a total of 15 villages. The declaration under Section 6 was published on 31.05.2005 whereas award no.15 was announced on 11.05.2006 acquiring 514 kanals and 13 marlas of land, i.e., approximately 65 acres of land in village Kasan while offering to pay a uniform market value at the rate of Rs.12,50,000/- per acre along with all other statutory benefits. This the second round to this court. In the first round, the Reference Court vide order dated 02.08.2012, assessed the market value of the acquired land at the rate of Rs.43,17,841/- per acre. The High Court vide judgment dated 05.02.2016, revised the

market value of the acquired land to Rs.62,11,700/- per acre with respect to the acquired land located in all the 15 villages while deciding various appeals. However, the Supreme Court vide judgment dated 25.1.2018 in *Surender Singh versus State of Haryana and others*<sup>1</sup> set aside the same and remanded back all the cases to the Reference Court while permitting the parties to lead further evidence. In the second round, the Reference Court has assessed the market value of the acquired land at Rs.49,20,237/- per acre vide award dated 14.01.2020, while solely relying upon a previous decision of the Supreme Court in *Wazir and another versus State of Haryana*<sup>2</sup>. While delivering this judgment, the court assessed the market value for 1500 acres of the acquired land, to be utilized for setting up Industrial Model Township-Phase II, III and IV, Manesar, District Gurgaon by various notifications. Para 29 of the judgment reads as under:-

“29. The values in other three villages, namely, Bas Kusla, Bas Haria and Dhana have not shown any such increase. Apart from Exts. P-1, P-2 and P-3, nothing has been placed on record, insofar as said villages are concerned. As stated hereinabove, even for these villages we may adopt the base rate of Rs 20.00 lakhs for the year 1994 and then consider the appropriate increase. As the sale deeds dated Exts. P- 1, P-2 and P-3 in respect of lands coming from these villages have not shown any increase at all, by way of rough and ready method we may adopt half the rise as shown in the lands coming from Villages Naharpur Kasan and Kasan. Half the difference between Rs 20.00 lakhs as the base rate and Rs 39,54,666 per acre adopted for the Villages of Naharpur Kasan, Kasan and Manesar would mean difference of Rs 9,77,333 over the base figure of Rs 20.00 lakhs as awarded in *Pran Sukh [HSIDC v. Pran Sukh, (2010) 11 SCC 175 : (2010) 4 SCC (Civ) 394]* . Thus, in our considered view, the market value of lands from Villages Bas Kusla, Bas Haria and Dhana in 2002 must be at Rs 29,77,333 per acre. ”

(3.2) The Reference Court, after noticing that in *Wazir's case (supra)* which involved the acquisition of vast tract of land which was acquired vide various notifications issued under Section 4 of the 1894

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<sup>1</sup> (2018) 3 SCC 278

<sup>2</sup> (2019) 13 SCC 101

Act on 26.02.2002, 06.03.2002 and 07.03.2002, respectively, the Supreme Court has assessed the market value at Rs.39,54,666/- per acre and that there is a gap of 2 years and 10 months between the notifications issued under Section 4 of the 1894 Act in *Wazir's case* and in the concerned case, opted to hike the market value by applying cumulative increase at the rate of 8% per annum.

(3.3) At this stage, it shall be appropriate to know the meaning of the various words and phrases used in this judgment while referring to the area of land. Ordinarily, each acre of land consists of 4840 sq. yards of land which is further subdivided into 8 kanals. Thus, each kanal of land normally consist of 605 sq. yards land which is further subdivided into 20 marlas. Each marla of an agricultural land consists of a little more than 30 sq. yards of land. In the cities, normally, a plot measuring 500 sq. yards of land is considered equivalent to 1 kanal. However, in the Northern India, for the purpose of measuring an agricultural land, normally 1 acre of land consists of 160 marlas of land.

#### (4) **Oral Evidence**

The landowners in order to prove their case have examined PW 1 Hakam Singh, PW2, Puran Singh, PW3 Attar Singh, PW5 Rakesh and PW6 Jagra Ram, the owners of the acquired land. They have also examined Samunder Singh, Patwari of the area. On the other hand, HSIIDC has examined Dhiriya Ram, Manager, IAKMP Cell, HSIIDC as RW1.

#### (5) **Documentary evidence**

(5.1) The Reference Court has compiled the documentary evidence produced by both the parties in a tabulated manner, correctness whereof is not disputed. Hence, the same is extracted as under:-

Ex.P1	Copy of award dated 16.12.2009 passed by the Court of Shri Kuldeep Jain, learned ADJ, Gurugram in LA Case No.513 of 2004 in case titled as ' <i>S.K. Gupta Vs. State of Haryana and others</i>
Ex.P2	Copy of Jamabandi for the year 2003-04 of Village Kasan
Ex.P3	Electricity Bill

Ex.P4	Copy of award dated 14.2.2011 passed by the Court of Shri Y.S. Rathor, learned ADJ, Gurugram in LA Case No.78 of 2008 in case titled as ' <i>Jagat Singh and others Vs. State of Haryana and others</i>
Ex.P5	Copy of LAC Award No.4 of 24.12.2008 of Village Dhana
Ex.P6	Copy of LAC Award No.12 of 11.8.2009 of Village Fazilwas
Ex.P7	Copy of LAC Award No.13 of 11.8.2009 of Village Kukrola
Ex.P8	Copy of LAC Award No.2 of 21.4.2011 of Village Fazilwas
Ex.P9	Copy of LAC Award No.3 of 21.4.2011 of Village Kukrola
Ex.P10	Copy of Sale Deed dated 28.4.2004 vide which the land measuring 96K-13M situated in Village Naharpur Kasan was sold for Rs.136200000/-
Ex.P11	Copy of Sale Deed dated 4.12.2006 vide which the land measuring 12K-16.5M situated in Village Naharpur Kasan was sold for Rs.25650000/-
Ex.P12	Copy of Sale Deed dated 5.12.2006 vide which the land measuring 5K-13M situated in Village Naharpur Kasan was sold for Rs.11300000/-
Ex.P13	Copy of Sale Deed dated 5.12.2006 vide which the land measuring 3K-14M situated in Village Naharpur Kasan was sold for Rs.7400000/-
Ex.P14	Copy of Sale Deed dated 14.12.2006 vide which the land measuring 5K-13M situated in Village Naharpur Kasan
	was sold for Rs.11300000/-
Ex.P15	Site Plan

Ex.P16	Site plan
Ex.P1 to Ex.P3/ P20/P21/P 23/P24 /P47	<i>Aksh Shijra</i> of Village Kasan
Ex.P4/P1 1/P25/P49/ P50/P51	Copy of Jamabandi for the year 2013-14 of Village Kasan
Ex.P5	Copy of award statement
Ex.P6/P48	Copy of Jamabandi for the year 1993-94 of Village Kasan
Ex/P7	Copy of Jamabandi for the year 2008-09 of Village Kasan
Ex.P8/P1 8/P19/Mark - PA	Copy of Jamabandi for the year 2003-04 of Village Kasan
Ex.P9	Copy of Jamabandi for the year 1993-94 of Village Kasan
Ex.P10	Copy of Khasra Girdwari
Ex.P12	Copy of Sale Deed dated 28.11.2006 vide which the land measuring 22K-16M situated in Village Naharpur Kasan was sold for Rs.45600000/-
Ex.P13/P42	Copy of Sale Deed dated 23.4.2004 vide which the land measuring 0K-07M situated in Village Naharpur Kasan was sold for Rs.360000/-
Ex.P14/P41	Copy of Sale Deed dated 23.4.2004 vide which the land measuring 0K-07M situated in Village Naharpur Kasan was sold for Rs.360000/-
Ex.P15/P43	Copy of Sale Deed dated 23.4.2004 vide which the land measuring 0K-07M situated in Village Naharpur Kasan was sold for Rs.360000/-

Ex.P16	Copy of Sale Deed dated 10.10.2005 vide which the land measuring 1000 sq. yards situated in Village Naharpur Kasan was sold for Rs.1500000/-
ExP17	Copy of Sale Deed dated 12.6.2006 vide which the land measuring 01K-2M-5S situated in Village Kasan was soldfor Rs.1366000/-
Ex.P22	Copy of Jamabandi for the year 2003-04 of Village Kasan
Ex.P26	Copy of Judgment dated 17.8.2010 passed by the Hon'ble Supreme Court in Civil Appeal No.6515 of 2009 titled as <i>'HSIDC Vs. Pran Sukh and others</i>
Ex.P27	Copy of Sale Deed dated 20.9.1996 vide which the land measuring 01K-1.5M situated in Village Naharpur Kasan was sold for Rs.355000/-
Ex.P28	Copy of Sale Deed dated 20.9.1996 vide which the land measuring 01K-1.5M situated in Village Naharpur Kasan was sold for Rs.353000
Ex.P29	Copy of Sale Deed dated 20.9.1996 vide which the land measuring 01K-5M situated in Village Naharpur Kasan was sold for Rs.406000/-
Ex.P30	Copy of Sale Deed dated 20.9.1996 vide which the land measuring 01K-1M situated in Village Naharpur Kasan was sold for Rs.353000/-
Ex.P31	Copy of Sale Deed dated 20.9.1996 vide which the land measuring 01K-5M situated in Village Naharpur Kasan was sold for Rs.406000/-
Ex.P32	Copy of Sale Deed dated 20.9.1996 vide which the land measuring 01K-6M situated in Village Naharpur Kasan was sold for Rs.408000/-
Ex.P33	Copy of Sale Deed dated 20.9.1996 vide which the land measuring 01K-6M situated in Village Naharpur Kasan was sold for Rs.408000/-



Ex.P34	Copy of Sale Deed dated 20.9.1996 vide which the land measuring 00K-17M situated in Village Naharpur Kasan was sold for Rs.275000/-
Ex.P35	Copy of Sale Deed dated 20.9.1996 vide which the land measuring 01K-1M situated in Village Naharpur Kasan was sold for Rs.355000/-
Ex.P36	Copy of Sale Deed dated 20.9.1996 vide which the land measuring 00K-17M situated in Village Naharpur Kasan was sold for Rs.275000/-
Ex.P37	Copy of Sale Deed dated 26.8.1996 vide which the land measuring 01K-11M situated in Village Naharpur Kasan was sold for Rs.484375/-
Ex.P38	Copy of Sale Deed dated 17.7.1996 vide which the land measuring 01K-11M situated in Village Naharpur Kasan was sold for Rs.484375/-
Ex.P39	Copy of Sale Deed dated 3.3.2006 vide which the land measuring 01K-9M situated in Village Bas Kusla was sold for Rs.3640588/-
Ex.P40	Copy of Sale Deed dated 3.3.2006 vide which the land measuring 01K-04M situated in Village Bas Kusla was sold for Rs.3012900/-
Ex.P44	Copy of Sale Deed dated 18.8.2003 vide which the land measuring 01K-04M situated in Village Bas Kusla was sold for Rs.730000/-
Ex.P45	Copy of Conveyance Deed dated 30.8.2004 vide which the land measuring 4032 sq. yards situated in IMT Manesar was sold for Rs.32150000/-
Ex.P46	Copy of Sale Deed dated 10.10.2005 vide which the land measuring 1000 sq. yards situated in Village Naharpur Kasan was sold for Rs.1500000/-

Ex.P52	Copy of Judgment dated 11.1.2019 passed by Hon'ble Supreme Court in Civil Appeals No.264-270 of 2019 titled as ' <i>Wazir and anr. Vs.State of Haryana.</i> '
Mark-A	Allotment letter of SCO No.T-9
Mark-B	Allotment letter of SCO No.T-10
Mark-C	Allotment letter of SCO No.T-2
Mark-D	Allotment letter of SCO No.D-3
Mark-E	Allotment letter of SCO No.D-2

Ex.R1/R11	Copy of Sale Deed dated 17.9.2004 vide which the landmeasuring 7K-14M situated in Village Kasan was sold for Rs.530000/-
Ex.R2/R14	Copy of Sale Deed dated 18.8.2004 vide which the landmeasuring 16K-0M situated in Village Kasan was sold forRs.11000000/-
Ex.R3	Copy of Sale Deed dated 9.7.2004 vide which the land measuring 04K-10M situated in Village Inayatpur was sold forRs.500000/-
Ex.R4/R13	Copy of Sale Deed dated 7.5.2004 vide which the land Measuring 4K-15M situated in Village Kasan was sold for Rs.288000/-
Ex.R5/R12	Copy of Sale Deed dated 26.2.2004 vide which the landmeasuring 10K-1M situated in Village Kasan was sold for Rs.880000/-
Ex.R6	Copy of Award dated 23.1.2010 passed by the Court of ShriR.S. Bagri, learned ADJ, Nuh in LA case No.270 of 2008 titled as ' <i>Inderawati Vs.State of Haryana and others</i>
Ex.R7	Copy of Award dated 1.5.2010 passed by the Court of ShriR.S.

	Bagri, learned ADJ, Nuh in LA case No.31 of 2008 titled As ' <i>Sachin Kumar and others Vs.State of Haryana and others</i> '
Ex.R8	Copy of Award dated 23.12.2010 passed by the Court ofShri Pradeep Kumar, learned ADJ, Nuh in LA case No.36 of2008 titled as ' <i>Pyare Lal Vs.State of Haryana and others</i> '
Ex.R9	Copy of Award dated 23.12.2010 passed by the Court ofShri Pradeep Kumar, learned ADJ, Nuh in LA case No.46 of2008 titled as ' <i>Braham Parkash and others Vs.State of Haryana andothers</i> '
Ex.R10	Map of KMP Expressway
Ex.R15	Integrated Sijra Plan of Village Kasan

(6) The Reference Court framed the following issues:-

“1. What was the market value of the acquired land on the date of notification u/s 4 of Land Acquisition Act?OPP

2. Relief

9. It is pertinent to mention here that vide order dated 15.7.2019, the following additional issue was framed by this Court in continuation of the issues framed vide order dated 24.11.2019:-

“1-A. Whether the petitioners of LA case No.1019/2018 1034/2018 and 1031/2018 are also entitled for the compensation on account of severance of their land?OPP”

(7) Heard learned counsel for the parties at length and with their able assistance perused the paper book as well as the voluminous record produced by the parties before the Reference Court which had been requisitioned. Learned counsel representing the owners has also filed synopsis along with the gist of his arguments.

(8) **Arguments of Learned Counsel representing respective parties:-**

(8.1) Learned counsel representing the HSIIDC contends that the Reference Court has committed an error in overlooking the sale deeds

produced by HSIIDC. He, while referring to the sale deeds Ex.R1, R2, R4 and R5, has contended that once the comparable sale exemplars of contemporaneous period were produced, the Reference Court erred in relying upon the assessment of the market value made in Wazir Singh's case(Supra). He further contends that in the absence of evidence of consistent increase in the price of the acquired land, the Reference Court has erred in further enhancing the market value by granting cumulative increase of 8% per annum. Moreover, he contends that it is proved that even after the date of the notifications issued for acquisition of the land of village Kasan for establishing the industrial township in February and March, 2002, respectively, there has been no increase in the price of the land as would be evident from the sale deeds produced by the HSIIDC. He further contends that the owners failed to produce any evidence to prove the market value assessed by the Land Acquisition Collector was wrong. Still further, he contends that the owners have only produced sale deed Ex.P17, with respect to sale of a residential plot measuring 1 kanal and 2.5 marlas on 12.06.2006. He contends that apart from the aforesaid sale deed (Ex.P17), the remaining sale deeds pertain to the land located in the various other villages which cannot be relied upon to assess the market value of the acquired land. While referring to the lay out plan, he has contended that village Naharpur Kasan is at a distance and does not share its boundary with village Kasan.

(8.2) On the other hand, learned senior counsel appearing for the landowners contends that as the market value of the land in the year 2002 has been determined by the Supreme Court, which is the final Court in the country, therefore, the Reference Court has correctly placed reliance upon the aforesaid judgment in Wazir's case (supra). However, he contends that the Court should have reworked the market value by granting cumulative increase at the rate of 12% per annum instead of 8% as the Industrial Model Township had already been developed in the area. He further contends that the Reference Court has committed an error in ignoring sale deeds Ex.P13, P14 and P15 with respect to the sale of a plot of land measuring 7 marlas located in village Naharpur Kasan. While relying upon the judgment passed in *Ram Kanwar and others versus State of Haryana*<sup>3</sup>, he contends that the sale instances of nearby villages can be relied upon. He further contends that evidence of sale deed Ex.P-27 and P28, wherein certain plots of land have been sold in the year 1996 at the rate

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<sup>3</sup> 2015 (10) RCR (Civil) 234

of Rs.25,00,000/- per acre, have also been ignored on the ground that these relate to approximately 10 years old transactions. He contends that the Reference Court should have calculated the current market value by increasing the price from the year 1996 at @12% per annum. He contends that if the annual hike is calculated in this manner, the market value of the land will be Rs.85,00,000/-. He further contends that the Reference Court has also erred in ignoring sale deeds Ex.P13, P14, P46, P16, P12 and P17 on the ground that these sale deeds are subsequent to the date of notification under Section 4 of the 1894 Act. He contends that the sale deeds were executed only after a period of 11 months from the date of notification u/s 4 of 1984 Act and they show that there was a sharp increase in the prices of the land in the nearby places. He further contends that the correct market value could have been arrived at by applying an appropriate cut. The learned counsel has further laid stress on the fact that the Reference Court has erred in refusing to assess the compensation on account of bisection of the remaining (unacquired) land now left with the owners after the construction of the road. While drawing the attention of the Court to Section 23 of the 1894 Act, he contends that the Court has erred in rejecting the aforesaid prayer of the land owners. He relies upon the judgments passed in *Tahar Singh and others versus State of Punjab*<sup>4</sup>, *State of Haryana versus Rohtak* in RFA-3158-2013 decided on 12.02.2020 and *HSIIDC versus Rajesh Kumar and others* in RFA-4104-2008 decided on 05.07.2019.

(9) **Discussion**

(9.1) The market value of the acquired land is to be determined on the date of issuance of the notification under Section 4 of the 1894 Act i.e. 11.01.2005. In other words, the crucial date for determination of the market value of the land in these cases is 11.01.2005. Section 15 of the 1894 Act provides that the Collector shall be guided by the provisions contained in Section 23 and 24 of the 1894 Act in determining the amount of compensation. Section 23, 24 and 25 of the 1894 Act are extracted as under:-

**“23. Matters to be considered in determining compensation-**

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall

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<sup>4</sup> 1987 Recent Revenue Reports 495

take into consideration—

first the market-value of the land at the date of the publication of the notification under Section 4, sub-section (1).

secondly the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change, and

sixthly the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.

(1-A) In addition to the market-value of the land, as above 16 of 54 provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum of such market-value for the period commencing on and from the date of the publication of the notification under Section 4, subsection (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.—In computing the period referred to in this subsection, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of [thirty per centum] on such market-value, in consideration of the compulsory nature of the acquisition.

***24. Matters to be neglected in determining compensation***

-But the Court shall not take into consideration—

first, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him, which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under Section 6, by or in consequence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

seventhly, any outlay or improvement on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the [notification under Section 4, sub-section (1)]; or

eighthly, any increase to the value of the land on account of its being put to any use which is forbidden by law or opposed to public policy.

**25. Amount of compensation awarded by court not to be lower than the amount awarded by the Collector** - The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11.”

(9.2) On a careful scanning of the aforesaid provisions, it becomes crystal clear that while determining the market value, the matters which are required to be considered have been enlisted in Section 23 of the 1894 Act whereas the matters which are to be ignored are enlisted in Section 24 of the 1894 Act. This Court, while interpreting the provisions in *Haryana State Industrial & Infrastructure Development Corporation versus Kulbir and Others* (Regular First Appeal No. 4163 of 2017, decided on 01.09.2017) has observed as under:-

“4.6 It is apparent from the reading of the aforesaid statutory provisions that while determining the market value of the acquired land, the court is required to examine the existing geographical location of the acquired land apart from its existing and potential use. The Court is also required to examine as to whether the acquired land has proximity to the National Highway or the State Highway Road or any developed area. The market value of the other land situated in the same locality/area or adjacent to or very near to the acquired land can also be taken into consideration by the Court. While assessing the market value, the Court is required to see as to what would be the price on which a willing seller would sell the land to a willing purchaser. While assessing such compensation, one of the methods is to assess the market value by comparable sale method i.e. by referring to contemporaneous transactions.

4.7 While adjudicating the market value of the acquired land, the Courts are expected to award “just” and “appropriate” amount on the basis of the material available on record. The Court is not expected to distribute the public money with largesse. It is the duty of the Court to maintain a proper equilibrium between the interest of the parties and the public interest, in general. If the Courts lean in favour of the landowners, the government or the allottees are likely to be unnecessarily overburdened and it will result in distributing the public money without limits thereby impacting the public interest, at large whereas if the courts are inclined towards the government, it can result in undermining of just claims. Therefore, a proper balance has to be drawn guided by the facts of case and to preserve the



public interest and the public resources, as a whole”.

(9.3) Having heard the learned counsel for the parties at length, this Bench now proceeds to assess the market value of the acquired land. At this stage, it may be observed that the process of acquiring the land was initiated by a notification dated 11.01.2005 located in the following villages:-

Sr.No.	Name of village	Area acquired (per acre)
1.	Kasan	514 Kanal 13 Marla
2.	Kukrola	97 Kanal 04 Marla
3.	Khaintawas	99 Kanal 14 Marla
4.	Dhana	241 Kanal 00 Marla
5.	Patli Hajipur	960 Kanal 04 Marla
6.	Sultanpur	798 Kanal 02 Marla
7.	Fazilwas	11 Kanal 13 Marla
8.	Mokalwas	185 Kanal 18 Marla
9.	Bas Lambi	313 Kanal 07 Marla
10.	Mubarikpur	242 Kanal 13 Marla
11.	Jhanjhrola	117 Kanal 01 Marla
12.	Babra Bakipur	100 Kanal 19 Marla
13.	Shed Mohammdpur	222 Kanal 01 Marla
14.	Kharkari	14 Kanal 11 Marla
15.	Fakharpur	182 Kanal 14 Marla

(9.4) The Supreme Court, while remanding these matters to the Reference Court, has observed as under:-

“34. In our considered opinion, the approach of the High Court in the facts of these cases does not appear to be right inasmuch as the High Court failed to take into consideration several material issues which arose in these cases and had bearing on determination of the fair market rate of the land in question under Section 23 of the Act.

35. First, the acquired land, in these cases, was a huge chunk of land measuring around 520 acres, 2 kanals and 13.5.marlas. Second, the entire acquired land was not situated in village Kasan but it was spread over in 15 villages as detailed above. Third, there is no evidence to show much less any finding of the High Court as to what was the actual distance among the 15 villages against one another, the location, situation/area of each village, whether any development had taken place and, if so, its type, nature and when it took place in any of these villages, the potentiality and the quality of the acquired land situated in each village, its nature and the basis, the market rate of the land situated in each village prior to the date of acquisition or in its near proximity, whether small piece of land or preferably big chunk of land, the actual distance of each village qua any other nearby big developed city, town or a place, whether any activity is being carried on in the nearby areas, their details. Fourth, whether the acquired land in the case of Pran Sukh (supra) in village Kasan and the acquired land in question are similar in nature or different and, if so, how and on what basis, their total distance etc.

36. These were, in our view, the issues which had material bearing while determining the rate of the acquired land in question.

37. The High Court, in the absence of any evidence on any of these issues, could not have determined one flat market rate of the acquired land in question by applying one isolated rate of one land situated in one village Kasan and adding 8% annual increase from 1994 in such rate and made it applicable to the entire lands situated in 15 different villages.

38. In our opinion, it is only when the evidence had been adduced by the parties to the lis on the aforementioned issues, the Court would have been in a position to apply its mind objectively as to which method should be applied for determination of the rate, i.e., whether belting system or flat rate system or different rates for different lands depending upon the quality of land situated in different villages etc.

39. The fair market value of the acquired land cannot be decided in isolation on the basis of only one factor. There are

several other factors, which govern the determination of the rate. These factors need to be proved with sufficient evidence. It must appear that the Courts have made sincere endeavor to determine the fair market rate of the acquired land and while determining has taken into account all relevant aspects of the case. It is the duty of the landowners and the State to adduce proper and sufficient evidence to enable the Courts to arrive at a reasonable and fair market rate of the acquired land prevalent on the date of acquisition.

40. Taking into consideration the aforesaid infirmities, which we have noticed, we have no hesitation in holding that the trial in these cases has not been satisfactory. We cannot countenance the cursory manner in which both the Courts below proceeded to determine the market rate of the acquired land. It has certainly caused prejudice to both the parties.”

(9.5) After receipt of the order of remand, the Reference Court in the 2<sup>nd</sup> round has compiled the information of the sale exemplars relied upon by both the parties, in two separate tables, (correctness whereof is not disputed by learned counsel representing the parties) and the same are extracted as under:

**Sale exemplars produced by the landowners**

Exhibits	Date of execution of sale deed	Area K-M	Sale consideration	Rate per acre (in Rs.)	Revenue estate of village
1. P10	28.04.2004	96 13	13,62,00,000/-	1,12,73,668/-	Naharur Kasan
2. P11	04.12.2006	12 16.5	2,56,50,000/-	1,60,00,000/-	Naharur Kasan
3. P12	28.11.2006	22 16	4,56,00,000/-	1,60,00,000/-	Naharur Kasan
4. P13/P42	23.04.2004	0 7	3,60,000/-	82,28,571/-	Naharur Kasan
5. P14/P41	23.04.2004	0 7	3,60,000/-	82,28,571/-	Naharur Kasan

6.	P15/ P43	23.04.2004	0	7	3,60,000/-	82,28,571/-	Naharur Kasan
7.	P16	10.10.2005	1	13	15,00,000/-	72,72,727/-	Naharur Kasan
8.	P17	12.06.2006	1	2.5	13,66,000/-	97,13,778/-	Naharpur Kasan
9.	P12	05.12.2006	5	13	1,13,00,000/-	1,60,00,000/-	Naharur Kasan
10.	P13	05.12.2006	3	14	74,00,000/-	1,60,00,000/-	Naharur Kasan
11.	P14	14.12.2006	5	13	1,13,00,000/-	1,60,00,000/-	Naharur Kasan
12.	P27	20.09.1996	1	1.5	3,55,000/-	26,41,860/-	Naharur Kasan
13.	P28	20.09.1996	1	1.5	3,53,000/-	26,26,977/-	Naharur Kasan
14.	P29	20.09.1996	1	5	4,06,000/-	25,98,400/-	Naharpur Kasan
15.	P30	20.09.1996	1	1	3,53,000/-	26,89,524/-	Naharur Kasan
16.	P31	20.09.1996	1	5	4,06,000/-	25,98,400/-	Naharur Kasan
17.	P32	20.09.1996	1	6	4,08,000/-	25,10,769/-	Naharur Kasan
18.	P33	20.09.1996	1	6	4,08,000/-	25,10,769/-	Naharur Kasan
19.	P34	20.09.1996	1	17	2,75,000/-	25,88,235/-	Naharur Kasan
20.	P35	20.09.1996	1	1	3,55,000/-	27,04,762/-	Naharur Kasan
21.	P36	20.09.1996	0	17	2,75,000/-	25,88,235/-	Naharur Kasan
22.	P37	26.08.1996	1	11	4,84,375/-	25,00,000/-	Naharur Kasan
23.	P38	17.07.1996	1	11	4,84,375/-	25,00,000/-	Naharur Kasan

24.	P39	03.03.2000	1	9	36,40,588/-	2,00,86,003/-	Baskulsa
25.	P40	03.03.2006	1	4	30,12,900/-	2,00,86,000	Baskulsa
29.	P44	18.08.2003	1	4	7,30,000/-	48,66,667/-	Baskulsa
30.	P45	CD 30.8.2004	4032 sq meter		3,21,50,000/-	3,22,68,489/-	IMT Manesar
31.	P46	10.10.2005	1	13	15,00,000/-	72,72,727/-	Naharur Kasan

**Sale exemplars produced by HSIIDC**

Sr. No	Exhibits	Date of Execution of sale deed	AreaK-M		Sale consideration (in Rs.)	Rate per acre (Rs.)	Revenue  Estate of village
1	R1/R11	17.09.2004	7	14	5,30,000/-	5,50,649/-	Kasan
2.	R2/R14	18.08.2004	16	0	8,80,000/-	4,40,000/-	Kasan
3.	R3	09.07.2014	4	10	5,00,000/-	8,88,889/-	Inayatpur
4.	R4/R13	07.05.2004	4	16	2,88,000/-	4,80,000/-	Kasan
5.	R5/R12	26.02.2004	10	1	8,80,000/-	7,00,498/-	Kasan

(9.6) Before evaluating the contentions of the learned counsel representing the parties, it is appropriate to notice that apart from the sale exemplars, the parties have also produced various judgments passed by the Courts while assessing the market value of the acquired land in the adjoining villages. The Reference Court, after discussing each document, has held that such assessment made with respect to the land situated in various other villages cannot be made the basis to assess the market value of the land in the village Kasan. The correctness of the aforesaid finding has not been questioned by the learned counsel representing the parties. In any case, once the sale exemplars of the village in question i.e Village Kasan are available, it is not considered

appropriate to rely upon a judicial determination of the market value of the land located in various other villages. The determination of the market value by the court depends upon the evidence produced by the parties. The sale exemplars are reliable and appropriate documents to be considered while assessing the market value of the acquired land. A judicial determination, on the other hand, is subjective in nature, largely dependent upon the evidence produced in that particular case. Such determinations/precedents call for assumptions to be made by the Court which hold the field only in the absence of such evidence which is otherwise relevant while making an assessment.

(9.7) The first argument of the learned counsel representing the HSIIDC is that the Reference Court has failed to take into consideration the sale deeds produced by HSIIDC. Undoubtedly, the Reference Court is required to take into consideration all the evidence produced by the parties as such, hence, the Reference Court has committed an error on this account. The next argument of the learned counsel representing the HSIIDC is with respect to 8% cumulative hike awarded by the Reference Court. This aspect will be examined at a later stage.

(9.8) Now, let us examine the arguments of the learned counsel representing the owners. Their first argument is with reference to sale deeds Ex.P-13, 14, 15 which are also exhibited as P41, P42, P43, respectively. On a careful scrutiny of the table reproduced above, it is apparent that these three sale deeds are with respect to small plots located in village Naharpur Kasan. All these 3 sale deeds have been executed on 23.04.2004. As per the lay out plan produced by the owners Ex.P15, it is apparent that the village Naharpur Kasan is at a distance from village Kasan. In-between, there are villages Dhana, Bas, Khusla,- Bas Lambi, Khoh and then comes Naharpur Kasan. Moreover, once the sale exemplars of the land situated in village Kasan are themselves available for guiding the court to assess the market value, it is not considered appropriate to rely upon the sale deed of very small plots located in an another village which are residential in nature, particularly when the acquisition in the present case is of an agricultural land.

(9.9) The next argument of the learned counsel is with reference to sale deeds Ex.P27 to P30. On careful perusal of the tabulated information compiled in para 8. These sale deeds are with respect to plot/land located in village Naharpur Kasan. These sale deeds are more than 8 years prior to the date of notification under Section 4 of the

1894 Act in the present case. The size of the plots sold through these sale deeds is also very small. Hence, in the considered view of this Bench, it is not appropriate to rely upon these sale deeds, particularly, when the sale deeds, of the same village of the contemporaneous period, are available.

(9.10) The next argument of the learned counsel representing the landowners is with reference to sale deeds Ex.P12, 13, 14, 16, 17 and 46. These sale deeds are again with respect to the land situated in Naharpur Kasan. Some of these sale deeds are also post the date of notification under Section 4 of the 1894 Act. As per Section 24 of the 1894 Act, the sale instances post the date of notification under Section 4 should not be taken into consideration while assessing the market value of the acquired land. Still further, Naharpur Kasan is located at a distance and there is no evidence to prove that the land situated in Naharpur Kasan is comparable with the land of village Kasan as regards its market value.

(9.11) Though the landowners have produced various lay out plans, however, they have not made any attempt to prove the comparative geographical location of the land sold through various sale exemplars vis-a-vis the acquired land.

(9.12) The next argument of the learned counsel is with respect to the cumulative hike of 8% applied by the Reference Court. Learned counsel submits that it should be @ 12% per annum. Learned counsel relies upon the judgment in *Balwant Singh (dead) through his L.Rs versus State of Haryana*<sup>5</sup>

(9.13) Furthermore, the learned Reference Court has relied upon the judgment passed in *Smt. Mahabiri Devi and others versus State of Haryana*<sup>6</sup> to hold that once the market value has been assessed by the Court then in a subsequent acquisition, the court must follow the same. In aforesaid judgement, the Division Bench was deciding an appeal with respect to acquisition of land for grain Market, Karnal. The Court, while relying upon the previous judicial assessment of the market value with respect to acquisition of land for Sector 4 and 5, assessed the market value at the same rate. However, with greatest respect, the aforesaid judgment does not lay down that the court should ignore the comparable sale deeds while restricting its quest to assess the correct

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<sup>5</sup> 2019 5) RCR (Civil) 238.

<sup>6</sup> 2006 (1) PLR 434

market value of the acquired by merely relying upon a previous judicial assessment. The Reference Court has also relied upon the judgment passed in *Special Land Acquisition Officer, Kheda and others versus Vasudeva Chandershankar and others*<sup>7</sup>. On a careful reading of the aforesaid judgment, it is apparent that in a short order, the Court determined the amount of market value while observing that the judicial precedent relied upon reflects a comparable price for the determination of the compensation. The Reference Court also relies upon the judgment in *Karan Singh and others versus UOI*<sup>8</sup>, in which while the assessing the market value of acquired land in village Gharoli for development of the NCT of Delhi, the Supreme Court held that in the absence of sale transactions of contemporaneous period, the previous judgment can be relied upon in certain eventualities. However, on a careful perusal of this judgement, it is apparent that the Supreme Court eventually refused to rely upon the previous judgment and dismissed the appeals. The Reference Court has also relied upon the judgment in *Tek Chand and another versus State of Haryana*<sup>9</sup>. In this judgment, it was held that it will not be appropriate to adopt a different norm for acquiring the land under the same notification. This case is with respect to acquisition of land located in village Sarhaul, District Gurgaon. The Reference Court has further relied upon the judgment passed by the Hon'ble Supreme Court in *The General Manager, Oil and Natural Gas Corporation Limited versus Rameshbhai Jeevanbhai and others*<sup>10</sup>. From a careful reading of the aforesaid judgment, it is apparent that the Supreme Court, after finding that no evidence of the concerned village itself is available for the assessment of the market value, laid down certain guidelines for arriving at the correct assessment.

Now, the stage is set for discussing the issues which require adjudication.

### Issue No.1

(9.14) This issue is no longer res-integra. Recently, in *Manoj Kumar etc. versus State of Haryana and others*<sup>11</sup>, the Supreme Court has held that while assessing the market value, the Court is required to

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<sup>7</sup> (1997) 11 SCC 218

<sup>8</sup> 1997 (8) SCC 186

<sup>9</sup> (1996) (1) PLR 420

<sup>10</sup> (2018) 14 SCC 745

<sup>11</sup> (2018) 13 SCC 96



evaluate the various factors which goes to impact such a determination depending upon the peculiar facts governing each case. There cannot be any hard or fast rule for assessment of the market value. Common sense is the best and most reliable guide. While denouncing the practice of the courts to place an outright reliance on the previous judgments, the Supreme Court has declared that the decision cannot be applied ipso facto to the facts of the subsequent cases neglecting the other evidence. The Court has further warned of the ill effects of such an approach. The relevant discussion is in paras 11 to 14, which are extracted as under:-

“11. In our opinion, the High Court couldnot have placed an outright reliance on *Swaran Singh case* [*Swaran Singh v. State of Haryana*, 2012 SCC OnLine P&H 19044] , without considering the nature of transaction relied upon in the said decision. The decision could not have been applied ipso facto to the facts of the instant case. In such cases, where such judgments/awards are relied on as evidence, though they are relevant, but cannot be said to be bindingwith respect to the determination of the price, that has to depend on the evidence adduced in the case. However, in the instant case, it appears that the land in *Swaran Singh case* [*Swaran Singh versus State of Haryana*, 2012 SCC OnLine P&H 19044] was situated just across the road as observed by the High Court as such it is relevant evidence but not binding. As such it could have been taken into consideration due to the nearness of the area, but at the same time what was the nature of the transaction relied upon in the said case was also required to be looked into in an objective manner. Such decisions in other cases cannot be adopted without examining the basis for determining compensation whether sale transactionreferred to therein can be relied upon or not and what was the distance, size and also bona fide nature of transaction before such judgments/awards are relied on for deciding the subsequent cases. It is not open to accepting determination in a mechanical manner without considering the merit. Such determination cannot be said to be binding.

12. We have come across several decisions where the High Court is adopting the previous decisions as binding. The determination of compensation in each case depends upon the nature of land and what is the evidence adduced in each

case, may be that better evidence has been adduced in later case regarding the actual value of property and subsequent sale deeds after the award and before preliminary notification under Section 4 are also to be considered, if filed. It is not proper to ignore the evidence adduced in the case at hand. The compensation cannot be determined by blindly following the previous award/judgment. It has to be considered only a piece of evidence, not beyond that. The court has to apply the judicial mind and is supposed not to follow the previous awards without due consideration of the facts and circumstances and evidence adduced in the case in question. The current value reflected by comparable sale deeds is more reliable and binding for determination of compensation in such cases award/judgment relating to an acquisition made before 5 to 10 years cannot form the safe basis for determining compensation.

13. The awards and judgment in the cases of others not being inter parties are not binding as precedents. Recently, we have seen the trend of the courts to follow them blindly probably under the misconception of the concept of equality and fair treatment. The courts are being swayed away and this approach in the absence of and similar nature and situation of land is causing more injustice and tantamount to giving equal treatment in the case of unequals. As per situation of a village, nature of land, its value differ from distance to distance, even two to three kilometre distance may also make the material difference in value. Land abutting highway may fetch higher value but not land situated in interior villages.

14. The previous awards/judgments are the only piece of evidence on a par with comparative sale transactions. The similarity of the land covered by previous judgment/award is required to be proved like any other comparative exemplar. In case previous award/judgment is based on exemplar, which is not similar or acceptable, previous award/judgment of court cannot be said to be binding. Such determination has to be outrightly rejected. In case some mistake has been done in awarding compensation, it cannot be followed; on the ground of parity an illegality cannot be perpetuated. Such award/judgment would be wholly

irrelevant.”

(9.15) In the considered view of this Court, the determination of the market value of the land on the basis of comparable sale exemplars of the contemporaneous period is the most preferred and logical method to arrive at a fair and true market value. While deciding such cases, the Court is required to adopt a holistic approach. The Court is expected to assess a just and appropriate market value on the basis of the evidence produced. In such circumstances, comparable sale deeds offer a good solution to the problem. They are considered as the best evidence to prove a fact being in the nature of direct evidence and help the Court to assess the market value more accurately and realistically. Once comparable sale deeds of the contemporaneous period are available to guide the court, it is not safe to rely upon a previous judicial assessment of the market value while ignoring the sale deeds which reflect the most accurate market value of the property on which a seller voluntarily offers to sell the property on receipt of the amount from a willing purchaser. Unless the correctness of the price, reflected in these sale deeds, is disputed on any ground duly proved, the court can safely rely upon the same for assessing the market value. If there are a large number of comparable sale deeds of the contemporaneous period, the Court can, with reasonable certainty, assess the market value while relying upon such sale instances.

(9.16) Furthermore, while assessing the market value of the acquired land under the 1894 Act, the Court is required to apply the test of preponderance of probabilities. Thus, the Court assesses the market value on the basis of the evidence produced. If the parties fail to produce sufficient evidence or the best evidence, the assessment of the court has to be on the basis of whatever evidence has been produced. In such circumstances, it may not be a true reflection of the market value prevailing at the relevant time. Hence, reliance on the previous judicial decision/ determination may not be a safe method to calculate the market value particularly in a case where the direct evidence like sale exemplars of the relevant period have been produced. In such an eventuality, the court should prefer to assess the market value on the basis of the sale exemplars. Undoubtedly, under Article 142 of The Constitution of India, the law declared by the Hon'ble Supreme Court is binding on all the courts, however, assessment of market value of the acquired land in a particular case in the absence of any declaration of law made on a particular point, is only a decision given on the facts of that particular case and such a decision merely on the question of fact is

not binding. What is binding is the ratio of the decision and not any finding on facts, or the opinion of the court on any question which was only incidental in nature or was not required to be decided in a particular case. While assessing the market value of the acquire land, with highest respect, the Hon'ble Supreme Court does not as a ratio decidendi lays down a principle of law which is binding on all the courts. As correctly observed by the Hon'ble Supreme Court in Manoj Kumar's case (supra), such decision is only a piece of evidence produced for consideration of the court. However, in the appropriate cases, in the absence of any other evidence, the Presiding Judge may not be left with any choice but to rely upon the same in the absence of any other reliable or relevant evidence. The Hon'ble Supreme Court in *Krishena Kumar versus Union of India and others*<sup>12</sup>, while expounding on the phrase 'Ratio Decidendi' has held as under:-

“20. In other words, the enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. In the words of Halsbury (4th edn., Vol. 26, para 573)

“The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons

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<sup>12</sup> (1990) 4 SCC 207

than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi.”

(9.17) This Court has carefully read the judgment passed in Wazir (supra). In that case, Ex.P4 was a sale deed dated 18.08.2008 relating to the sale of a plot measuring 1 kanal and 4 marlas in village Kasan, which has not been produced in the present case. The Supreme Court, while considering the matter, has assessed the market value of the acquired land. In the absence of the sale deed dated 18.08.2003, it is not appropriate to rely upon the assessment made in Wazir's case (supra) while ignoring the sale exemplars produced by the State.

(9.18) Now, let us analyze the judgments relied upon by the learned senior counsel representing the landowners. First judgment is in *Ram Kanwar and others versus State of Haryana and another*<sup>13</sup>. In the aforesaid case, the Supreme Court was examining the correctness of the judgment passed by the High Court while assessing the market value of the acquired land in village Kanhai, Wazirabad, Chakrapur and Sikandarpur. The acquisition was made for development and utilization of land for residential, commercial, institutional and open space area. While discussing the position of law, the Court held as under:-

“12. It is settled law that prices fetched for similar lands with similar advantages and potentialities under *bona fide* transactions of sale at or about the time of the preliminary notification are the usual and, indeed the best, evidences of market value of lands.

13. In *Bangaru Narasingha Rao Naidu v. Revenue Divisional Officer*, (1980) 1 SCC 575, this Court observed :

“2. There cannot be any doubt that the best evidence of the market value of the acquired land is afforded by transactions of sale in respect of the very acquired land, provided of course there is nothing to doubt the authenticity of the transactions.”

14. This Court in *Charan Dass v. H.P. Housing & Urban Development Authority*, (2010) 13 SCC 398 has reiterated its aforesaid view and further observed:

“21. One of the preferred and well-accepted methods

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<sup>13</sup> 2015 (1)RCR (Civil) 134

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 there 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 are considered as a good piece of evidence for determining the market value of the acquired land.*

22. 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 guesswork 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.”

(9.19) Ultimately, the Supreme Court upheld the judgment passed by the High Court. In this judgment, with highest respect, it has not been held that while assessing the market value of the acquired land the Court must follow the previous decision of the court while ignoring the comparable sale exemplars of contemporaneous period. Rather on careful reading of the extract, it is evident that the Supreme Court itself recognized that the best evidence of the market value of the acquired land is afforded by transactions of the sale in respect of the exact land which has been acquired or the nearby land.

(9.20) The learned counsel representing owners has also relied upon the judgment passed in *Balwant Singh*<sup>14</sup>. In the aforesaid case, the market value of the acquired land situated in villages Ajronda, Taloribanger and Daulatabad, Tehsil and District Faridabad was required to be assessed. The Supreme Court while relying upon *Wazir's case* (supra), granted cumulative increase of 12%. It may be

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<sup>14</sup> 2019 (5) RCR (Civil) 238

noted here that in the aforesaid judgment, the Court found that comparable sale exemplars of the contemporaneous period were not available.

(9.21) Moreover, the price of the immovable property in any areas subject to fluctuations. There is no rule that the price of the land increases constantly or uniformly. There can be reduction or steep hike in the price depending upon various circumstances. The increase in price of the immovable property is never in a straight line. The Hon'ble Supreme Court in *General Manager, Oil and Natural Gas (supra)* held that if the court finds that there are no comparable sale deeds of the contemporaneous period available, then the court should look towards the sale deeds of the nearby villages or of small plots or as a measure of the last resort, rely upon the assessment made by the courts, previously. In the present case, as already noticed, HSIIDC has produced the copies of the sale deeds Ex.R1, R2, R4 and R5 which are comparable in nature and are of a contemporaneous period. On a careful perusal of the lay out plan Ex.R15, it is evident that the sale exemplar Ex.R5/R12 is with respect to the acquired land. This sale exemplar is with respect to 10 kanals and 1 marla of land executed on 18.08.2004 vide sale deed no.10779. The total consideration of 10 kanals and 1 marla of land is Rs.8,80,000/- whereas its per acre price comes to Rs.7,00,498/-. This land is a part of the land acquired for the construction of an express highway. Moreover, it is evident from Ex.R-15, a lay out plan produced by the HSIIDC, that the sale exemplar dated 26.08.2004 is with respect to land measuring 16 kanals (2 acres). The total sale consideration of the same is Rs.8,80,000/- whereas its per acre price comes to Rs.4,40,000/- . This sale deed is exhibited as R2/R4. This piece of land is located 19 acres towards western side of the acquired land. Furthermore, the sale exemplar dated 07.05.2004 Ex.R4/R30 is with respect to sale of 4 kanals and 15 marlas of land for Rs.2,88,000/-. This land is 15 acres towards the western side of the express highway. Its average per acre price comes to Rs.4,85,000/-. Moreover, the sale deed Ex.R5 proves that the price in village Kasan one year prior to the date of notification under Section 4 of the 1894 Act was Rs.7,00,498/- per acre. As compared thereto, the landowners have produced one sale deed Ex. P17 with respect to the village Kasan. On a careful reading of the aforesaid sale deed, it is apparent that this sale deed is not with respect to an agricultural land. The land measuring 683 Sq. yards, being a little more than 1 kanal of land has been sold. As this sale deed is not with respect to an agricultural land, hence, it is not

appropriate to rely upon the same to assess the market value of the agricultural land.

(9.22) Moreover, HSIIDC has produced in evidence many sale deeds. It is evident that the sale exemplars produced by HSIIDC uniformly and cumulatively suggest that the market value of the acquired land is nowhere close to what is being claimed by the owners. The sale exemplars produced by the owners does not lead/assist the court to assess the market value of the acquired land. Moreover, once the sale exemplars of the acquired land as also of the land located at nearby places are available, which is considered to be the best evidence in assessing the market value of acquired land, this Court is bound to rely upon the same to assess the correct market value. The LAC has assessed the market value at the rate of Rs.12,50,000/- per acre whereas out of the various sale exemplars produced by the HSIIDC, if the highest are taken into consideration, the market value would come around Rs.7,00,000/- per acre.

(9.23) The court is required to assess just and appropriate market value of the acquired land. The Supreme Court in a recent decision *Narendra and others versus State of Uttar Pradesh and others*<sup>15</sup> has held that irrespective of the fact that the landowners have claimed the market value at a particular rate, it is the responsibility of the court to assess a just amount and ensure payment thereof to the owners who stand deprived of the land. It has come to the notice of the court while deciding appeals concerning the acquisition of the land for KMP expressway in village Daboda Khurd and other connected villages in **HSIIDC versus Rattan Singh RFA-5620-2013 and other connected cases decided on 05.10.2021**, that the State Govt. had taken a policy decision for guiding the respective Land Acquisition Collectors in assessing the market value of the acquired land. Similarly, while deciding appeals from acquisition of land in village Sultanpur in **HSIIDC versus Om Dutt and others (RFA-421-2021) decided on 07.10.2021**, the Court while following a previous judgment has held as under:-

“8.18 There is another aspect of the matter which has come to the notice of the court and in the considered view, the same should not be ignored. The Reference Court or the Appellate Court under the 1894 Act is expected to ensure that the land owners get appropriate just and proper

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<sup>15</sup> (2017) 9 SCC 426)



compensation for the compulsory acquisition of the land. It is the responsibility of the Court to assess the market value irrespective of the fact that whether the land owners have claimed appropriate amount or not? In **Narender Singh and others versus State of Uttar Pradesh and others (2017) 9 SCC 426**, the Hon'ble Supreme Court after noticing that the High Court did not grant appropriate amount as assessed on the ground that the land owners failed to claim the amount held that it is the duty of the court to ensure that the land owners get appropriate compensation for the compulsorily acquired land. It has come to the notice of the Court that State of Haryana took a policy decision. The first policy decision by the State was taken on 28.04.2005. Such decision was made applicable w.e.f. 05.03.2005. The land situated in the State was divided into three different zones for the purpose of fixing floor rates for land acquisition. In this policy decision, the Government decided that irrespective of the date of notification under Section 4 if the award of the LAC is made on or after 05.03.2005, the amount to be determined by the LAC shall not be less than what was decided in the aforesaid policy. The present case falls in category

(ii) in para 5. The policy decision is extracted as under:-

Sir,

“Subject:- Fixation of floor rates for acquisition of land for public purpose in the State of Haryana.

I am directed to refer to the subject cited and to state that the State Government has been acquiring land for public purposes for various departments as well as other State Agencies. Under the present system compensation is paid to the land owners based on the rate fixed by the Committee constituted under the Chairmanship of Divisional Commissioner vide this department letter No. 3670-R-5-95/8943, dated 20.6.1995. This Committee had been recommending rates based on the quality, category and location of the land under acquisition.

2. It has been the general experience that the rates of compensation fixed for acquisition are quite low as

compared to the market rates prevalent in that area. Consequently, the land owners have to approach the Courts for enhancing the compensation paid to them and this process of litigation takes a substantial time. Agricultural land all over the State has become very valuable and more so in the region surrounding Delhi. The farmer who is deprived of his only livelihood is entitled to a fair compensation based on the market rates prevalent in the area.

3. The question of bringing about an improvement in the system by fixing a minimum floor rate and thereby ensure payment of fair compensation to the farmers based on the market rates, has been under the active consideration of the State Government. The system of acquisition followed by the Delhi Administration as well as by the NOIDA operating in the NCR has also been studied.

4. It has now been decided by the Government that the State be divided into following Zones for the purpose of fixing floor rates of land acquisition:-

- i) The urbanisable area as shown in the Gurgaon Development Plan.
- ii) Rest of the NCR sub-region of Haryana including Panchkula and periphery of Chandigarh forming part of Haryana State.
- iii) Rest of the State outside Haryana sub-region of NCR.

5. After due consideration, it has further been decided to fix the following floor rates for the above three Zones for acquisition of land for public purpose:

- i) The urbanisable area of Gurgaon will have a minimum floor rates of Rs. 15.00 lacs per acre.
- ii) Rest of the Haryana sub-region of NCR including Panchkula and area of Chandigarh periphery in the Haryana State will have a minimum floor rate of Rs. 12.50 lacs per acre.
- iii) For the rest of the State minimum floor rate will be Rs. 5.00 lacs per acre.
- iv) These rates do not include the solatium and interest

payable under the provisions of the Land Acquisition Act.

6. The Committee headed by the Divisional Commissioner will continue to perform its duties while fixing the rate of compensation for various categories of land under acquisition based on these floor rates. It will continue to take into account all these parameters for working out the land acquisition rate being followed at present while communicating the rate to the Acquiring Departments/Agencies in the State.”

9. Thereafter, Government of Haryana, issued letter dated 25.5.2005 clarifying about applicability of the aforesaid instructions/ policy dated 28.4.2005 with regard to fixation of floor price of acquired land for public purposes in the State. The relevant extract thereof is as under:-

“After a careful and detailed consideration, it has been decided that no award for acquisition of land to be announced on/ after 5th March 2005 shall be on rates lower than the floor rates, communicated to you vide this department letter dated 28-4-2005. The other provisions of the communication dated 28-4-05 will remained unchanged.”

8.19 The aforesaid policy decision has been revised on 06.04.2007 while increasing the minimum floor rates in the State of Haryana for the acquisition of the land in the State of Haryana, which is extracted as under:-

"Sub: Fixation of floor rates for the acquisition of land for public purpose in the State of Haryana.

Ref: This Department Memo No. 2025- R-5-2005/4299,dated 28.4.2005.

Vide this Department Memo. under reference, minimum floor rates for acquiring land for public purposes for various Departments as well as other State Agencies were fixed by the Haryana Government as follows:

i) Minimum floor rate for urbanisable areaof Gurgaon	Rs. 15.00 lacs per acre
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ii) Minimum floor rate for rest of the Haryana Sub-Region of NCR including Panchkula and area of Chandigarh periphery in the Haryana State. Rs.12.50 lacs per acre.	Rs.12.50 lacs per acre.
iii) Minimum floor rate for the rest of the Haryana State.	Rs. 05.00 lacs per acre.

(These floor rates did not include the solatium and interest payable under the provisions of the Land Acquisition Act, 1894).

2. Now it has been observed that with the passage of time market rates of the land have increased substantially. Therefore, Haryana Government has re-considered this matter and has decided to re-fix these floor rates as follows:

i) Minimum floor rate for urbanisable area of Gurgaon.	Rs. 20.00 lacs per acre
ii) Minimum floor rate for rest of the Haryana Sub-Region of NCR including Panchkula and area of Chandigarh periphery in the Haryana State.	Rs.16.00 lacs per acre.
iii) Minimum floor rate for the rest of the Haryana State.	Rs. 08.00 lacs per acre.

3. These floor rates do not include the solatium and interest payable under the provisions of the Land Acquisition Act, 1894.

4. These revised rates will be applicable on all those acquisitions where awards have been announced on or after 22.3.2007 irrespective of the date of notification under Section 4 of the Land Acquisition Act, 1894."

8.20 It has also been noticed that the Reference Court while deciding the cases of the villages Daboda Khurd and various other villages in District Jhajjar, the Reference Court relied

upon such policy decision and the State did not assail the correctness of the aforesaid finding. This Court has decided the aforesaid appeals on 05.10.2021. In that case also the acquisition of land was for the same purpose i.e constructing Kundli-Manesar-Palwal Expressway. Furthermore, a coordinate Bench while deciding the appeals in *Om Parkash and others vs. State of Haryana and others* in RFA-7450-2011 and connected cases decided on 30.03.2012 took a view that the State has recognized the enhancement of the land's market value over the period of time due to various contributing factors, the prices of the land have been increasing. The Court after calculating the difference of Rs.3,50,000/- from 05.03.2005 and 22.03.2007, calculated proportionate per day increase and appropriately tweaked the market value. This Bench is in respectful agreement with the aforesaid view. In the present case, the increase in the market value per day comes to Rs.469.79 per day. There is a huge difference of 430 days from 05.03.2005. Thus, the additional amount works out to Rs.2,02,009.70 which is rounded to Rs.2,02,010/-. As in this case the award was passed on 10.05.2006 accordingly, taking the proportionate increase the amount as the market value works out to Rs.14,52,010/- per acre.”

(9.24) Hence the amount of the market value of the acquired land in these appeal comes to Rs. 12,50,000/- + Rs.2,02,479.49 ( 431 days x 469.79) = Rs.14,52,480/- per acre.

### **Issue No.2**

(9.25) Now let us examine the Second issue. While deciding the appeals filed by the owners in *HSI IDC versus Rutham Singh (RFA No.5620/2013)* and other connected cases, concerning the land situated in village Daboda Khurd and RFA No.421-2021 concerning the acquisition of land in village Sultanpur for the same expressway, this Bench has assessed the severance charges at the rate of 20% with respect to cases arising from acquisition of land for the same purpose. The relevant discussion in the judgment, passed with respect to the land in Sultanpur, is extracted as under:-

“8.15 Keeping in view the aforesaid facts, it is declared that if on account of acquisition of a land the remaining land holding of the landowner has been split into two or more

parts, then the landowners shall be entitled to 20% of the smaller parcel of un-acquired land. However, the damages for severance shall be restricted only to those owners who are left with less than 5 acres land in the smaller parcel. This assumption has been made, particularly, in view of the fact that due to splitting of the land, the landowner will have to not only cultivate his land in two independent parcels but also make a provision for irrigation of the land located in each parcel of land. Even the agricultural implements have to be carried to the other side of the road by going through underpasses, which may be at a distance. If a owner is left with a very small parcel of land, he may be forced to indulge in distress sale thereof. “

(9.26) The learned senior counsel also relies upon the judgment passed in Tehal Singh's case (supra) 1987 RRR 495. In this case, on account of construction of a canal, the respective landholdings of the owners had been split out. Since it was nearly impossible for the owner to go across the canal to cultivate the remaining piece of land which stood severed from the original landholdings, the Court assessed the severance charges at various percentages. Para 11 of the judgment is extracted as under:-

“11. Taking all the above factors into account, I consider the following compensation to be appropriate for severance of land to the concerned landowners:-

(1) Where the SYL Canal intervenes between the land served and the village abadi and it is two acres or less in area, compensation for severance shall be 60% of the market value of the land so acquired.

(2) Where the severed land is on the abadi side of the village and S.Y.L. Canal is being constructed beyond it and it is two acres or less in area, compensation for severance shall be 40% of the market value of the land so acquired.

(3) Where the severed land is more than two acres in area but is less than 5 acres, and is located on either side of the S.Y.L Canal, compensation at the rate of 10% of the market value for its severance shall be payable.”

(9.27) With highest respect, the aforesaid judgment is not applicable to the present case as in that case, on account of construction of a canal, the severed parcel of land located on the other side of the

Canal had been practically rendered impossible to cultivate, whereas in the present case, the land has been split up into pieces due to construction of road in which underpasses have been provided but it is not a case where the remaining part of land has been rendered useless. Hence, the same yardstick cannot be applied. The learned counsel also relies upon the judgment passed in *State of Haryana versus Rohtash (supra)* RFA 3158-2013 decided on 12.02.2020. In this case, while relying upon the judgment passed in Tehal Singh's (*supra*), the Court granted 50% severance charges. In determining the severance damages, the assessment is required to be made after appreciating the facts of the individual case. Hence, such judgments, with highest respect, cannot be considered to have laid down any ratio decidendi. The judgments, do not lay down that as a general rule, severance charges are to be given in every case of splitting of land. The same is to be decided on the peculiar facts and circumstances of individual cases.

(9.28) In the conclusion, it is held as under:-

- (1) The landowners who stand deprived of the land shall be entitled to market value of the acquired land at the rate of Rs.14,52,480/- per acre along with all the statutory benefits as per the amended Land Acquisition Act, 1894.
- (2) The landowners shall also be entitled to 20% of the market value assessed by the Court for the smaller parcel of the unacquired land left with the owner, if due to the compulsory acquisition, the remaining landholding left with the owner has been split up into two or more parts. However, the damages for severance shall be restricted only to those owners who are left with less than 5 acres of land in smaller parcels.

All the pending miscellaneous applications, if any, are also disposed of.

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*Ritambhra Rishi*