Before G.S. Sandhawalia, J.

THE AKASH COOPERATIVE GROUP HOUSING SOCIETY LTD.II—*Appellant*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

RFA No.1817 of 2019

May 27, 2020

(A) ***Land Acquisition Act, 1894—Ss. 4, 18, 23 and 54—Compensation—Potentiality of land—Land under acquisition situated on northern portion of planned city of Chandigarh, capital of two states, Punjab and Haryana—Land is just abutting Village Kishangarh development of which by Chandigarh Administration took place at subsequent point of time since there was acquisition for construction of approach road of Rajiv Gandhi Information & Technology Park and connected acquisitions which took place on 01.10.2002 & 20.02.2003—Sum awarded in those cases were enhanced to Rs.35,71,200/- per acre by Reference Court—Land subject matter of acquisition is situated beyond Kishangarh and between developed land of Panchkula town—Portion of old Mani Majra town which is part of Chandigarh, touches its southern boundaries wherein commercial complex in name of Fun Republic had come up on main Highway, leading to Kalka-Shimla—Motor Market at Mani Majra had been developed for commercial purposes by Chandigarh Administration—M-I road which leads from main road from Chandigarh to Kalka had been developed by setting up showrooms with link road on both sides which was 80 meters wide—Road from Mani Majra leads to Mansa Devi Temple—Only negative factor which lead to lack of development of land of Village where land in question situate is that there was railway line bisecting its land—Therefore, exploitation across railway line at later stage was reason for land being exploited subsequently—There is no dispute regarding potentiality of land with its closeness to developed area.***

Held, that land for the group housing societies, as noticed, had been sold also which would be clear from the statement of PW-6, Suresh Kumar, Clerk from the Estate Office, HUDA in Sector 4 MDC on 13.12.1993 (Ex.P14) and on 28.12.1993 (Ex.P15), as per the evidence of the 3rd notification of many plots ranging between Rs.2000-3000/- sq. meters. Thus, there is no dispute regarding the

potentiality of the land with its closeness to the developed area.

(Para 98)

(B) ***Land Acquisition Act, 1894—Ss. 4, 18, 23 and 54—Compensation—Potentiality of land—Acquisitions are of years 1997 to 1999 and landowners still seeking adequate compensation which is being received by them in driblets on account of repeated remands inspite of fact that land had all potential of being urbanized—Therefore, principles laid down in Udho Dass v. State of Haryana 2010 (12) SCC 51 would come into play that payment of compensation is still being contested by landowners and State—Once land which was situated by side of residential belt and was capable for use of such as non-agricultural purpose, it necessarily has to be treated as non-agricultural land for determination of compensation—The location of land that was sandwiched between two major urban areas can, thus, be highlighted and, therefore, it can be safely concluded that it was urbanisable land situated near developed villages with close access to all infrastructure facilities.***

Held, that once the land which was situated by side of an residential belt and was capable for use of such as non-agricultural purpose, it necessarily has to be treated as non-agricultural land for determination of compensation. The location of land that was sandwiched between two major urban areas can, thus, be highlighted and, therefore, it can be safely concluded that it was urbanizable land situated near developed villages with close access to all infrastructure facilities. Reliance can be placed upon the judgment in Anjani Molu Desai Vs. State of Goa and another 2010 (13) SCC 710, which was followed by the Apex Court in Special Land Acquisition Officer and another Vs. M.K Rafiq Saheb 2011 (7) SCC 714 regarding this aspect, which has to be kept in mind.

(Para 105)

Shoaib Khan, Advocate, M.K.Chauhan, Advocate, P.C. Dhiman, Advocate, M.L. Sharma, Advocate, Meenakshi Sharma, Advocate, Anuj Sharma, Advocate, Sandeep Gehlawat, Advocate ,Vinod Kumar, Advocate, D.K. Singal, Advocate, Rajan Gupta, Advocate, P.L. Singla, Advocate, S.K. Loura, Advocate, S.K.Sharma, Advocate, Aditya Grover, Advocate, Ranjit Saini, Advocate, Kuldeep Kaur, Advocate, Adarsh Jain, Advocate, S.S. Kaliramna, Advocate, Akash Sridhar, Advocate, for Sonu Giri, Advocate for M.S. Kundu, Advocate, for the landowners.

Pritam Singh Saini, Advocate, for Shri Mata Mansa Devi Shrine Board.
Sudeep Mahajan, Addl.A.G., Haryana Abhinash Jain, A.A.G., Haryana.
Vibha Tiwari, A.A.G., Haryana, for the State.
Sunil Kumar Sharma, Sr.Panel Counsel, for Union of India.

G.S. SANDHAWALIA, J.

(1) The present judgment shall dispose of the above appeals numbering 359 and 4 cross-objections filed under Section 54 of the Land Acquisition Act, 1894 (for short, the 'Act') directed against the awards of the Reference Court, Panchkula, arising out of 3 separate notifications, since they pertain to common villages of Bhainsa Tibba and Saketri, which are adjoining villages. The notifications are dated 29.09.1997, 16.03.1999 and there is one notification dated 02.06.1999, in the present set of cases. The landowners, as such, seek further enhancement ofcompensation naturally whereas the appeals filed by the State of Haryana, Mata Mansa Devi Shrine Board and HUDA, seek reduction of the amountof compensation, for the land acquired.

(2) On an earlier occasion also, the matters have been remanded, not once but twice, by this Court and the appeals were taken up together and therefore, keeping in mind the earlier observations of the Co-ordinate Benches, it is appropriate that the matters are taken up together again. Even otherwise, for the purpose of fixing of the fair rate of compensation for the land, on the date of Section 4 notification, as prescribed under Section 23 of the Act, the evidence which has been led by different set of parties, would also be relevant.

Details and background of the 1st notification dated 29.09.1997

(3) The Land Acquisition Collector assessed the market value of the acquired land @ Rs.1,80,000/- per acre, as per the award dated 11.04.2000, which was issued in pursuance of the Section 4 notification dated 29.09.1997, for land measuring 5 acres 4 kanals 3 marlas, falling in Village Bhainsa Tibba Hasbast No.377 Tehsil & District Panchkula, for the public purpose namely Key Location Plan for the Central Government, Ministry of Defence. In the petition filed under Section 18 of the Act, two petitions were clubbed together of the landowners, lead case of which was LAC-226-2001 titled ***Smt. Mansi & others*** *versus* ***The Sub-Divisional Officer (Civil)-cum-Land Acquisition Collector, Panchkula,*** filed by the interested persons under Section 30, claiming share in the compensation on account of their possession. The

proprietors of the village having share in the *shamlat deh* were arrayed as respondents and the interested persons have not preferred any appeal. A separate petition was filed by Rajinder Singh etc. bearing LAC-227-2001, under Section 18, which was decided initially on 31.03.2006, by the Reference Court, by coming to the conclusion that the sale deeds (Exs.P2 to P5, P7 to P9) were pertaining to the year 1997 and prior to the issuance of the Section 4 notification and could be taken into consideration. The average price of all the sale instances worked out to Rs.34,95,959/- per acre and since the same were pertaining to small areas, a 60% cut was applied, to fix the market value @ Rs.14,03,600/- per acre (Rs.290/- per sq.yard). The tenants who claimed long possession since 1918-19, were held entitled to 75% of the compensation amount, in view of the judgment of the Apex Court in ***Mangat Ram & others*** *versus* ***State of Haryana & others***[1] and 25% was granted to the proprietors of the village who were objectors.

(4) This Court in RFA-3008-2009 titled ***Poonam*** *versus* ***State of Haryana,*** decided on 25.02.2009, noticed that no site-plan was produced on record to give the location of the sale deeds and therefore, it was held that the non-producing of the site-plan by the landowners was a calculated effort not to enable the Court to reach to a right conclusion and the market value assessed was also based on the subsequent notification. It was noticed that there was much variation in the sale deeds between Rs.12,00,000/- to Rs.80,00,000/- per acre and the same could not be held to be comparable sale instances of the sale exemplars and the land was situated at a considerable distance of 1.5 kms and with no development in the surroundings. The award was set aside on 25.02.2009 and the matter was remanded to the Reference Court. However, the issue of compensation inter se the parties, was held to be fixed at the ratio of 50% each, since the occupiers were there since 1918-19 but they were not paying any batai/rent to the landowners. Similarly, the valuation of super- structures, fruit-bearing trees standing on the acquired land, apportionment of compensation was finally decided while remanding the matter. Relevant portion of the order dated 25.02.2009 reads as under:

> "After hearing learned counsel for the parties on this issue, I do find some reason to interfere with the award of the learned court below. Though the persons in possession of the land have been shown to be recorded as gair marusi but

[1] 1996 LACC 377 (SC)

the fact remains that they are in possession of the land for the last80 years. In such a situation, in my opinion, ends of justice will be met in case both the parties are held entitled to share compensation for the acquired land in the ratio of 50:50.Accordingly, the impugned award of the learned court below is modified to that extent.

The parties through their counsels are directed to appear before the learned District Judge, Panchkula on 25.4.2009 for further proceedings. The learned District Judge may either keep the references with himself or entrust the same to any other Additional District Judge.

As far as the issue regarding valuation of super structure, fruit bearing trees standing on the acquired land and apportionment of compensation, is concerned, the issue has been finally decided.

The appeals and the cross-objections are disposed of in the manner indicated above."

(5) It is to be noticed that this fixation of the share of compensation inter se or super-structure/fruit bearing trees, was never appealed against by any of the parties and has become final inter se.

(6) On remand on 08.07.2013, the market value was reduced to Rs.276/- per sq.yard (Rs.13,35,840/- per acre) on the ground that the sale deeds (Exs.P2 to P5 and P7 to P9) were executed 4-5 months prior to the notification and therefore, the said documents were brought into existence to inflate the market value. Resultantly, since for the notification dated 16.03.1999, an award had been passed and compensation @ Rs.374/- per sq. yard was passed, a reverse cut of 18% was applied, to reduce the market value to Rs.307/- per sq. yard. Considering the fact that the land acquired in the present set of notification was adjoining the reserved forest area and the cantonment and was 2 kms from the abadi whereas the land acquired vide notification dated 16.03.1999 had greater potential, another 10% cut was put to fixthe market value @ Rs.276/- per sq. yard.

(7) The said method was not approved by this Court in RFA-10326-2014 titled ***The Akash Co-op. Group Housing Society Ltd.*** *versus* ***State of Haryana & another,*** **decided on 14.11.2017,** primarily on the ground that the subsequent acquisition had been relied upon and the observations, while remanding the matter earlier, of not producing the site-plan, had not been kept in mind. It was also noticed

that the parties were permitted to lead further evidence but they had not done so and therefore, the purpose of remand had remained unfilled, while placing reliance upon the judgment of the Apex Court in ***General Manager, Oil & Natural Gas Corporation Ltd.*** *versus* ***Rameshbhai Jivanbhai Patel***[2], that the principle of reverse cut is not liable to be applied. The matters were, thus, remanded for the second time.

(8) Now, vide the impugned award dated 10.08.2018, the Reference Court has fixed the market value @ Rs.390/- per sq. yard (Rs.18,87,600/- per acre) along with all statutory benefits, while relying upon 8 sale deeds to take out the total @ Rs.6392/- per sq. yard and thereafter, took out an average of Rs.866/- per sq. yard. A cut of 55% was put on the same, to fix the market value at the said rate. In compliance of the earlier observations, the Nakha Nazri (site-plan) depicting the location of the sale deeds (Exs.P2 to P5 (Exs.P1-/B), Exs.P8, P9, PW10/C and Ex.R3), were taken into consideration. However, under issue No.2, since the compensation had been fixed earlier by this Court @ 50% between the occupiers and the landowners, the same was not disturbed. ***Details and background of second notification dated 16.03.1999***

(9) Initially land measuring 202.55 acres of Bhainsa Tibba Hadbast No.377 and 785.67 acres of Village Saketri, Hadbast No.376, was sought to be acquired under Section 4 of the Act, for development and utilisation as residential, commercial, institutional and recreational area for Sectors 1, 2, 3, 5B, 5C and 6, Mansa Devi Complex, Panchkula, for which, notification under Section 6 was issued on 15.03.2000. There was a nominal decrease for Village Saketri, to the extent of land measuring 747.69 acres which was sought to be acquired. However, vide award No.8 dated 09.10.2003, only 140.59 acres of land of Bhainsa Tibba was acquired wherein Rs.9 lakhs per acre for Chahi Abi-barani land, Rs.5 lakhs per acre for Banjar Qadim and Rs.2,60,000/- per acre for Gair Mumkin was fixed as the market value. For the land falling in Village Saketri, vide award No.7, eventually only 482.17 acres of land was acquired. The value was same for Chahi Abi and Barani land as for Bhainsa Tibba whereas for Banjar land, it was pegged at Rs.4,70,000/- per acre and for Gair Mumkin, Rs.2,30,000/- per acre.

(10) The Reference Court, initially on 31.10.2006, while deciding 25 references, lead case of which was LAC-227-2001, fixed

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[2] 2008 14 SCC 745

the market value @ Rs.418/- per sq. yard. The same was done on the basis of the subsequent notification dated 02.06.1999, which was for the development works for providing amenities and facilities to the devotees of Shri Mata Mansa Devi Shrine Board, Panchkula. Since the Reference Court, vide award dated 26.07.2006, in the case of ***Charan Singh and others*** *versus* ***State of Haryana***, had fixed the said market value. The matters had been remanded in ***Smt. Poonam*** *(supra)* on 25.02.2009, as noticed above.

(11) On 31.10.2011, the case was re-decided and the market value was fixed @ Rs.374/- per sq. yard (Rs.18,10,160/- per acre), which was also pertaining to the same notification as ***Charan Kaur's case*** had been re-decided. In the meantime, the Reference Court chose not to rely upon Ex.P28, which is the same sale deed, Ex.PW10/C, exhibited in the first notification measuring 1 marla which had been sold at Rs.60,000/-, on the ground that neither it can be used for residential or agricultural purposes and the sale was within 4 months and it seemed to be a sham transaction. Accordingly, reliance was placed upon the awards (Exs.R1 to R3) passed in the case of Charan Kaur on 24.04.2010 and 28.03.2011-Sucha Singh, wherein the market value of the land which had been acquired for the notification dated 02.06.1999, had been fixed @ Rs.374/- per sq.yard.

(12) The said awards were again set aside and remanded on 14.11.2017, in ***Akash Cooperative House Building Society*** (supra) by holding that the Reference Court should first decide the cases of the earliest notification rather than applying a reverse cut. The Reference Court, vide impugned award now passed on 20.09.2018 in ***LAC-420-2005 titled Fazal Mohd (deceased) through LRs & others*** *versus* ***State of Haryana & another f***ixed the market value @ Rs.511/- per sq. yard (Rs.24,73,240/- per acre), by placing reliance upon average of the 8 sale deeds which had been taken out in ***Mansi's case,*** pertaining to the first notification, the market value of which worked out to Rs.866/- per sq. yard. A 50% cut was applied to the same, to work out the value @ Rs.433/- per sq. yard and 18% increase was given, in view of the difference in the time-gap between 29.09.1997 and 16.03.1999, to fix the market value. The said market value was followed by awards dated 21.09.2018, 16.02.2019, 03.04.2019 and 06.03.2020.

(13) A perusal of the award dated 29.07.2006, passed in ***Charan Kaur's*** *case* would go on to show that the Reference Court had raised serious doubts about the sale deed executed vide Ex.P99, which

is dated 27.08.1997 (Ex.PW10/C in Mansi's case) that it was purchased by one of the claimants, Subhash Chander and his wife who was owner of other portions of the acquired land and it was done to create evidence. It was noticed that what was the need to purchase one marla of land when he was huge landowner himself and therefore, it was recorded not to be a genuine sale transaction. Eventually, reliance was placed upon a sale deed (Ex.P79) of 12 marlas of land dated 23.04.1997 (exhibited as Ex.P4 in Mansi's case) and resultantly, giving cumulative increase of 12% and noticing that the same was close to Abadi Deh of the Village and the Lal Lakeer, a cut of 50% was applied to assess the market value @ Rs.574/- per sq.yard. Other sale instances were rejected on the ground that there was construction raised on the same.The award of other villages, as such, were pending before this Court or had been remanded or they were not adjoining villages and were accordingly discarded. Similarly, in ***Sucha Singh*** *(supra)*, Reference Court assessed the same amount of market value, while deciding the cases pertaining to the notification dated 02.06.1999, whereby another 4 kanals 8 marlas of land was acquired, to fix the same amount of compensation as awarded in ***Charan Kaur's*** *case*, for the same purpose to provide amenities and facilities to the devotees of the Mata Mansa Devi Temple, as it was adjoining each other.

(14) It is also pertinent to mention that against the awards dated 28.11.2011, 19.12.2011, 29.08.2012, 26.09.2012, 19.02.2013 & 29.09.2017, appeals have been filed at a belated stage, after the matter had been remanded by this Court (details of which have been given in the chart above). The appeals are time-barred and the delay had been condoned in separate applications filed with the condition that the landowners will not be entitled for the benefit of statutory interest on account of filing delayed appeals, in view of the law laid down by the Apex Court in ***Imrat Lal and others*** *versus* ***Land Acquisition Collector and others***[3] and ***Dhiraj Singh (D) through L.Rs. and others*** *versus* ***Haryana State and others***[4]. However, no useful purpose would be served in remanding the matter since similarly situated landowners have already filed appeals after the second remand and the said appeals against the above-said orders are also being decided with the cases filed by the landowners who are before this Court for the third time. It is settled principle that the landowners whose land had been acquired for the same notification are entitled for the same amount of compensation.

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[3] 2014 (14) SCC 133

[4] 2014 (14) SCC 127

By remanding the matter, decision making would only be delayed and the Reference Court, in any ways would be bound by the decision in the main case which has been pronounced.

Details and background of 3rd notification dated 02.06.1999

(15) Land measuring 56 acres 6 kanals 3 marlas falling in village Bhainsa Tibba was acquired for the public purpose namely i.e. for providing amenities and facilities to the devotees of the Shri Mata Mansa Devi Shrine Board, Panchkula. The LAC vide his Award No.2 dated 27.05.2002 fixed the market value @ Rs.9 lakhs per acre for Chahi/Abi Barani and Rs.5 lakhs per acre for Banjar Qadim and Rs.2 lakhs per acre for Gair Mumkin land.

(16) On 29.07.2006, the Reference Court while deciding 54 references, lead case of which was ***LA Case No341 of 2002 Charan Kaur and another*** *versus* ***State of Haryana and another*** had fixed the market value @ Rs.418/- per square yard (Rs.20,23,120/- per acre). The same was on the basis of an earlier Award dated 31.03.2006 passed in the case of ***Mansi*** *(supra)* (Ex.P83) of the first notification dated, wherein Rs.290/- per square yard had been awarded. 12% increase for 2 yearswas given (totalling 24%) and additional 20% increase was granted on account of better location to fix the market value @ Rs.418/- per square yard (Rs.20,23,120/- per acre).

(17) As noticed above, the Coordinate Bench of this Court in the case of ***Poonam*** *(supra)* decided on 25.02.2009, remanded the matters to the Reference Court. The Reference Court had re-decided the matter on 24.04.2010 and awarded Rs.374/- per square yard (Rs.18,10,160/- per acre) by relying upon Ex.P79, which was a sale deed dated 23.04.1997, whereby 12 marlas of land falling in village Bhainsa Tibba was sold @ Rs.916 per square yard, which is equivalent to Ex.P21/D. 12% increase was given on the same to work the market value @ Rs.1149/- per square yard. 50% cut was put on the same, on account of the location and 35% on account of smallness to fix the market value.

(18) Thereafter, the matters were again remanded by this Court in ***The Aakash Cooperative House Building Society*** *(supra)* on 14.11.2017. The Reference Court re-decided the issue on 21.05.2019 and the lead case was **LA Case No.221 of** ***2002 Charan Kaur and another*** *versus* ***State of Haryana and another*** to fix the market value @ Rs.576/- per square yard (Rs.27,87,840/- per acre), on the basis of the same sale deed dated 23.04.1997 (Ex.PW21/D). The increase of

12% was given from the date of sale deed till the date of Section 4 notification. The market value from **Rs.909/- per square** yard was, thus, enhanced to Rs.1151/- per square yard and a 50% cut was put on the same to arrive at the figure of Rs.576/- per square yard. The same was followed by awards dated 05.08.2019, 13.08.2019, 14.08.2019, 16.08.2019 & 25.09.2019.

Pleadings and evidence of first notification dated 29.09.1997

(19) A perusal of the petition filed under Section 18 of the Act by Rajinder Singh and others-the proprietors, would go on to show that they sought enhancement on the ground that the land was situated in the UrbanEstate, Panchkula, which was declared an urban area and the private buildings and multi-storey buildings had developed before the Section 4 notfication. The same was adjoining the Urban Estate, Panchkula, Mansa Devi Complex, Swastik Vihar and other multi-storey buildings were built by the private contractors/societies and the land was ideally situated for residential and commercial purposes and the land had great potential. Accordingly, Rs.5000/- per sq.yard was claimed as market value.

(20) The stand of Union of India, the beneficiary Department was that the land was hilly and undulating and not cultivated and therefore, the award of the Collector @ Rs.1,80,000/- per acre was on the higher side. It was denied that there was any kind of crop standing on the acquired land. It was, accordingly, pleaded that the amount was assessed on the higher side.

(21) Similarly, the occupiers, as such, apart from claiming the possession and their entitlement, referred to the potentiality of the land that it was green and very fertile belt and adjoining to Sector 4, Mansa Devi Complex, Panchkula on one side and holy temple of Mata Mansa Devi and the Headquarters of Western Command, was on the other side. Potentiality for residential and commercial purposes was there and the value was claimed to be Rs.2 crores per acre, on account of the auction of the buildings in Sector 4, Mansa Devi Complex, which was also situatedin the revenue estate of Bhainsa Tibba.

(22) The stand of Union of India was the same as in the petition under Section 18 filed by the landowners. However, a perusal of the award of the LAC would go on to show that 5 acres 4 kanals 3 marlas of land was found to be Barani and the assessment of the market value was on the basis of the said classification of soil and the revenue record. It was also recorded that there were no building and

tubewells but sometrees were standing. There was no reference to the land as being mountainous in the revenue record and as noticed, it was found that the occupiers were in possession since 1918. Therefore, counsel for the landowners is also well justified to hold out that the land was not mountainous and it was not having any disadvantage, as such.

(23) Even RW-1, Ramesh Kumar, Patwari stated that the acquiredland was at a distance of more than 1 km from the sale deeds Ex.P2 to P11) and adjacent to the Military area of Chandi Mandir. It was stated that the land was Barani and uneven. The land between the village Bhainsa Tibba and the acquired land was forest and of the Government Deparment and hilly in nature. He admitted that the sale deeds (Exs.P2 to P11) were pertaining to revenue estate of Village Bhainsa Tibba whereas residential colonies were developed in Sector 4 MDC. In cross- examination, he stated that the temple fell between the acquired land and the land of sale deeds (Exs.P2 to P11).

(24) The landowner, Rajinder Singh, in cross-examination, stated that when he came to know about the revenue record in favour of Mansi and the occupiers, he challenged that same, thereafter. He denied that the occupiers were in cultivating possession since 1918.

(25) PW-6, Balkishan, in his cross-examination, on first remand, admitted that Sector 4, Mansa Devi Complex was ½ km away from the land in question, while appearing for the occupiers. He stated that Group Housing Societies and commercial show-rooms were constructed in the acquired land of Bhainsa Tibba, which was acquired in 1981. Group Housing Societies were constructed prior to 1990 and commercial establishments were also constructed on both sides of the road while coming from Chandigarh road to the link road of Bhainsa Tibba and the same was known as Swastik Vihar, which were developed after the acquisition of 1981 and Fun Republic, Dhillon Complex and the motor market were adjoining the land. North-western side of Bhainsa Tibba adjoined Mani Majra and Rajiv Gandhi Technology Park which adjoins the boundaries of Bhainsa Tibba. There was Valley Public School in the land of Bhainsa Tibba. After crossing the Railway line, the road went to Mansa Devi Temple on one side and Sector 4 MDC Panchkula on the other side. It was admitted that the remaining land of Bhainsa Tibba was situated opposite the developed Sector 4, which was acquired for the residential and commercial purposes. Double road was coming from north to south on the back side of Sector 4 MDC Panchkula and therewere roads on all the four

sides of MDC. The temple fell on the southern side and even there was vacant land after crossing the road on the back- side of Sector 4. He admitted that Mata Mansa Devi Complex was not levelled land and it was somewhere at height and somewhere down. The land in front of the temple had been acquired by HUDA in 1999 and made available for urban, residential and commercial purposes and the Cantonment area adjoining the back side of the Mata Mansa Devi was also adjoining the acquired land in question. The residential quarters of the Army officials adjoined the acquired land and therefore, the land was acquired for the residential quarters of the Army officials. He admitted that the acquired land in question was situated remote to Bhainsa Tibba and was not connected to the road. The rate of compensation had been fixed @ 50% to the occupiers and 50% to the proprietary body and there was only a cantonment area beyond the acquired land which had no connectivity on the other side.

(26) PW8, Sohan Lal, Patwari who brought the Aks Sijra, Ex.P35, in his cross-examination, did not tell the distance of the acquired land in kms between the khasras in question. He also denied the suggestion that it was 1 ½ kms and the land of Forest Department and Government Department was between the acquired land.

(27) RW1, Madan Lal, Patwari brought Exs.R1 to R7 and also proved Ex.R5 wherein the land acquired was shown in red colour and the lands shown in blue colour which were sold within the last 3 years from the date of the acquisition.

(28) Similarly, RW-3, Suita Devi, SDO-III, proved Ex.R8, which was prepared by her after seeing the land. The distance of the abadi was 3 kms and it was shown in red colour. She had shown the acquired land in green colour and the land which had been sold between the last 3 years from the date of the acquisition in red colour. Kilometers in place of karams have been shown and she stated that there was no construction between the land and there was jungle.

(29) After the second remand, Ram Kumar Sharma, PW9 was also examined who produced the attested copy of the lay-out plan and abadi of Village Bhainsa Tibba was shown at point X on PW9/A. The Railway line was also shown in blue lines in Ex.PW9/B along with the location of the roads, commercial belts, Group Housing Societies etc. The Chandigarh-Kalka road was shown as points A-B. However, he could not show the location of the acquired land in Ex.PW9/A and PW9/B, as elicited. In cross-examination, he admitted that there was forest area which was marked as Y in Ex.PW9/A and that he could

not tell the exact area of the forest land.

(30) PW10, Madan Lal, Patwari proved Ex.PW10/A whereby the abadi of Bhainsa Tibba had been shown at point A with red lines. Khasra No.54//26 of the registered sale deed (Ex.PW10/B) was shown at Point B in fluorescent pale green colour whereas PW10/C was shown at point C. Ex.P4 was shown at point D. The location of the sale deeds were all outside the limits of Abadi Deh of Bhainsa Tibba. In cross- examination, he stated that the acquired land was Barani, as per the revenue record and there was no approach road towards the acquired land. He could not tell the distances of the Abadi Deh of the village from the temple and from points B, C & D. In cross-examination, after getting the Peetal Paimana on the subsequent date, he stated that the acquired land was 1232 karams from Abadi Deh and 832 karams from starting point of forest area. He admitted that there was forest in between the village and the acquired land which was after 400 karams from the abadi of the village. The boundaries of Village Saketri was 750 karams. The sale deeds were situated outside the abadi of Bhainsa Tibba. He also admitted that the acquired land was surrounded by forest area.

(31) PW-11, Parveen Kumar Gupta produced the site-plan as Ex.PW11/A, lay out plan as Ex.PW11/B, Aks Sijra as Ex.PW11/C where the temple was shown at point B. The motor market at Mani Majra was shown at point E, which was adjoining Swastik Vihar, Sector 5, MDC. The commercial show-rooms were also shown from Point H.I to J.K. He admitted, in cross-examination, that he never visited the area shown entirely nor he had visited the undeveloped area of Bhainsa Tibba. He had never seen the land which was acquired for Defence and he could not tell the distance of the Defence area from the acquired land of abadi.

(32) PW-12, Gurdev Singh, the proprietor and one of the landowner, denied that Village Bhainsa Tibba was not located at prime location or was not adjoining Mani Majra. He also denied the suggestion that acquired land was barren and no cultivation was possible due to the nature of the land.

(33) Similarly, PW-13, Karamveer, Patwari produced various notifications of the area but he could not throw much light as he had joined Panchkula circle 2 months ago.

(34) PW-14, Ram Niwas Walia, Architect produced the site-plan as Ex.PW14/A in which he had shown the acquired land in red colour

at point A and it was stated to be at a distance of 1 km from Mata Mansa Devi Mandir. Sector 5D showed that the acquired land of Mata Mansa Devi Shrine road was shown at the boundary whereby land measuring 4 kanals 8 marlas was shown in green colour, which had been acquired along with 56 acres 6 kanals 3 marlas of land, vide the subsequent notification dated 02.06.1999. The said site-plan was stated to be on the copy of the DTPS which had been coloured and marked by him. The location of the earlier acquired land whereby the market value had been assessed by this Court and Supreme Court vide judgments Exs.PY1, PY2, PX3 to PX9 and the acquired land had been shown in red colour at point X of the site-plan, Ex.PW14/B. The acquired land of PY1 was shown at point Z1 in blue colour and the land of Mata Mansa Devi Shrine Board was shown at PY2 at point Z of land acquired of Panchkula which was described in site-plan, Ex.PW14/B. The abadi of Villages Bhainsa Tibba and Saketri were shown in dark pink colour at point A and A1 of Ex.PW14/C, which was the site-plan, by extending the Aks Sijra of the un-developed land of Bhainsa Tibba. The land of sale deed (Ex.P10/B) was shown at point B in orange colour. The land of sale deed (Ex.P10/C) was shown at point C and the land of Ex.P4 was shown at point D. It was stated that the site-plan (Ex.PW14/C) was produced by him by reducing the scale of DTP, by 60%. In cross-examination, he stated that he had gone to the site on 20.03.2018 and was accompanied by one of the landowners, namely, Mr. Sodhi. He admitted that he had not taken any measurement of the site and therefore, could not tell the distance between the Abadi Deh of the village and the acquired land and the distance from the temple. He volunteered that Mr. Sodhi, who had accompanied him, had told the distance from the temple but the said person had not measured the distance in his presence. He admitted that Ex.PW14/A had been handed over to him by the said person who had brought the same to his office from the office of the DTP, which was not a certified copy but the same was xerox copy. He admitted that he had not visited the office of the DTP to check the genuineness of PW14/A. He admitted that he didnot take the measurement in kms of the road which was shown in the site-plan, though he had guessed it in kms. He had not seen the acquired land at the spot and could not tell the area of the acquired land nor if any construction was raised on it and for which purpose it was being used. The description of the land acquired at Cantonment Board was written as told by Mr. Sodhi and that he had not measured the distance between points A & B. He could not tell the area of the temple. He denied the suggestion that PW14/A was not as per the actual position.

He could not tell the distance between points A & B since he had not visited the spot. He admitted that he put the colours on Ex.PW14/B in the office of the Advocate after going through the judgments given to him. He did not have the said judgments and could not tell the distance of the Abadi Deh of Villages Bhainsa Tibba, Judian, Kharak Mangoli, Majri, Devi Nagar, Fatehpur, Kundi, Rally, Maheshpur, Nada, Chowki, Mandanpur Bana, Jhuriwala, Moginand, Ramgarh. He also could not tell whether the acquired land from point X in Ex.PW14/B was surrounded by forest as he had never visited the said places. Similarly, he was also cross-examined to the same effect regarding the site-plan (Ex.PW14/C) and denied that it did not depict the actual position. He admitted that Khasra Nos.55//26, 53/26-7 were located on the Phirni of the Village Bhainsa Tibba, as per Ex.PW14/C and that he had not given any notice to the respondents prior to his visit and that he had not prepared any rough notes prior to preparation of Exs.PW14/A to PW14/C. He could not tell about the potentiality of the land pertaining to the judgments which had been shown from PY1, PY2 and mark PX3 to PX9.

(35) RW1, Madan Lal, Patwari produced the copy of Aks Sijra as Ex.RW1/A wherein abadi of the village had been marked at Mark A. The land of Ex.R1 measuring 4 kanals has been shown at Mark B whereas the land of Ex.R3, measuring 3 kanals 2 marlas has been shown as Mark C, which were also of the same village. The acquired land has been shown in green colour as Mark D. The same was at a distance of 1232 karams from the abadi. At Mark E was private agricultural land which had already been acquired. In between, there was forest land and there wasno land of any private individual. Mark D was stated to be the hills. His cross-examination was done by Shri M.K. Chauhan, counsel for the landowners in the proprietors case, Rajinder Singh and performa respondents No.2 to 193 therein the witness stated that he could not tellthe nature of the land mentioned in Exs.R1 to R4. He admitted that the said sale deeds had been impounded being undervalued and extra stamp duty had been charged from the concerned parties. He had also admitted that he had not visited the acquired land shown as Mark D and therefore, could not tell the nature and situation of the land. He, however, admitted that as per the statement No.19, the land was shown as shamlat deh hasab rasad araji khewat 49966 share, provincial Government capital project, 3532 share and the total share was 53449 shares. Mansi etc. had been shown as gair marusis and he admitted that as per the said entry was in cultivating possession and the persons were not owners and could not

tell whether they were also residing on the said plot. He admitted that Ex.P18, in the jamabandi for the year 1980-81, the land was shown as barani and so was for the entry of 1990-91 (Ex.P19). Similar was Ex.P35, jamabandi for the year 1995-96. In cross-examination in-chief, he has stated that the entry of the land was Pahar (hills) but he had not seen any revenue record as such and the entry of the land as per Exs.P18, P19 and P35 was that land was barani. He volunteered that there were Pahars near to the adjacent land and khasra numbers of the land near the acquired land was of the same nature.

Arguments of counsels for notification dated 29.09.1997

(36) It is, in such background, counsel for the landowners, Mr. Shoaib Khan and Mr. M.K. Chauhan have submitted that it was cultivable land, as such and Mansi and others were in possession, which was proved from the revenue entries and therefore, it cannot be said that the land was Pahar or hilly in nature. It was also submitted that even the Patwari, Madan Lal, appearing as RW1, himself admitted so in his cross- examination. It is, thus, submitted that there was immense potentiality of the land since it was close to the Mata Mansa Devi Temple and land of Bhainsa Tibba had been commercially exploited by HUDA and the best sale deed, as such, should have been taken into consideration, i.e. Ex.PW10/C whereby the market value worked out to Rs.1984/- per sq.yard, which was closest in proximity. It was submitted that even if a 75% cut is put, in view of the judgment of the Apex Court in ***Chandrashekar (D) by LRs & others*** *versus* ***Land Acquisition Officer & another***[5] the market value would still come to Rs.496/- per sq.yard (Rs.24,00,640/- per acre) and therefore, there was scope for enhancement.

(37) Mr. Sharma, appearing for the Union of India, on the other hand, submitted that firstly, the sale exemplar (Ex.PW10/C) was a miniscule area of only 30 sq. yards and measuring 1 marla and the acquired land was far away from the abadi and at least at a distance of 1 km. It was submitted that Exs.P7 to P9 which had been brought on record on an earlier occasion, also by the occupiers, Mansi etc., showed that larger chunks of land had been sold at around Rs.12,00,000/- per acre, which were better located and same were subject matter of sale to various societies and falling on a rasta. The said sale deeds were of the year 1997 and measuring between 1 ½ kanals to 3 kanals which were better sale exemplars than the ones which were being relied upon. It

[5] 2012 (1) SCC 390

was further pointed out that even Exs.P2 & P 4 showed that the market value ranged between Rs.900/- per sq. yard and the sale deeds (Exs.PW10/B & PW10/C) showed exceptional higher values in comparison to the same time period and therefore, could not be relied upon. It was further submitted that if further reliance is to be placed upon them, they were situated in close vicinity of the abadi area and therefore, on account of the location, as such, also, the same were not relevant exemplars. It was, accordingly, submitted that it was a case for reduction in the market value as excessive amount had been granted.

(38) Relevant sale deeds which would, thus, require consideration, are as under:

Exemplar	**Area (in sq yards)**	**Sale price (in Rs.)**	**Date**	**Rate per sq.yard (in Rs.)**	**Rate per acre (in Rs.)**
Ex.P2	196	1,65,000	25.04.97	846	4,094,640
Exemplar	**Area (in sq yards)**	**Sale price (in Rs.)**	**Date**	**Rate per sq. yard (in Rs.)**	**Rate per acre (in Rs.)**
Ex.P3	120	1,10,000	25.04.97	916	4,4,33,440
Ex.P4	363	3,30,000	23.04.97	909	4,3,99,560
Ex.P5 Ex.PW10/B	90	1,50,000	27.08.97	1653	8,000,520
Ex.PW10/C	30	60,000	27.08.97	1984	9,6,02,560

(39) Similarly, the sale deeds which have been exhibited on anearlier occasion by the occupiers-gair marusi, Mansi etc., are as under:

Exhibit	Date	Village	Area	Sale consideraion (in Rs.)	Rate per acre (in Rs.)
Ex.P7	27.2.97	Bhainsa Tibba	3-0	4,50,000/-	12,00,000/-
Ex.P8	6.6.97	Bhainsa Tibba	1-7-1/2	2,08,000/-	12,10,181/-
Ex.P9	30.5.97	Bhainsa Tibba	3-0	4,50,000/-	12,00,000/-

Pleadings and evidence of Second Notification dated 16.03.1999

(40) A perusal of the petitions filed under Section 18 of the Act, the main case being LAC-420-2005 titled ***Fazal Mohd.*** *versus* ***State of***

Haryana, would go on to show that the landowners had pleaded that the land was adjacent to the already developed posh residential and commercial Sectors 4 & 5 of Mansa Devi Complex, on one side and on the other side, was situated near the Sukhna Lake. The acquired land had the nearest approach to Chandigarh, which is the joint capital of Punjab & Haryana and has great urban potential. HUDA had earlier acquired land of villages and developed Sectors 4 & 5, MDC which were fully developed by way of residential and commercial buildings in the close proximity of the acquired land. Plots for residential purposes @ Rs.5000/- per sq. yards and for commercial purposes @ Rs.50,000/- per sq. yards were being sold and therefore, the land had great potential. The land in question was situated in such a place since there was no possibility of extension for urban estate, Panchkula and the acquisition was most essential. There were many interested and bona fide buyers but due to the apprehension of acquisition, the deals were not finalized at those rates. HUDA had been publishing acquisition proceedings for the last several years and was withholding the same by issuance of notification but the same was withdrawn on account of the lapse and resultantly, enhancement was prayed for.

(41) In evidence, PW-1 Fakir Chand, Patwari produced the notification register of the Section 4 notifications from the year 1971 onwards of the adjoining villages till 1978 to prove the entry at Sr.No.218whereby land measuring 788.67 acres of Village Saketri and 551.67 acres of Village Bhainsa Tibba, were acquired vide notification dated 27.08.1981. Similarly, entry at Sr.No.226 for land measuring 43.42 acres of Bhainsa Tibba, 7.46 acres of Village Saketri and 0.62 acres of Village Judian which had been acquired vide notification dated 20.01.1982 were also produced. Entry at Sr.No.276 for land measuring 7 kanals 5 marlas of Bhainsa Tibba notified on 23.04.1985 and similarly 0.71 acres notified on 04.09.1997 having entry at Sr.No.387 were also produced, which were prior in point of time apart from the other notifications. Similarly, notification under Section 6 of 107.25 acres of Bhainsa Tibba which was notified on 23.09.1975 were mentioned.

(42) PW-2, Jarnail Singh deposed in terms of the averments of the Section 18 petition and that UT had developed IT sector in the adjoining portions. In cross-examination, he admitted that the acquired land was agricultural before acquisition.

(43) PW-3, Ramesh Chand, Assistant Draftsman brought the summoned record of original official development plan of Shree Mata

Mansa Devi Urban Complex Development Plan, Panchkula Extension Development Plan, interim Master Plan of Panchkula pertaining to southern side area of Chandigarh-Kalka road for Sectors 1 to 21. The blue prints were exhibited as Exs.P1 to P3. As per Ex.P1, on both sides of the M-1 road which was 80 meter wide, leading from Chandigarh to Kalka road, there were already developed urban residential and commercial sectors of MDC, Urban Estate Complex which had been developed by acquiring the land of Villages Bhainsa Tibba and Saketri. Sectors 4, 5 & 5A were shown in Ex.P1 and the road from Chandigarh-Kalka road was shown as link road from A to A-1 and which was 80 meters wide and known as the M1 road on which there were developed showrooms on both sides. It was stated that the IT Park of UT Chandigarh and Mani Majra town were adjoining the acquired land, situated in Sectors 5-B & 6. There were commercial showrooms on both sides of the Chandigarh-Kalka road from Housing Board Chowk to the link road, marked as A to A-1, which had been allotted by UT Chandigarh. He, in cross-examination, admitted that the land was agricultural land and before any type of construction which was made, permission had to be taken for the change of land use.

(44) PW-4, Naresh Kumar, Planning Officer, Department of Urban Planning, Chandigarh Administration brought the record of the Motor Market Complex Mani Majra lay out plan of residential colony of the East of Chandigarh-Kalka road, lay out plan of pocket No.1 Mani Majra on the Chandigarh-Kalka road along with the lay out plan of Rajiv Gandhi Chandigarh Technology Park Phases I & II. The blue prints were exhibited as Exs.P4 to P7. He deposed that the eastern outer boundaries of UT Chandigarh adjoins the territory of Haryana of Villages Bhainsa Tibba and Saketri of District Panchkula. HUDA had developed the area adjoining to UT from MDC Urban Estate and there were several group housing societies in the said area adjoining Mani Majra. The Motor Market of Mani Majra and showrooms on both sides of Chandigarh- Kalka road, Dhillon Complex were shown in the site-plans. In Ex.P7, the land earmarked as IT Habitat was meant for being used by the Housing Board U.T. Chandigarh for residential and commercial purposes. He also deposed that the area touched the boundaries of Haryana, which touches the boundary of the Motor Market, Mani Majra, i.e., the land of Village Bhainsa Tibba. In cross-examination, he could not tell the details of the roads on which the land of UT was acquired for development of the IT Park. He did not know the nature and quality of the land situated in Haryana. He deposed that

the land acquired by both UT or Haryana before acquisition comes in the agricultural zone and no construction or development or change of land use was permissible without the permission of the competent authority.

(45) PW-5, Sandeep Sharma, Junior Assistant, Estate Office, U.T.Chandigarh deposed that the land of IT Park, Chandigarh was sold at the minimum rate of Rs.1 crore per acre and the maximum rate was Rs.1.71 crores per acre. In cross-examination, he deposed that the land was sold after thorough development. He did not know the rates of the acquisition. He volunteered that the land was sold on as and where is basis without development but the roads had been provided and he had not visited the site in question. PW-6, Preet Pal Singh, Clerk from the Office of the Estate Officer, Panchkula approved various allotment letters of HUDA.

(46) PW-7, Hernek Singh, Halqa Patwari produced the summonedrecord. He stated that the revenue estates of the 2 villages in question adjoined UT Chandigarh and the boundaries of Mani Majra. Sectors 4 &5 of MDC Urban Estate Panchkula were already existing prior to the present acquisition, i.e., before 1999. The fully developed commercial market of Swastik Vihar in MDC, Urban Estate Panchkula was established on the road from Chandigarh to old Panchkula going towards MDC and there were also built up and commercial activities. NAC Mani Majra had developed the Motor Market which was adjoining the Fun Republic Dhillon Complex. The land of Bhainsa Tibba was around 4 acres away from Fun Republic Dhillon Complex and was adjoining the land of Village Bhainsa Tibba. The Motor Market was situated on the back side of Fun Republic Dhillon Complex adjoining the land of Bhainsa Tibba, IT Park of UT Chandigarh. A road from the middle of Bhainsa Tibba and Saketri was passing through to Chandigarh through the IT Park. There was Valley Public School, Disha Arcade, big showrooms and other commercial establishments in Bhainsa Tibba towards both sides of the road leading to Mansa Devi Temple as well as on the road leading to Saketri.

(47) He deposed that the Government of India had acquired 5 acres of land of Bhainsa Tibba comprising in Khara No.21//26,27,28 of Shamlat land for extension of Cantonment area in the year 1997 (Mansi's case). The said land of 5 acres was acquired by Government of India was 1.5 kms on the back side i.e. western side of Mata Mansa Devi Temple. The said area was adjoining the Cantonment area and forest land on the back side of Mata Mansa Devi Temple. The land

was adjoining the revenue estate of already acquired land of Darra Khoni, which was acquired in the year 1960 by Government of India. The acquired land of Bhainsa Tibba fell on the road from Mani Majra town to Mata Mansa Devi Complex and on both sides of the Railway line. It had been earlier left from acquisition but now had also been acquired. It was just on the back side of the Swastik Vihar showrooms belonging to Gurdev Singh and his sons, Mula Singh Sodhi. The acquired land was situated on the eastern side of the earlier acquired land which was opposite the Motor Market, Mani Majra. The land of Saketri was contiguous to the land of Bhainsa Tibba and was small and had same urban potentiality. In cross- examination, he admitted that the land fell under the Periphery Control Act and no construction was permissible without prior permission of the competent authority and it was agricultural in nature. The land was mixed type, some of which was Barani, Gair Mumkin and some of it being Chahi. The land of Bhainsa Tibba was adjoining the developed sectors of HUDA and Mani Majra town whereas the land of Saketri was far from Mani Majra but was adjoining the land of Bhainsa Tibba and UT.

(48) Neelam Kumar, PW-8, Registration Clerk from the office of the Sub-Registrar, Panchkula produced the minimum Collector's rate for Mansa Devi Sector 4 which was Rs.2000/- per sq. meter. For the year 2000-2001, the minimum rate for residential plots in the sectors of Mansa Devi Complex was Rs.2800/- per sq. meter and for commercial plots, it was Rs.20,000/- per sq. meter. The same had gone upto Rs.3000/- per sq. meter for residential plots, for the year 2003-04.

(49) Ram Niwas, PW-9, Draftsman (Civil) District Court Complex, Panchkula, who had prepared the lay out plan as Ex.P26, proved the same and deposed that area of Urban Estate Panchkula was bounded by UT Chandigarh area on the one side, NAC, Zirakpur on the other side, Ramgarh Mubarakpur road on the third side, National Highway Panchkula-Shahbad via Ramgarh on the fourth side, Cantonment area on the other side and also IT Habitat and IT Park, Motor Market Mani Majra, Fun Republic Dhillon Complex, NAC Commercial market, on the remaining sides of Panchkula. He deposed that he had shown the area developed by HUDA on the Northern side of Chandigarh- old Panchkula road and some land of Village Bhainsa Tibba was already acquired for Sectors 5, 5-A, 4 and part of Sector 6 in MDC, Panchkula. The present acquired land of Bhainsa Tibba was shown in yellow colour and that of Saketri in red colour in Ex.P26. The

land acquired by the Mansa Devi Shrine Board for notification dated 02.06.1999 was shown in blue colour which also touched the Cantonment area. The land which had been acquired for the Government of India vide notification dated 29.09.1997 (Mansi's case) of 5 acres was about 1.5 kms away from the Temple and the hilly area existed which had been shown in green colour. The western side of the Villages Bhainsa Tibba and Saketri touched the fully developed commercial market, Mani Majra, Motor Market and also the boundaries of IT Park UT and IT Habitat. On the southern side of Bhainsa Tibba were commercial markets known as Swastik Vihar and Group Housing Societies. The land of Mr. Sodhi had been left out from acquisition earlier and had been acquired vide the present notification which has been shown in yellow colour in Sector 5 MDC.

(50) He also deposed regarding the M1 road coming from Chandigarh Shimla Highway and land which had been earmarked as commercial zone and assigned Sector 5-B by HUDA. In the said zone, Kuhni Sahib Gurudwara and Santoshi Mata Mandir had been released from acquisition which were also shown in Ex.P26. A pucca road from Bhainsa Tibba and Saketri leading to Chandigarh through IT Park, Valley Public School and Jain Colony were also shown in Sector 5-C of the acquired land. Sectors 4,5 & 5-A of Bhainsa Tibba were already developed much prior to the present acquisition. Booths had been sold by HUDA at the rate of more than Rs.50 lakhs for an area of 24 sq. meter and the shopping complex of the Temple.The abadi of Bhainsa Tibba was connected with two roads and the area adjoining the two roads was fully developed as commercial market like Disha Arcade, Shemrock International School and various showrooms and shops. Smaller site planof the acquired land and its surroundings were shown as Ex.P27 which showed the shops and commercial market of Saketri and other important locations. The site-plans were hotels in the area of UT alongwith the IT Park which was adjoining the proposed Sector 7 of MDC Panchkula and Sectors 7 & 3 which were reserved for Information & Technology Park by HUDA, had been shown. In cross-examination, he denied the suggestion that he had not shown the correct locations in Exs.P26 & P27 and the fact that he had not brought the record of the DTP on the basis of which he had prepared the same.

(51) PW-10, Malkiat Singh also deposed in terms of Section 18 petition regarding the location and potentiality of the land. In cross-examination, he denied the suggestion that HUDA had spent many times on the development charges before selling the plots etc.

(52) RW-1, Dhoop Singh, Kanungo from the office of the Land Acquisition Collector stated that the compensation was awarded on the basis of the rates supplied by the Collector. He also proved the notification of the Punjab New Capital Periphery Control Act, 1952 as Ex.R12. He admitted, in cross-examination, that some of the land of Bhainsa Tibba was acquired prior to the acquisition for development and utilization of the same for Sectors 4,5 & 5A MDC Panchkula in the year 1983. He also admitted that Swastik Vihar had been developed much prior to the acquisition of Bhainsa Tibba where there were showrooms on both sides. He admitted that group housing societies were already constructed on the acquired land and the boundaries of Mani Majra UT, Chandigarh were adjoining the land of Bhainsa Tibba including the IT Park. He also deposed that the Temple was on the outer side of the Cantonment area. The acquired land was situated outside the T-point road, leading from Fun Republic Dhillon Complex and the Motor Market.Ex.R3, the Aks Sijra had been prepared by Ram Gopal, Patwari on his directions on which the land of Bhainsa Tibba had been shown in green colour. He denied the suggestion that Ex.R3 did not depict the correct situation of khasra numbers. He could not tell that residential and commercial plots of Swastik Vihar had been developed by private colonizers.

(53) After the first remand, as noticed above, the landowners, thereafter, produced PW-11 & PW-12 and also also proved Exs.P33 to P40 and thereafter, PW-13 to PW-20 were produced.

(54) PW-11, Surlekh Singh, another landowner, also deposed in terms of the petition filed under Section 18 and the potentiality of the land. In cross-examination on 15.09.2010, he admitted that land was agricultural in nature before acquisition. He denied the suggestion that HUDA spent many times on development charges before offering the plots. He also denied the suggestion that the acquired land was not adjoining to Village Bhainsa Tibba. He stated that Sectors 1,2,3,5-B,5-C and 6 were across the Railway line towards south. He denied the suggestion that sale deed of Subhash and his wife was a sham transaction and had been prepared after coming to know about the acquisition. He also denied the suggestion that the acquired land was not connected with Mani Majra town and Rajiv Gandhi Technology Park or that they were far from it. He admitted that on the land just before the Railway line on the left-hand while going from Mani Majra to Mansa Devi, an under-pass had been constructed below the Railway line and the land had remained on the upper level of the

under-pass.

(55) Similarly, Parveen Gupta, Planning Assistant from the Office of District Town Planner, Panchkula, appearing as PW-12 produced the blue prints and the Aks Sijra lay out plans of the area, Sectors 5 and five sub-sectors. Sector 5-B was the commercial area adjoining UT boundary, Sector 5A adjoined Village Judian as per the attested blue prints of Sijra lay-out plan as Ex.P34. Ex.P35 had been developed on the basis of the said original drawing. He stated that while entering the urban MDC complex from Chandigarh-Kalka Highway, first falls the land of Judian, then Bhainsa Tibba and then Saketri. Swastik Vihar had been developed in Sector 5 and Sector 5-B abutted the road leading from Mani Majra to Shri Mansa Devi Shrine on the left side of the road and adjoined Mani Majra. In cross-examination, he stated that it was yet to be developed and the drawings had been approved by the Chief Administrator, HUDA. He also stated that it fell before the Railway line while going to Mata Mansa Devi Shrine and Sector 5B was developed for group housing societies whereas Sector 5C was being developed for residential purposes, as per Ex.P35. Sector 5-C was yet to be developed and there were construction of showrooms on both sides of the road from point Ato A1.

(56) PW-13, Monica, Clerk from the office of Municipal Corporation, Chandigarh produced the allotment letters of the Motor Shops as PW13/A and the allotment of Dhillon Cinema as PW13/C etc.

(57) PW-14, Parveen Kumar Gupta, Assistant Town Planner from the office of the Country & Town Planning, Panchkula produced the drawings maintained showing the various locations of Bhainsa Tibba, Saketri and Mani Majra on PW14/A and that the Chandigarh-Kalka road had been shown at point A to D on the same. The access to the MDC Urban Complex was from points C to D touching the Kalka-Chandigarh road on the M1 road, there were commercial showrooms on both sides which had been outlined in red colour. Sector 5A was known as Swastik Vihar and had been developed by the private colonizers, after getting licence from the DTP. The Motor Market Complex was on one side of Sector 5A and fell in UT Chandigarh and was fully developed. The acquired land was falling in Sector 5B on the Mata Mansa Devi and Mani Majra Road and was situated just opposite the Motor Market and was only divided by the road from Mata Mansa Devi to Mani Majra. Same was a commercial area of MDC and land for Sector 4 MDC had already been acquired before

1990 and used for setting up residential and commercial properties. The boundary of Bhainsa Tibba was separated from the boundary line H-I. The land of Sector 4 was shown at point J which was commercial and already developed. Abadi of Bhainsa Tibba was shown at point K and that of Saketri was shown at point L and the Peer Majra at Saketri was shown at point M. The acquired land touched UT boundary of Mani Majra, IT Park, Chandigarh. The Sijra lay-out planof Mansa Devi was exhibited as Ex.P34 and the same highlighted sectors in PW14/C, demarcation plan of MDC Sector 5 as Ex.PW14/D, revised demarcation plan of MDC Sector 6 Panchkula as Ex.PW14/E, lay-outplan of Sector 2 Panchkula as Ex.PW14/F, revised plan of Sector 5 Panchkula as Ex.PW14/G and the lay-out plan of Sector 4 MDC Panchkula as ExPW14/H. In cross-examination, he admitted that he had not prepared the original drawings of Ex.PW14/A to PW14/H but he had personal knowledge about MDC Panchkula as he had been visiting Mansa Devi Temple and other areas shown in the plan. He denied the suggestion that the blue prints Exs.PW14/A to PW14/H were not as per scales shown at respective points.

(58) PW-15, Madan Lal, Patwari Halqa, produced the Aks Sijra as Ex.PW-15/A on which the land acquired as per notification dated 29.09.1997 by the Cantonment Board had been shown in red colour at point A. The abadi of the village had been shown at point B and the land of the sale deeds (Ex.P15/B) had been shown at point C which was beyond the abadi. Land of Ex.P15/C was shown at point D which measured 3 marlas, which was also outside the abadi. Ex.PW15/D was shown at point E and the location of Ex.P15/E was shown at point F. The boundary of village was adjoining the IT Park and Mani Majra and the other side of Village Judian.

(59) PW-16, Ram Kumar Sharma, produced the road and sewerage plan as Ex.PW16/A and that of Sector 4 MDC as Ex.PW16/B and that of Sector 5 as PW16/C. He stated that the infrastructure work was done by their Branch, Division No.1, Panchkula.

(60) Tejinder Singh Tiwana, appearing as PW17 produced the site-plan as PX, which was prepared on the basis of the Aks Sijra. PW18, Raj Kumar Singal also tendered Aks Sijra of Village Saketri as PW18/B wherein his land had been shown with green colour and which fell in Village Saketri, which touched the boundary of Chandigarh Housing Board.

(61) PW-19, N.N. Sharma, Executive Engineer (Retd.), a landowner, tendered the lay-out plan of the Motor Market as

Ex.PW19/B. In cross-examination, he submitted that the Motor Market and shopping complex were developed by UT Chandigarh in 1977-78 and being opposite to Sector 5B, it would increase the market value of the acquired land.

(62) PW-20, Ram Niwas Walia, Architect proved the development plan as Ex.P20/A, showing various locations including the acquired land by the Government of India, Cantonment Board at point Y, which was approximately 1 km behind the Temple. The land of sale deed Ex.PW20/B has been shown at point D, Ex.PW15/C at point B, Ex.PW15/D at point C. Ex.PW15/F is shown on Ex.PW20/B at point B, being common khasra number. The acquired land of the Mata Mansa Devi Shrine had been earmarked at point D and shown in green outline whereas land of Bhainsa Tibba has been shown in bottle green colour and that of Saketri in purple colour. Another chunk of land acquired on 02.06.1999 of 4 kanals 8 marlas was shown in blue colour and the acquisitions and development of Panchkula Urban Estate had been shown on Ex.PW20/C on which the present acquisition had been shown in red boundary. He denied the suggestion that he had not visited the site shown at Exs.PW20/A to PW20/C and that he had verified the different locations by visiting the said sites except the land shown at point A acquired on 29.09.1997.

Arguments of Counsels for notification dated 16.03.1999

(63) Mr. Khan, counsel for the landowners, has argued mainly on the ground that the Reference Court had taken the average of the 8 sale deeds of Mansi's case and put a 50% cut. Thereafter, it had given a 18% increase to fix the market value and some of the sale deeds had not even been relied upon and therefore, could not have been taken into consideration. He relied upon the chart of the sale deeds to submit that only 3 of the sale deeds were common and if the average of the 5 sale deeds exhibited is taken into consideration, the amount would work outto Rs.1421/- per sq. yard and if an appropriate cut is put on the same and thereafter, cumulative increase could have been given of 12% or 15%, since the sale deeds pertain to the year 1996-97. The market value would thus be in the range of Rs.1265/- per sq. yard and after giving appropriate enhancement and giving 30% cut, and Rs.1445/- per sq. yard after 20% cut. Whereas 50% cut would bring the market price to Rs.904/- persq. yard. In the alternative, he submitted that average could be taken of Exs.P15/C & P15/D, which were executed on the same date. The chart, as per grounds of appeal, reads as under:

Exemplar	Area	Sale price	Date	Rate on date ofsale	Cumulative increase 12%	Cumulative increase 15%
Ex PW 15/B	12 m	3,30,000	23.4.1997	909.09	1140.36	1202.27
Ex PW15C	3 m	1,50,000	27.8.1997	1652.89	1979.76	2067.14
Ex PW 15/D & Ex P28	1m	60,000	27.8.1997	1983.47	2376.99	2480.58
ExPW15/E	1m	45,000	29.7.1996	1487.60	2015.32	2164.09
Ex PW 15/F	1m	32,500	6. 2.1996	1074.38	1524.53	1647.43
Average				1421.49	1807.39	1912.30

(64) He also argued that the potentiality of the land could not be disputed in as much as the land for Village Bhainsa Tibba had been acquired on 27.08.1981 for 551.67 acres (Ex.P41). Similarly, on 10.01.1983 (Ex.P42) notification under Section 4 had been issued for 499.24 acres of land and the award had been passed on 02.02.1984 for only 31.51 acres. He has placed reliance upon the statement of PW1,Fakir Chand to the extent that 107.25 acres of land of Bhainsa Tibba had been acquired on 30.09.1975 and that land of Saketri had been sought to be acquired measuring 785.67 acres but had never been acquired under Section 6. It was, accordingly, his contention that the shadow of acquisition has always been falling on the land of the 2 villages and therefore, on the lack of sale exemplars on account of the impending fear of the land being acquired for development of Panchkula/MDC and therefore, the benefit of the 6 small sale exemplars should have been given. He placed reliance upon the site-plans (Exs.P15/F & PW20/A) at various points and that the sale deeds produced by the State were below the rate given by the LAC. Reference was made to Ex.R12, which was notification dated 21.03.1972, issued under the provisions of the Punjab New Capital (Periphery Control) Act, 1952, whereby the Villages Saketri and Bhainsa Tibba were shown at Sr.No.119 & 120, thus, restricting the usage by the landowners. Reliance was placed upon the judgments in ***RFA-3506-2009*** titled ***Lokinder Singh & others*** *versus* **State of *Haryana & others,*** decided on 06.04.2018, to submit that similar

argument had been also accepted that on account of the impending acquisition and lack of sale deeds available, pertaining to land acquired in Panchkula District having close proximity to Chandigarh town. The relevant portion reads as under:

> "The location of the land is of utmost importance, which is to be kept into consideration, which would be clear from the site-plans which are already on record and from ark-, which has now been taken on record and which is identical on all accounts to site-plans Exts.P-23 & P-55. No doubt, the land was situated across the river and there was only a sole lifeline in the form of a bridge on the National Highway No.73, to cross the turbulent river of Ghaggar which becomes dominant during monsoon and continues to entail damage downstream, disgorging its discharge from the hills and enters into the State of Punjab and after heaping misery for some time, enters Haryana. It was in such circumstances, the land in question, as such, could not be immediately developed as it was lying on the other side of the river and the State of Haryana continued developing Panchkula, firstly on the western side of the river, closer to Chandigarh firstly and then thereafter, on the portion abutting National Highway No.22, which would be clear from the statement of the witnesses and from the site-plan. The first development which took place was in 1971 and 1983, which has been marked-A and was on the western-side of the National Highway No.22 which led from Ambala-Zirakpur-Kalka and Shimla and awayfrom the river and to the road leading to Chandigarh.
>
> In view of the land which lay on the other side of Sector 21 & 22 and Ghaggar on the National Highway No.73 from Panchkula to Yamunanagar and onwards leading to Delhi on the alternate road, which is shown as 'D' in purple colour in the site-plan Mark-A, on which came up the ITBP Colony which was developed in the year 1985 and across it, to augment infrastructure, land had been acquired at point 'C', shown in green colour for 220 KV sub-station of the erstwhileElectricity Board in 1984.
>
> Similarly, at that point of time, land abutting the bridge before crossing the Ghaggar, falling in Village Kharak Mangoli was acquired in 1985, which is known as old

Panchkula and right across the District Court's complex, Panchkula and on the National Highway No.22, for which compensation was fixed @ Rs.250/- per sq.yards in CA-10286- 2010, Kanti Parkash Bhalla (Dead) through LRs & others Vs. State of Haryana, decided on 10.07.2012.

Thereafter, the land adjoining the river on the National Highway No.22 was acquired on 31.03.1987, which fell in Village Devi Nagar, for which, the market value was assessed @ Rs.250/- per sq.yards in CA-1074-2012, Om Prakash Vs. State of Haryana, shown at point 'F' in blue colour. The said portion of land also gives access to the road which leads to the new bridge crossing the river Ghaggar, which had been constructed in 1994 and which came in the statement of PW- 18, Rakesh Kumar, Patwari. The Youth Hostel and Golf Course, Cricket Stadium and the Sports Complex etc were developed in the said land which is adjoining Village Maheshpur, again situated on National Highway No.22 of which, land also was sought to be acquired in 1990, for the purpose of developing Sector 21.

A small stretch of land falling in Village Nada was then acquired on 05.04.1988 a portion of which also abuts National Highway shown at point 'G', for the purpose of construction of Commando Training Centre, whereby the landvalue was fixed @ Rs.332.50 per sq.yards and the SLP-3179- 2013, State of Haryana Vs. Santokh Singh, was dismissed on 01.07.2015 upholding the said amount.

The land in Village Fatehpur, Kundi shown at point 'I' was acquired on 29.01.1990, along with the balance land of Village Maheshpur, for development of Sector 20 and the land is situated towards the boundary of Punjab and again falling on the National Highway No.22 and the rate was finally pegged down @ Rs.394/- per sq.yards, in Ashok Kumar's case (supra)."

(65) A vain effort was also made to argue regarding the allotment rates of Mansa Devi to submit that market value was at Rs.1571/- per sq.yard (Ex.P8), which was allotted in auction bid on 22.10.1997. Similarly Ex.P12 dated 13.12.1993 wherein land had been sold @ Rs.2000/- per sq.meter of MDC @ Rs.22,84,000/-, which worked out @ Rs.1142/- per sq.meter and enhancement was liable to be given for the 6 years difference on the said amounts.

(66) Mr. Mahajan, on the other hand, submitted that out of the land which has been acquired 1/3rd of the land fell in Bhainsa Tibba of approximately 140 acres whereas the larger chunk of land of 482 acres was of Village Saketri and no sale deeds of Saketri had been exhibited. Admittedly, the amount awarded by the LAC for the two villages was also different and the onus lay upon the landowners and therefore, they were not entitled for uniform market value. Reliance upon sale deed (Exs.P15/D to P15/F) which were of 1 marla of land was opposed and it was submitted that the best exhibit i.e. Ex.P15/B could have been taken into consideration which is measuring 12 marlas. It is submitted that as per the site-plan itself, the sale deeds were of close vicinity and close to the abadi of Bhainsa Tibba at point B at Ex.PW20/B and the difference between the 2 lands from one end to the other was 3 kms. Therefore, appropriate cut was to be imposed on account of the location aspect and also on account of the development and the smallness of the plot. Resultantly, it was submitted that even if cumulative increase of 15% is given on it, the amount would work out at Rs.1202/- per sq. yard and the cut of 50% would work out @ Rs.601/- per sq. yard and Rs.396/- per sq. yard @ 67% and Rs.300/- per sq. yard @ 75%.

(67) Reliance was placed upon the judgments in ***RFA No.2680 of 2012 Ishar Singh*** *versus* ***U.T.*** Chandigarh decided on 11.02.2019 for the notification dated 01.10.2002 whereby market value has been assessed @ Rs.26,02,807/- on the basis of the sale deeds (Exs.P17 & P18) of June, 2000 in IT Park Chandigarh. It was submitted that the same was a relevant piece of evidence as admittedly, it has come on record that the land was adjoining each other especially the land of Saketri and the question of granting higher market value did not arise. Reliance was placed upon the sale deed dated 17.05.1996 (Ex.R5) to submit that 2 kanals 12 ½ marlas was sold @ Rs.8 lakhs per acre and even if 15% increase is given, the market value would not be more than Rs.11,51,920/-. Reliance was placed upon the market value fixed @ Rs.9,81,000/- per acre for the notification dated 11.09.1997, as per judgment ***R.M. Prashar*** *versus* ***State of Haryana*** (Ex.R11) to submit that itwas a relevant piece of evidence and also was pertaining to the same village.

Pleading and evidence of 3rd notification dated 02.06.1999

(68) The petition under Section 18 of the Act, in the case of ***Charan Kaur*** would go on to show that the claim of the landowners was that the market value had not been determined in accordance with

the principles laid down in Section 23 and amount is highly inadequate. The market value was Rs.10,000/- per sq. yard on account of the potentiality of the land for being used for residential and commercial purposes. Thus, the statutory benefits were also claimed in addition to the market value.

(69) The respondent No.2-Shri Mata Mansa Devi Puja Shrine Board, in its stand took the plea that the competent authority had fully complied with the provisions of the Act and rules, regulations and instructions of the Government. The Collector had awarded compensation after considering all relevant factors as well the potentiality of the land.

(70) PW-1 Sunita Sharma in her affidavit, stood by the averments made in the petition under Section 18 and averred that the land was surrounded by fully developed colony known as Jain Colony, H.P. Gas Agency, K.P. Sharma's farm and other commercial establishments and sheds. The land abutted to the main road leading to Mata Mansa Devi Shrine, which was at stone's throw distance. The land was situated at the foot of Shivalik Hills and was ideally located for the construction of educational institutions, residential houses and commercial activities. She had constructed a huge building over there and was running a school there upto 8th standard with a strength of 129 students, and, therefore, claimed compensation @ Rs.20,000/- per square yard. She was duly cross-examined regarding the recognizition of the school and the fact that land had been purchased by her father-in-law and she had not brought the relevant sale deeds etc.

(71) PW-2 Jarnail Singh deposed regarding the commercial market of Bhainsa Tibba comprising showrooms and other commercial establishments including Shemrock School. Valley Public School was also nearby Sector 4 and 5 of Mansa Devi Complex. The land was surrounded by fully developed sectors of HUDA and multi storeyed group housing societies and had great potentiality. In 1980-1981, the land had been acquired for the construction of the roads and the market value had been fixed @ Rs.120/- per square yard. HUDA was selling plots in the vicinity for the purpose of commercial establishments @ Rs.50,000/- per square yard for booths and showrooms. Reference was made to an Award dated 13.08.2001 (Ex.P5) passed in ***LA Case No.153 of 1999 Jarnail Singh*** *versus* ***Executive Engineer Bridge Const. Division and another*** pertaining to the notification dated 03.07.1998, whereby land measuring 1.48 acres was acquired for the purpose of link road from Saketri Mahadevpur Road to Shri Shiv

Mandir Nav Durga Charitable Trust Mahadevpur, wherein the market value had been fixed @ Rs.11,55,000/- per acre-, which was stated to be land at the dead end.

(72) PW-3, Dinesh Kumar, Head Draftsman, in the office of District Town Planner, Panchkula produced the development plan of Mansa Devi Urban Complex, Panchkula (Ex.P6), lay out plan of Sector, Mansa Devi Complex (Ex.P7) and demarcation plan of Mansa Devi Complex of Sector 5 (Ex.P8) alongwith Ex.P9 and Ex.P10 which were also produced. He stated that he had personally visited the acquired land and the surrounding sites. The Mansa Devi Complex was approved in theyear 1989 and Sector 4 was carved out and construction started thereon in 1990. Commercial belt of Swastik Vihar on the 80 meter wide road had been developed and construction had been raised in the year 1992-1993. He deposed that HUDA had demolished the shops situated on the Mansa Devi Temple road about four years back and now had constructed booths in the shopping centre.

(73) PW-4 Neelam Kumari, Registration Clerk, in the office of Sub-Registrar, Panchkula, proved the Collector rates and stated that minimum market value for registration of documents in Mansa Devi Complex Sector 4 was Rs.2,000/- per square meter in the year 1997-1998.For the year 2000-2001, the minimum market value had been fixed @ Rs.2800/- per square meter for residential plots and for commercial place (booth) it was Rs.60,000/- per square meter for Sector 7. For SCF in MDC Rs.20,000/- per square meter and for SCO Rs.12,000/- per square meter was the rate.

(74) Anil Kmar in his affidavit in affirmative while appearing as PW-5 deposed about the location of the land and stated that it was situated just on the outskirts of Manimajra and adjoining to the National Highway Chandigarh-Kalka and to the Motor Market, Manimajra. He deposed about the sale which had been taken of the plots and the fact that for village Judian Rs.250/- per square yard had been awarded 22 years earlier. In cross-examination he denied the suggestion that the land was not used for agricultural purpose and it was Banjar and uneven land. He admitted that the land had been acquired for the purpose of Dharamshala for the devotees of Mata Mansa Devi and not for any other purpose.

(75) PW-6 Suresh Kumar, Clerk in the office of Estate Officer, HUDA, Panchkula, proved the rates of the properties, which were auctioned and allotted in Sector 4, MDC, including the allotment letter dated 22.10.1997 (Ex.P11) for 438.75 square meters for a sum of Rs.27

lakhs. He also deposed about the allotment of plot measuring 2000 square meters in favour of President of Haryana Civil Secretariat Employees GHS Limited, vide allotment letter dated 13.12.1993 for a sum of Rs.22,84,000/- (Ex.P14). Similar deposition was also regarding allotment letter dated Ex.P15 dated 28.12.1993 of GH 34 in Sector 5, MDC in favour of the Secretary, Mangal Jyoti Cooperative GHS Limited at the cost of Rs.26,76,000/- for plot measuring 3000 square meters. Booth No.37, Sector 4 MDC measuring 22.687 square meters had been allotted through auction, vide allotment letter dated 05.07.1999 for aprice of Rs.4 lakhs (Ex.P28).

(76) PW-7 Harnek Singh, Halqa Patwari, brought the summoned record to submit that the some of the temple building was situated in the revenue estate of Bilaspur which was adjoining to village Bhainsa Tibba. He deposed about the acquisition and the award passed in the year 2000 for the Shamlat land of 5 acres and that the present acquired land was at a distance of 1.5 acres from the above said land which was acquired by Army. He also deposed that the cantonment area and forest land falls in between the acquired land and the above said 5 acres which was acquired by Army in the year 1997. The aforesaid land was on the outer boundaries, which was Gair Mumkin and adjoined the revenue estate of village Dara Khooni, which had already been acquired much before bythe Army. In cross-examination he admitted that the acquired land was Chahi and that it was uneven and non-cultivable. One side of Bilaspur, the acquired adjoined the Military area and it was also adjacent to the Mata Mansa Devi Temple. He also admitted that Sector-5 Mansa Devi Complex was not adjacent the acquired land and it was at a distance of more than half kilometer. There was no commercial site near the acquired land. One side of the acquired land was adjacent to a hilly area of the cantonment of Bilaspur. He denied the suggestion that the land was uneven and Banjar Qadim and was totally un-irrigated.

(77) PW-8 Faquir Chand, Patwari produced the notifications of the acquisitions as has been done in the second notification and, therefore, the same need not be discussed in detail. In cross-examination he stated that he made his deposition as per the record and he had no personal knowledge about notifications.

(78) PW-9 Jasbir Singh, Deputy Director (retd.), Horticulture deposed regarding the fruit bearing trees and super-structure for whichthe present Court had earlier fixed the compensation inter se the parties on an earlier occasion, which has become final. PW-10 Amar

Singh also deposed regarding the super-structure. Therefore, for the same reasons his evidence need not be discussed in detail, as is the statement of PW-11 Rinku Verma, Photographer.

(79) PW-12 Ram Niwas, Draftsman, proved the site plan (Ex.P67). The acquired land was shown in red colour in the copy of Aks Shijara. The land acquired by the Ministry of Defence in the year 1997 shamlat land was shown in blue colour. Mansa Devi Temple was shown in the green colour and the copy of Aks Shijara was exhibited as Ex.P68. He had also shown the SCO's and other residential area in Bhainsa Tibba. The shopping complex of Mansa Devi Shrine Board was opposite to the acquired land, in which booths had been constructed, which had been sold by HUDA @ Rs.50 lakhs or above measuring 28 square yards. Sector 5, MDC comprising of the House Building Societies and SCOs was on the other side of the railway line. The cantonment area adjoined on one side and Patiala Mandir and Gurudwara Bauli Sahib on the other side. The locations of other important locations were also shown in the site plan, Ex.P69 and that IT Park was around half kilometer from the acquired land. In cross-examination he stated that he obtained blue prints from the DTP, Panchkula of Mansa Devi Complex and Extension. He denied the suggestion that the land shown in Ex.P67 was not correct or that it was not as per the actual location.

(80) PW-13 Urmila Devi also deposed regarding the development of the land and the area. In cross-examination she stated that the distance of Mansa Devi Temple was half kilometer from the acquired land. Distance of Sector 5, MDC was about one kilometer and the distance of IT Park was 4-5 Kms. Multi storeyed flats of HUDA were at a distance of about 3/4th to 1 kilometer from the acquired land, which was plain and there were no pits. She stated that the market value of the acquired land in the vicinity was Rs.10,000/- per square yard. She denied the suggestion that the LAC had rightly awarded the compensation to the landowners.

(81) Similarly, Subhash Chand Batta submitted his affidavit in affirmative in the same line as PW-14. In cross-examination he submitted that 16 marlas of his land was acquired. Sector 5, MDC was at a distance of one kilometer, whereas IT Park was at a distance of 4-5 Kms from the acquired land. The Mansa Devi flats of HUDA were 4-5 Kms from the acquired land and the value was Rs.1 crore per acre for the agricultural land.

(82) PW-15 Gurdev Singh in his cross-examination denied

the suggestion that the land was uneven and not cultivable. He denied the suggestion that the acquired land was at a long distance from the land of HUDA and submitted that it was adjacent to the commercial area.

(83) The respondents examined RW-1, Rakesh Pahuja, Junior Engineer, Shri Mata Mansa Devi Shrine Board, Panchkula. He stated that the land had been acquired for the purpose of construction of Dharamshala, Bhandara building, Waiting Hall, Parking Place, Old Age Home, Sarai, Utility Services, Cloak Rooms, Information Centres, for the benefits of the devotees, who were coming for the Navratra Mela.

(84) In cross-examination he admitted that the acquired land abutted the road leading to Mansa Devi Temple while coming from Panchkula and fell on the left side, if coming from the temple. Thereafter, the Valley Public School and the railway line crossing was there. The whole of land did not fall on the old approach road and main portion of the land was deep inside towards Western Command boundary. He admitted that only a corner of the acquired land touchedthe railway line and on the other side of the railway line, Sector 5, MDC, Panchkula was located. He could not say whether it was fully developed and he had not brought the record of the acquired land. He admitted that on the right side of the temple, shopping complex was developed by HUDA. He could not say that booths had been sold @ Rs.51 lakhs. Bhainsa Tibba was stated to be at a distance of one kilometer and he admitted that the IT Park adjoins Sector 6, MDC Panchkula. The distance from IT Park was more than 3 Kms.

(85) RW-2 Aneeraj Sharma, Accountant, produced the supplementary award for building, structures and trees. RW-1 Rakesh Pahuja, Junior Engineer, Shri Mata Mansa Devi Shrine Board, Panchkula was recalled for cross-examination after the first remand and producedthe copy of the lay out plan Ex.R5 which also depicted the land of the present acquisition and the subsequent acquisition of 4 kanals 8 marlas, the lead case of which was ***Sucha Singh etc.*** *versus* ***State***.

(86) In cross-examination he deposed about 9 kanals 10 marlas of Bhainsa Tibba belonging to Mata Mansa Devi Shrine Board acquired by HUDA, vide notification dated 16.03.1999 and the pendency as such of the reference petition. In cross-examination he admitted that Sector 4 MDC was developed by HUDA before the acquisition and was across the intervening road. HUDA market

adjoined the acquired land and Sector 4, MDC was on the other side. He admitted that while entering from Chandigarh road towards the link road leading to MDC Panchkula and the acquired land, before the railway line, there were showrooms known as Swastik Vihar. Group Housing Society Flats in Sector 4 and 5 of MDC, Panchkula had also come prior to the acquisition.

(87) After the second remand, in the case of ***The Aakash Cooperative House Building Society*** *(supra)* decided on 14.11.2017, PW-19, Monica, Clerk in the office of Estate Branch, M.C. Chandigarh, was examined, as had been done in the second notification dated 16.03.1999 and, therefore, her evidence need not be discussed as the deposition is on the same terms.

(88) Similarly, Vipin Kumar, Junior Engineer, Division-1, HUDA, Panchkula was examined as PW-20, who proved attested copies of the lay out plan of Sector 6, MDC, Panchkula as Ex.PW20/1. The drawing of the roads and the sewerage etc. of Sector 5, MDC, Panchkula was proved as Ex.PW20/2. The entry road to MDC was marked as A and B which was connecting the Kalka-Chandigarh road as shown in Ex.PW20/2. The Fun Republic Cinema was stated to be near the vacant area abutting the Kalka-Chandigarh road. The acquired land was stated to be falling in Sector-5D of MDC, Panchkula, which was situated on the HUDA road from Manimajra to Mata Mansa Devi Mandir. Sector 5C, on the other side adjoined the railway line and that Sector 4, MDC was already developed before the year 1990 and commercial market fell in front of the same portion of the acquired land. The rear portion of the MDC adjoined the U.T. boundary.

(89) PW-21 Madan Lal, Patwari, Halqa Chandimandir proved the Aks Shijara Ex.PW21/A, wherein boundary of Bhainsa Tibba was shown at Point 'A'. The acquired land 56 acres 6 kanals 3 marlas was shown in green colour. The same also included another chunk of land of 4 kanals 8 marlas, which was acquired vide Award No.3 dated 27.05.2002, whichhad been shown in blue colour at Point 'B'. Point 'C' depicted the acquired land. The abadi of Bhainsa Tibba was shown at Point 'D'. The land of sale deed Ex.PW21/D was shown in yellow colour at Point 'E' in Ex.PW21/A. The land of sale deed Ex.PW21/E was shown in blue colour at Point 'F' and land of sale deed was shown in blue colour at Point 'G' in Ex.PW21/A. Similarly, land of sale deed Ex.PW21/G was shown at Point 'H'. Sale deed PW21/H was shown at Point 'F' already marked and shown in blue colour. The acquired land

abutted the main road from Manimajra to Mata Mansa Devi Temple. The temple was not shown in the Aks Shijara and fell in the revenue estate of Bilaspur, which was the adjoining village.

(90) PW-22 Karambir, Kanungo stated the land of Bhainsa Tibba had been acquired by notification under Section 4 dated 27.08.1981 (Ex.PW22/A) and notification under Section 6 dated 10.01.1993 was Ex.PW22/B, whereas award of said acquisition was exhibited as Ex.PW22/C. The market value had been assessed by this Court @ Rs.250/- per square yard. HUDA had developed Sectors 4 and 5, MDC and also acquired land of village Judian and Bhainsa Tibba. Vide subsequent notification dated 16.03.1999 (Ex.PW22/D), the land had been acquired from village Bhainsa Tibba and Saketri, which is the second notification and the Award dated 09.10.2003 was exhibited as Ex.PW22/F. He stated that his deposition was on the basis of the record.

(91) PW-23, Parveen Kumar Gupta, Assistant Town Planner, produced the copies of the lay out plan of Sector 5D acquired by Shri Mata Mansa Devi Shrine Board (Ex.PW23/A) to depose that the temple was shown at Point 'A' and the land was abutting the main road leading from Manimajra to Mata Mansa Devi Temple. The shopping complex of Sector 4 MDC, Panchkula was on the other side of the road at Point 'B' in Ex.PW23/A. Sectors 4 and 5 were already developed on the land of Bhainsa Tibba and Judian, which was acquired in the year 1989. The lay out plan of Sector 4, MDC, Panchkula was exhibited as Ex.PW23/B, which was done on the basis of drawing dated 27.11.1989. The commercial establishments on the Kalka-Chandigarh road were also mentioned, which were present prior to the present acquisition. Sector 5C HUDA adjoining Sector 5D and the layout plan of Sector 5C was Ex.PW23/D. The lay out plan of Sector 2 of village Saketri was Ex.PW23/F and the development plan of MDC Panchkula showing different sectors, roads and railway line was Ex.PW23/H. The commercial market of Sector 4, MDC, Panchkula was shown at Point 'E'. In cross-examination he stated that the boundaries of Bhainsa Tibba adjoins Judian, Manimajra and IT Park, Chandigarh. He could not tell the distance from the Motor Market to the Temple. He stated that he had deposed on the basis of the record and could not tell about the market value.

(92) PW-24, Gurdev Singh Sodhi stated about the location of the land and its potentiality. He produced various judgments of this Court and the Apex Court pertaining to the adjoining area. Land pertaining to

sale deed Ex.P79, was outside the *Lal Dora* was relied upon, as were sale deeds Ex.P80 and Ex.P99, whereby land had been purchased by Subhash Chander and his wife Bimla Rani, which was stated to be a part of the acquired land. In cross-examination he stated that the market value of Bhainsa Tibba and Judian was assessed @ Rs.250/- per square yard bythe High Court in the year 1983.

(93) PW-25, Ram Niwas, Architect proved Ex.PW25A site plan and highlighted the roads with orange colour and also highlighted the abadi of village Bhainsa Tibba and Saketri. The Motor Market including Fun Republic had been drawn and shown in Ex.PW25/A. The location as such of the land falling in Sector 5D was in front of the temple. The acquired land in ***Mansi's case*** *(supra)* was also shown at Point 'B' andthe acquired land was shown at Point 'X'. Similarly, the other acquired land of 4 kanals 8 marlas was shown in blue colour adjoining the present acquired land and shown at Point 'Z'. The abadi of Bhainsa Tibba and Saketri had been shown in pink colour and the developed portion was shown in the yellow colour, acquisition of which had been done in the year 1981 to 1983. Ex.PW25/C showed the market value as assessed by the judgments of this Court and the Apex Court, which had been prepared on the basis of personal knowledge of various revenue estates of Urban Estate Panchkula and MDC, Panchkula.

(94) Similarly, counsels for the landowners argued for enhancement of the market value on the same lines as argued for the notification dated 16.03.1999, excepting that the benefit of the difference of sale exemplars for the time gap be given. Reliance was again placed upon the same sale deed for 12 marlas of land sold on 23.04.1997 which was exhibited as Ex.PW21/D in the present case and which has also been relied upon by the Reference Court noticing that the market value would come to Rs.1151/- per sq.yard after giving the enhancement. Thereafter,a 50% cut had been applied on the same, to fix the market value @ Rs.576/- per sq.yard. State, represented through Mr. Sudeep Mahajan, on the other hand, stressed that the onus was upon the landowners to produce relevant sale exemplars of large tracts of land and having failedto do so cannot not fall back on small tracts of land.

Potentiality for the purposes of assessing the market value of the land in question:

(95) From the evidence which has been brought on record by the landowners if taken into consideration, keeping in view the site-plans

which have now been exhibited, a common factor which has to be kept in mind is the immense potentiality of the location of the acquired land and its potential to be exploited for urban usage. The land is situated on the northern portion of the planned city of Chandigarh, the capital of two states, Punjab & Haryana, just abutting Village Kishangarh, which is situated behind the Sukhna Lake. It has also come on record that the land of Villages Bhainsa Tibba and Saketri are adjoining each other. The development of Kishangarh by Chandigarh Administration though has taken place at a subsequent point of time since the acquisition is for the construction of the approach road of the Rajiv Gandhi Information & Technology Park and connected acquisitions which took place on 01.10.2002 & 20.02.2003, which were subject matter in Ishar Singh (supra). The Collector, in those cases, had also awarded a sum of Rs.7,35,056/- per acre for low-lying and uncultivated land, Rs.8,46,064/- per acre for low-lying cultivated land and Rs.10,50,080/- per acre for normal levelled land, for the first notification, which was enhanced toRs.12,60,096/- per acre by the Reference Court and has been further enhanced to Rs.26,02,807/- per acre, by this Court. Similarly, for the notification dated 20.02.2003, the LAC awarded Rs.10,58,080/- per acre, which is also in close range to what had been awarded by the LAC herein. The amount of enhancement by the Reference Court in ***Ishar Singh's case*** *(supra)* was Rs.22,66,700/- per acre, for the notification dated 20.02.2003 which has been enhanced to Rs.35,71,200/- per acre.

(96) The land which is now subject matter of acquisition is situated beyond Kishangarh and between the developed land of Panchkula town. On one hand, a portion of old Mani Majra town which is part of Chandigarh, touches its southern boundaries wherein the commercial complex in the name of Fun Republic/Dhillon Complex had come up on the main Highway, leading to Kalka-Shimla. The Motor Market at Mani Majra had been developed for commercial purposes by the Chandigarh Administration which has been shown on the site-plan (Exs.PW11/A, 11/B & 11/C at point E in Mansi's case). Commercial show-rooms were also shown at points H to I and J to K, which had been developed. The land of Swastik Vihar, Sector 5 MDC had been developed by HUDA for multi-storeyed housing projects apart from the commercial market which had been developed by a private builder duly licenced on the land of Village Bhainsa Tibba. The location of other land which had been acquired and the value assessed by this Court and by the Apex Court had already been brought on record as per the judgments (Exs.PY/1 to PY/2 and PX3 to PX9).

The potentiality, thus, has been exploited to its fullest extent by the State Government by developing the land which is closer to the National Highway in the form of Sector 5B at an earlier point of time.

(97) The evidence of PW1, Fakir Chand, in the second notification dated 16.03.1999, would go on to show that land of Bhainsa Tibba, Saketri and Judian had been acquired vide notification dated 20.01.1982 initially and thereafter, more land of Bhainsa Tibba had been notified on 23.04.1985 and 04.09.1997. The lands of Bhainsa Tibba had also been notified under Section 6 of 107.25 acres on 23.09.1975. The M-I road which leads from the main road from Chandigarh to Kalka had been developed by setting up showrooms with the link road on both sides which was 80 meters wide. The road from Mani Majra leads to Mansa Devi Temple and the only negative factor which lead to the lack of development of the land of Village Bhainsa Tibba was that there was a railway line bisecting its land. Therefore, the exploitation across the railway line at a later stage was the reason for the land being exploited subsequently. However, for the first notification dated 29.09.1997 in question, it has come on record that the land was situated behind the Mansa Devi Temple and it was 1 ½ kms from the abadi of the village. It has also come on record that the requirement, as such, was because it was for the use in the Cantonment area on the other side for which it was,thus, acquired for houses of the Defence personnel. But the land could not be assessed that easily on account of the fact that it was situated beyond the temple. Even between the acquired land and the temple there was a forest land situated and therefore, the land had certain locational disadvantages.

(98) Even prior to the present set of notifications, Sector 4 MDC Urban Estate had already been developed which would be clear from the statement of PW-7, Harnek Singh, Halka Patwari. Similarly, Draftsman, PW-9, Ram Niwas had also proved the lay out plan as Ex.P-26, showing the locations of the land acquired and the adjoining land. Sectors 4 & 5 had been developed prior to the present acquisition and booths were sold by HUDA close to the famous Mansa Devi Temple. Land for the group housing societies, as noticed, had been sold also which would be clear from the statement of PW-6, Suresh Kumar, Clerk from the Estate Office, HUDA in Sector 4 MDC on 13.12.1993 (Ex.P14) and on 28.12.1993 (Ex.P15), as per the evidence of the 3rd notification of many plots ranging between Rs.2000-3000/- sq.meters. Thus, there is no dispute regarding the potentiality of the land with its closeness to the developed area.

(99) Under Section 23 of the Act, the date of Section 4 notification is the relevant date to assess the prevalent market rate and the value of the acquired land, the closeness to the developed area and the land being level and close to the Highway, are plus and minus factors which are to be kept in mind and which would also be kept in mind by a willing purchaser. As noticed, the land of Villages Bhainsa Tibba and Saketri are also notified whereby restrictions under the Punjab New Capital (Periphery) Control Act, 1952 (Ex.R12) would apply and therefore, the potentiality of the land for being converted into building sites, cannot be lost sight of. The argument raised by the State Counsel that there was restriction on making actual construction, would not, as such, foreclose the right of the landowners to get the true market value, keeping in view the potentiality since the Division Bench has already discussed this aspect in **LPA-113-1978** titled ***Union of India*** *versus* ***Pritam Singh & others,*** decided on 15.02.1979 and in **RFA-1550-1977** titled ***Shri Ramu @ Ram Singh & another*** *versus* ***U.T. Chandigarh*** decided on 19.09.1979, wherein the provisions of the said Act were taken into consideration. Relevant portion of the judgment of the Division Bench reads as under:

> "It was also contended by the learned counsel for the appellant that according to the New Capital Periphery Control Act no piece of land could be utilised for a purpose other than the one to which it was already in use on the date of commencement of the Act. In view of the same it was stressed that the owners of land in dispute could not convert the agricultural land into building sites. Therefore, these lands cannot be evaluated as potential building sites. The perusal of this Act shows that the only limitation placed on the lands within the periphery of Chandigarh, as laid down therein, was that the permission of the Capital Project Authorities had to be obtained for making any construction. Besides, though there may be a restriction on making actual construction under the rigours of the Act, but the development of the city of the Chandigarh could not in any way prevent the adjoining lands from being converted into potential buildings sites."

(100) The said view was followed in ***Raj Kumar & others*** *versus* ***Punjab State & another***[6] wherein, the plea taken was that the

[6] 1990 (1) PLR 662

Urban Land (Ceiling & Regulation) Act, 1976 would dampen the price of the acquired land in the open market as the user of the land could not be changed without prior permission of the concerned authority. Accordingly, it was held that it could not be said that the future potential of the acquired land had been frozen for agricultural purpose and it could not be sold to any other person for residential or commercial purposes. Resultantly, fall back was made upon the observations of the Division Bench and the findings of the Reference Court, who had failed to grant enhancement, as such, was set aside.

(101) Thus, the argument of the State Counsel, counsels for HUDAand Mata Mansa Devi Shrine, that on account of the restrictions of the land use, there is no potentiality in the land, is not liable to be accepted and is without any basis. The Apex Court in ***General Manager, Oil & Natural Gas Corporation Ltd.*** *versus* ***Rameshbhai Jivanbhai Patel***[7] has held that rapid development and high demand in some pockets in big cities results to major enhancement and escalation in the market value which may vary from 30-50%, especially during the nineties. Relevant portion of the judgment reads as under:

> "11. Primarily, the increase in land prices depends on four factors - situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi- urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during the nineties. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of

[7] 2008 (14) SCC 745

lands in the rural areas. Therefore if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are specialreasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same.

a. Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisition), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on-sale transactions/acquisitions precedes the subject acquisition by only a few years, that is upto four to five years. Beyond that itmay be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the `rate' of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase.

b. Much more unsafe is the recent trend to determine the market value of acquired lands with reference to future sale transactions or acquisitions. To illustrate, if the market value of a land acquired in 1992 has to be determined and if there are no sale transactions/acquisitions of 1991 or 1992 (prior to the date of preliminary notification), the statistics relating to sales/acquisitions in future, say of the years 1994-95 or 1995- 96 are taken as the base price and the market value in 1992 is worked back by making deductions at the rate of

> 10% to 15% per annum. How far is this safe? One of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices. Let us illustrate. Let us assume there was no development activity in a particular area. The appreciation in market price in such area would be slow and minimal. But if some lands in that area are acquired for a residential/commercial/industrial layout, there will be all round development and improvement in the infrastructure/amenities/facilities in the next one or two years, as a result of which the surrounding lands will become more valuable. Even if there is no actual improvement in infrastructure, the potential and possibility of improvement on account of the proposed residential/ commercial/ industrial layout will result in a higher rate of escalation in prices. As a result, if the annual increase in market value was around 10% per annum before the acquisition, the annual increase of market value of lands in the areas neighbouring the acquired land, will become much more, say 20% to 30%, or even more on account of the development/proposed development. Therefore, if the percentage to be added with reference to previous acquisitions/sale transactions is 10% per annum, the percentage to be deducted to arrive at a market value with reference to future acquisitions/sale transactions should not be 10% per annum, but much more. The percentage of standard increase becomes unreliable. Courts should therefore avoid determination of market value with reference to subsequent/future transactions. Even if it becomes inevitable, there should be greater caution in applying the prices fetched for transactions in future. Be that as it may."

(102) The manner in which the State has chosen to preserve the land for its potentiality and use by issuing notifications selectively while developing portions further away from Chandigarh would go on to show that it had immense potential and wanted to use it for its development, subsequently. Its peculiar features and the way development has been done by pincer movement for Panchkula, had

already been noticed on an earlier occasion by this Court in ***Lokinder Singh's*** *case (supra)* wherein the land had been acquired vide notification dated 04.05.1995 for Villages Jhuriwala, Bana Madanpur and Nada, which have contributed to the development of Panchkula town which were much further away from Chandigarh and closer to Ghaggar River and also across. The potentialityaspect is a factor which is to be kept in mind though the usage of the land is not to be taken into consideration, as per Clause (3) of Section 24 of the Act. The Apex Court in ***Raghubans Narain Singh*** *versus* ***U.P. Government through Collector of Bijnor***[8] has held that the pace of progress and whether the buildings can be put up on the land acquired, were some facts which had to be kept in mind. The distance between built-in land and the land which has been acquired and the overall picture drawn up had to be the factor as per the evidence on record and whether the neighbourhood was developing in the direction of the acquired land.

(103) In ***Suresh Kumar*** *versus* ***Improvement Trust, Bhopal***[9] this aspect of the proximity to the developed urban land and the potentiality of the land for being used for building purposes, were the relevant factors. The market value, thus, had to be assessed on the basis that there is no enrichment of the buyer and neither the landowner should be deprived of the true market value, on account of the principle of Eminent Domain. Relevant portion of the judgment reads as under:

> "9. It is true that the market value of the land acquired has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. Dr. Singhvi argues that failing to consider potential value is an error of principle. It is an accepted principle as was laid down in Narayana Gajapatiraju v. Rev. Divisional Officer, AIR 1939 PC 98 that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to obtain from willing purchaser. The disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy it must alike be disregarded. Neither must be considered as acting under compulsion. The value of the land is not to be estimated at its value to the purchaser but

[8] 1967 (1) SCR 489
[9] 1989 (2) SCC 329,

this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion, may always be taken into consideration for what it is worth. Any sentimental value for the vendor need not be taken into account. The vendor is to be treated as a vendor willing to sell at the market price. Section 23 of the Land Acquisition Act, 1894, enumerates the matters to be considered in determining compensation. The first to be taken into consideration is the market value of the land on the date of the publication of the Notification under Section 4(1). Market value is that of a willing vendor and a willing purchaser. A willing vendor would naturally take into consideration such factors as would contribute to the value of his land including its unearned increment. A willing purchaser would also consider more or less the same factors. There may be many ponderable and imponderable factors in such estimation or guess work. Section 24 of the Act enumerates the matters which the Court shall not take into consideration in determining compensation. Section 25 provides that the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11. As was observed in N. Gajapatiraju (supra) sometimes, it happens that the land to be valued possesses some unusual, and it may be unique features, as regards its position or its potentiality. In such a case the court has to ascertain as best as possible from the materials before it what a willing vendor might reasonably expect to obtain from a willing purchaser, for the land in that particular position and with that particular potentiality. In the instant case also the acquired land possesses some important features being located within the Corporation area and its potentiality for being developed as a residential area. In such a situation in determining its market value, where there was no sufficient direct evidence of market price, the Court was required to ascertain as, best as possible from the materials before it, what a willing vendor would reasonably have expected to obtain from a willing purchaser from the land in this particular position and with this particular potentiality. It is an accepted principle that the land is not to be valued, merely by reference to the use to

which it has been put at the time at which its value has to be determined that is the date of the notification under Section 4, but also by reference to the use to which it is reasonably capable of being put in the future. A land which is certainly or likely to be used in the immediate or reasonably near future for building purposes but which at the valuation date is waste land or has been used for agricultural purposes, the owner, however willing a vendor he is, is not likely to be content to sell the land for its value as waste or agricultural land as the case may be. The possibility of its being used for building purposes would have to be taken into account. However, it must not be valued as though it had already been built upon. It is the possibilities of the land and not its realised possibilities that must be taken into consideration. In other words, the value of the land should be determined not necessarily according to its present disposition but laid out in its lucrative and advantageous way in which the owner can dispose it of. It is well established that the special, though natural adaptability of the land for the purpose for which it is taken, is an important element to be taken into consideration in determining the market value of the land. In such a situation the land might have already been valued at more than its value as agricultural land, if it had any other capabilities. However, only reasonable and fair capabilities but not far-fetched and hypothetical capabilities are to be taken into consideration. In sum, in estimating the market value of the land all of the capabilities of the land, and all its legitimate purposes to which it may be applied or for which it may be adapted are to be considered and not merely the condition it is in and the use to which it is at the time applied by the owner. The proper principle is to ascertain the market value of the land taking into consideration the special value which ought to be attached to the special advantage possessed by the land : namely, its proximity to developed urbanized areas.

10. The value of the potentiality has to be determined on such materials as are available and without indulgence in fits of the imagination. In ***Mahabir Prasad Santuka v. Collector, Cuttack,*** 1987(1) SCC 587 the evidence on record was that the land was being used for agricultural purposes but it was fit for nonagricultural purposes and it had potentiality for

> future use as factory or building site and that on industrialisation of the neighbouring areas the prices increased tremendously, and that aspect, it was held, could not be ignored in determining compensation."

(104) In the present case, the acquisitions are of the years 1997 to 1999 and the landowners were still seeking adequate compensation which is being received by them in driblets on account of repeated remands inspite of the fact that the land had all the potential of being urbanized. Therefore, the principles laid down in ***Udho Dass*** *versus* ***State of Haryana***[10] would come into play that the payment of compensation is still being contested by the landowners and the State, for almost 20 years. Relevant portion of the judgment reads as under:

> "17. The land was notified for acquisition in May 1990. The collector rendered his award in May 1993 awarding a sum of Rs.2,00,000/- per acre. The Reference Court by its award dated January 2001 increased the compensation to Rs.125 per square yard for the land of the road behind the ECE factory andRs.150 per square yard for the land abutting the road which would come to Rs.6,05,000/- and Rs.7,26,000/- respectively forthe two pieces of land. This itself is a huge increase vis-a-vis the Collector's award. The High Court in First Appeal by its judgment of 24th September 2007 enhanced the compensation for the two categories to Rs.135 and 160 respectively making it Rs.6,53,400/- and Rs.7,74,400/. In other words, this is the compensation which ought to have been awarded by the Collector at the time of his award on 12th May 1993. This has, however, come to the land owner for the first time as a result ofthe judgment of the High Court which is under challenge in this appeal; in other words, a full 17 years from the date of Notification under Section 4 and 14 years from the date of the award of the Collector on which date the possession of the landmust have been taken from the landowner.
>
> 18. Concededly, the Act also provides for the payment of the solatium, interest and an additional amount but we are of the opinion, and it is common knowledge, that even these payments do not keep pace with the astronomical rise in prices in many parts of India, and most certainly in North

[10] 2010 (12) SCC 51

> India, in the land price and cannot fully compensate for the acquisition of the land and the payment of the compensation in driblets. The 12% per annum increase which Courts have often found to be adequate in compensation matters hardly does justice to those land owners whose land have been acquired as judicial notice can be taken of the fact that the increase is not 10 or 12 or 15% per year but is often upto 100% a year for land which has the potential of being urbanized and commercialized such as in the present case. Be that as it may, we must assume that the landowners were entitled to the compensation fixed by the High Court on the date of the award of the Collector and had this amount been made available to the landowners on that date, it would have been possible for them to rehabilitate their holdings in some other place. This exercise has been defeated for the simple reason that the payment of compensation has been spread over almost two decades."

(105) Resultantly, once the land which was situated by side of an residential belt and was capable for use of such as non-agricultural purpose, it necessarily has to be treated as non-agricultural land for determination of compensation. The location of land that was sandwiched between two major urban areas can, thus, be highlighted and, therefore, it can be safely concluded that it was urbanizable land situated near developed villages with close access to all infrastructure facilities. Reliance can be placed upon the judgment in ***Anjani Molu Desai*** *versus* ***State of Goa and another***[11] which was followed by the Apex Court in ***Special Land Acquisition Officer and another*** *versus* ***M.K Rafiq Saheb***[12] regarding this aspect, which has to be kept in mind.

(106) To meet the arguments of the State Counsel that uniform compensation should not be granted on account of the fact that the landof Village Bhainsa Tibba was better situated and the bulk land comprised of Saketri wherein as much as 747 acres of land had been acquired, in comparison to 140 acres, need not detain this Court for long. This Court has examined the location of the land. It is to be noticed and kept in mind the potentialities of the land of Bhainsa Tibba though closer to the developed estate of Panchkula, has its own peculiar

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[11] 2010 (13) SCC 710
[12] 2011 (7) SCC 714

advantages but on the other hand, land of Village Saketri has another peculiar advantage, to the extent that it is adjoining and abuts Chandigarh and next to Village Kishangarh. The principles of assessment of uniform compensation were dealt by the Apex Court in ***Haridwar Development Authority, Haridwar*** *versus* ***Raghubir Singh and others***[13]. The issue whether belting system should be adopted while assessing the market value, was the issue and the relevant part reads under:

> "6. The question whether the acquired lands have to be valued uniformly at the same rate, or whether different areas in the acquired lands have to be valued at different rates, depends upon the extent of the land acquired, the location, proximity to an access road/Main Road/Highway or to a City/Town/Village, andother relevant circumstances. We may illustrate:
>
> (A) When a small and compact extent of land is acquired and the entire area is similarly situated, it will be appropriate to value the acquired land at a single uniform rate.
>
> (B) If a large tract of land is acquired with some lands facing a main road or a national highway and other lands being in the interior, the normal procedure is to value the lands adjacent to the main road at a higher rate and the interior lands which do not have roadaccess, at a lesser rate.
>
> (C) Where a very large tract of land on the outskirts of a town is acquired, one end of the acquired lands adjoining the town boundary, the other end being two to three kilometres away, obviously, the rake that is adopted for the land nearest to the town cannot be adopted for the land which is farther away from the town. In such a situation, what is known as a belting method is adopted and the belt or strip adjacent to the town boundary will be given the highest price, theremotest belt will be awarded the lowest rate, the belts/strips of lands falling in between, will be awarded gradually reducing rates from the highest to the lowest.
>
> (D) Where a very large tract of land with a radius of one to two kilometres is acquired, but the entire land acquired is

[13] 2010 (11) SCC 581

far away from any town or city limits, without any special Main road access, then it is logical to award the entire land, one uniform rate. The fact that the distance between one point to another point in the acquired lands, may be as much as two to three kilometres may not make any difference"

(107) In the considered opinion of this Court, the belting method, as proposed under Category-C, would be applicable, in the facts and circumstances, as one end of the acquired land is closer to the outskirts of Chandigarh area known as Mani Majra whereas the other portion comes closer to the Sukhna Lake, which is over-looking Chandigarh. The potentiality, as such, of the said land of Saketri which is situated on the north-eastern end of Chandigarh and therefore, cannot be lost sight of, though it might be further away from Bhainsa Tibba but closer to Chandigarh and its posh northern sectors, in comparison to Village Bhainsa Tibba. Therefore, having been acquired for the same purpose of development of residential and commercial sectors 1,2,3,5A,5B and 6 of Mansa Devi Complex, a different rate of compensation is only liable to be awarded for the land of Bhainsa Tibba which falls across the railway line and towards the more developed portion of Mani Majra Motor Market and the Fun Republic/Dhillon Complex. Therefore, this Court will grant additional compensation to the land of village Bhainsa Tibba, which is adjoining Mani Majra and does not have the disadvantage of the railway line, which is a man-made barrier, as it cannot be crossed exceptat designated points. At the time of acquisition, it could only be accessed through a manned railway crossing, which has now been converted into an under-pass, which would be clear from the cross-examination of PW- 11, Surlekh Singh, in the evidence led for the notification dated 16.03.1999. The potentiality of the land, thus, had also been recognized by the Government itself once it has built an under-pass to get over the said barrier of the railway line and to connect the other portion of Bhainsa Tibba and the Mata Mansa Devi Temple and to give it easy accessibility from the main road and the Highway from Chandigarh to Shimla.

Reasoning for assessing the market price for the notification dated 29.09.1997

(108) The peculiarity of the location of the land is to be noticed from the site-plans also which have now been brought on record as Exs.PW11/A, PW11/C, PW14/A & PW14/B. It is not disputed that this land is tucked away behind the Mata Mansa Devi Temple. The

location, as such, is at a dead end and the only advantage being to the acquiring authority was that it was contiguous to the Defence area known as Chandimandir Military Station and access to this portion from the other side of Chandi Mandir is restricted. The only approach was from the Mata Mansa Devi Temple which was also at a considerable distance of 1 km. At the time of acquisition, the land also fell on the northern side of the Railway track due to which access to this portion and to the Mandir was also over a manned Railway crossing. The potentiality at the time of acquisition, thus, cannot be said to be exceptional, in any manner. It is settled principle that land closer to the developed portion always fetches more value on account of its potentiality to be developed for residential and commercial purposes. Exs.P4 and P5 (Ex.P10/B) are located right next to the abadi of Bhainsa Tibba and therefore, would command much higher value. The chart in Para Nos.38 & 39 would go on to show that Exs.P2 to P4 are in a uniform band-width ranging from Rs.846 to Rs.916/- are of the same month of April and if the average of Exs.P2 toP4 is taken, the same would work out to Rs.890/- per sq.yard. Even on that, a cut is liable to be imposed as the land acquired is 5 acres 4 kanals and 3 marlas and not as potentially situated as Exs.P2 to P4. Reference Court also had rightly relied upon the Nakha Najri which also goes on to show that the location of Exs.P7 to P9 which were sold to the Corporation/Housing Societies were at a considerable distance. Ex.P8 which is also closer to the acquired land, its value is also in the range of Rs.12 lakhs per acre and therefore, there is considerable merit in the argument of counsel for Union of India.

(109) Thus, this Court is of the opinion that as laid down by the Apex Court in ***Major General Kapil Mehra*** *versus* ***Union of India***[14] that averaging may be resorted to where the sale exemplars are in a narrow band-width and the fact that the sale deeds (Exs.P2 to P4) range between Rs.846/- to Rs.916/- per sq. yard, in comparison to the sale deeds (Exs.P5 and P10/C) wherein the market price has doubled the amount being Rs.1653-1984/- per sq. yard, within a period of 4 months. The said sale exemplars are also of smaller plots of 3 marlas and 1 marla in comparison and therefore, are liable to be ignored for that purpose. Similarly also on account of the fact that vendors/vendees had not been examined except of sale deed dated 27.08.1997 of 1 marla to prove the said sale deeds and expose themselves to cross-examination regarding the peculiar features which governed higher

[14] 2015 (2) SCC 262

rate though under Section 51A of the Act, the said sale deeds may be taken into consideration. However, the Constitutional Bench of the Apex Court in ***Cement Corporation of India Ltd.*** *versus* ***Purya***[15] has held that the Court can take into consideration various factors as to why it should not rely upon the said sale deeds.

(110) The sale deed dated 27.08.1997 of one marla of land for Rs.60,000/- is not liable to be accepted on account of the fact that the area is miniscule and secondly it does not seem to be a bona fide sale transaction as the market value is at great variance and more than double qua the other sale deeds executed within 4 months and the reasons given by the Reference Court on an earlier occasion that it was sham transaction, cannot be held to be unjustified in any manner. It was rightly noticed that the sale deed on one part of the acquired land was of Subhash Chander, the claimant being owner of the other portion of the land and what was the need for him to purchase such a small portion of land when he was already owner of a larger chunk of land. This is apparent keeping in view the upsurge in the market value and therefore the said sale transaction cannot be taken into consideration for working out the average as it is settled principle that only bona fide sale transactions areto be kept in mind.

(111) Keeping in view the above factors, this Court is of the opinion that taking average of Exs.P2 to P4, which are sale exemplars in close vicinity of the abadi of Bhainsa Tibba, would be a safer method. Resultantly, by taking the base price as Rs.890/- per sq.yard, this Court is of the opinion that 30% cut is liable to be applied on account of smallness of the sale exemplars which are ranging between 4 marlas to 12 marlas, in comparison to the land which has been acquired, which is over 5 acres. Similarly, 30% development cut has to be put in view of the law laid down by the Apex Court in ***Lal Chand*** *versus* ***Union of India***[16] wherein a 40% cut was applied by reducing the cut applied by the High Court, from 60% to 70%. Relevant portion of the judgment reads as under:

"34. But when the market value of such small plots intended or non-agricultural purposes is made the basis for determining the market value of large tracts of agricultural lands, it is necessary to make an appropriate deduction towards `development' factor. The evidence shows that the acquired lands were at the relevant time (1981) in a rural

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[15] 2004 (8) SCC 270
[16] 2009 (15) SCC 769

area on the outskirts of Delhi, with access to roads and services nearby. In fact the Municipal Corporation of Delhi, within a few months after the acquisition, issued a notification dated 23/4/1982, under section 507(a) of Delhi Municipal Corporation Act, 1957 declaring that Rithala in the northern zone of Delhi shall cease to be a rural area. The appellants have also let in evidence to show that the acquired lands were situated in an area having a potential for development for residential use. The policy resolution dated 27.12.1980 of Delhi Development Authority in regard to development of Zones H7 and H8 (Rohini Scheme) in North-West Delhi shows that the area was earmarked for fast urban development. Somefacilities like roads, water, electricity had reached the area in a limited manner. Therefore, the appropriate deduction towards development, needs to be only 40% instead of the higher standard percentage of 60% to 70%."

(112) Similarly, in ***Trishala Jain and another*** *versus* ***State of Uttaranchal and another***[17] the said principle was followed and in ***Valliyammal & another*** *versus* ***Special Tehsildar (Land Acquisition) & another***[18] the 40% cut towardsdevelopment was reduced to 1/3rd, on account of development charges.

(113) In ***Union of India*** *versus* ***Dyagala Devamma***[19] the 50% cut towards development charges was restored against the 25% cut which had been put by the High Court on account of the fact that the sale exemplars were relating to small pieces of land. Relevant portionof the judgment reads as under:

> "23) Keeping in mind the aforementioned principles, when we take note of the facts of the case at hand, we find that firstly, the land acquired in question is a large chunk of land (101 acres approx.); Secondly, it is not fully developed; Thirdly, the respondents (landowners) have not filed any exemplar sale deed relating to large pieces of land sold in acres to prove the market valueof the acquired land; Fourthly, exemplar relied on by he respondents, especially Ex.P18 pertains to very small pieces of land (19 guntas); Fifthly, the three distinguishing features noticed in the land in sale deed(Ex.P18) are not present in the acquired land.

[17] 2011 (6) SCC 47
[18] 2011 (10) SCR 293
[19] 2018 AIR SC 3511

> 24) It was for the aforementioned reasons, in our opinion, the Reference Court was justified in making deduction of 50% towards developmental charges from the market value. The High Court, in our opinion, did not assign any good reason as to why and on what basis, it considered proper to make deduction towards developmental charges at the rate of 25% in place of 50%."

(114) In ***Vithal Rao & another*** *versus* ***Special Land Acquisition Officer***[20] the Apex Court held that cut on the sale exemplars can go upto 10-86%, keeping in mind the fact that similar pieces of land had been taken into consideration and that development cut had also to be imposed. Relevant portion of the judgment reads as under:

> "28) These principles are invariably kept in mind by the Courts while determining the market value of the acquired lands (see also ***Union of India*** versus ***Raj Kumar Baghal Singh (Dead) Through Legal Representatives & Ors***. (2014) 10 SCC422).
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> 29) In addition to these principles, this Court in several cases have also laid down that while determining the true market value of the acquired land and especially when the acquired land is a large chunk of undeveloped land, it is just and reasonable to make appropriate deduction towards expenses for development of acquired land. It has also been consistently held that at what percentage the deduction should be made vary from 10% to 86% and, therefore, the deduction should be made keeping in mind the nature of the land, area under acquisition, whether the land is developed or not and, if so, to what extent, the purpose of acquisition, etc. It has also been held that while determining the market value of the large chunk of land, the value of smaller piece of land can be taken into consideration after making proper deduction in the value of lands and when sale deeds of larger parcel of land are not available. This Court has also laid down that the Court should also take into consideration the potentiality of the acquired land apart from other relevant considerations. This Court has also recognized that the Courts can always apply reasonable amount of

[20] (2017) 8 SCC 558

guesswork to balance the equities in order to fix a just and fair market value in terms of parameters specified under Section 23 of the Act. (***See Trishala Jain & Anr.*** versus ***State of Uttaranchal & Anr., (2011) 6 SCC 47)***

30) Keeping the aforementioned principles in mind when we take note of the facts of the case at hand, we find that firstly, the land acquired in question is a large chunk of land (30 acres approx.); Secondly, the purpose of acquisition is "Establishment of Rehabilitation Centre"; Thirdly, it is situated within the municipal limits; Fourthly, its one side is abutting the main district road (MDR); Fifthly, it is not fully developed; Sixthly, some buildings have come up in its near proximity; Seventhly, the appellants(land owners) have not filed any exemplar's sale deeds relating to large piece of land sold in acres to prove the market value of the acquired land; Eighthly, all sale deeds relied on by the appellants pertain to very small piece of land such as, 25x55ft., 40x20ft., 40x40ft., 12x45ft, 30x40ft., 12x45ft., 60x60ft., 10x65ft., 50x65ft., 40x65ft. and 29x49ft. whereas the land acquired, as mentioned above, is quite large (30 acres); Eighthly, the price at which these small plots were sold is Rs.85/- per sq. ft., Rs.70/- per sq. ft., Rs.80/- per sq. ft., Rs 69/- per sq. ft., Rs. 55/- per sq. ft., Rs. 64/- per sq. ft., Rs. 65 per sq. ft., Rs. 100/- per sq. ft., and Rs.218/- per sq. ft.,; Ninthly, these eleven plots were sold prior to the date of acquisition (2000, 2001 and 2002) whereas the acquisition was in the year 2003; Tenthly, the small parcel of lands sold under these sale deeds are situated in near proximity of the acquired land and some werepart of the acquired land; Eleventhly, all the eleven sale deeds are held bona fide and proper and lastly, these sale deeds, therefore, can be relied on for determining the proper market value of the acquired land."

(115) Similar is the view taken in ***Chandrashekar*** *(supra)* whereby the cut had been approved upto 75%. Resultantly, this Court is of the opinion that 30% cut is to be applied for development charges and another 25% on account of smallness of the sale exemplars and another 12% on account of the locational disadvantages, as admittedly, Exs.P2 to P4 are situated in close vicinity of the village abadi. The evidence has already been discussed in detail in ***Mansi's***

case, pertaining to the first notification and the fact that the land is situated behind the temple and between the land, there is forest land. Therefore, the landowners cannot ask for the market value of the land which is closer to the developed portion. As noticed, land of Village Bhainsa Tibba is also situated across the railway line and the market value has to be reduced in proportion to the distance from the developed portion, correspondingly. Resultantly, 67% cut is put on Rs.890/-, after taking into account Exs.P2 to P4 and the value thus works out to Rs.294/- per sq. yard (Rs.14,22,960/- per acre). Resultantly, the appeals filed by Union of India are accepted to that extent and those of the landowners are dismissed.

Reasons for assessment of the market value for second notification dated 16.03.1999

(116) The notification in question being 16.03.1999 and the sale deeds as reproduced in para No.63 dated 29.07.1996 and 06.02.1996 (Exs.P15/E & P15/F) being of 1 marla and thus miniscule and 3 years prior in time, are liable to be discarded. Even otherwise, the 2 sale deeds create discrepancy amongst themselves since there is variation of Rs.400/-per sq. yard of the market value, which were executed just 5 months apart. Similarly, sale deed (Ex.P-15/D) is liable to be discarded on account of being just one marla again and the land being acquired is of very large chunk of over 600 acres. The relevant sale deed would, thus, only be Ex.PW15/B, which is equivalent to Ex.P4, in ***Mansi's*** *case* (the first notification). The other 2 sale deeds in ***Mansi's*** case (Exs.P2 & P3) have not been exhibited by the landowners in the present case, but since it has also come on record in the connected matters and are relevant piece of evidence, this Court also adopts the principle of averaging as resorted to in the first notification, to fix the market value @ Rs.890/- per sq.yard, in April, 1997.

(117) For the difference of 11 months, the landowners are entitled for the benefit of 11% enhancement on Rs.890/-, the value of which would work out to Rs.1110/- per sq.yard. A 55% cut, as applied on the first notification, would also be applicable whereas on account of the locational advantage, the land being closer to the village of Bhainsa Tibba where the sale deeds are also located and the 12% cut has not to be applied, the market value would thus work out to Rs.500/- per sq.yard (Rs.24,20,000/- per acre). The appeals of the State are accordingly, partly allowed. However, certain portion of land for the said notification falls across the railway line, as per the site-plan, Ex.P26 and falling in Sector 5B; for that, additional 12% benefit has

to be granted, which works out the amount to Rs.2,90,400/-. Therefore, the market value for the land across the railway line towards Mani Majra and Chandigarh shown in Ex.P26, is valued @ Rs.27,10,400/- per acre (Rs.560/- per sq.yard) and the appeals of those landowners are partly allowed.

Reasoning for assessment of the third notification dated 02.06.1999

(118) The relevant sale deeds of the third notification are as under:

Exhibit	Location	Area	Date of sale	Sale considera-tion	Rate per sq. yard	Rate up dated with 12% PA increase
PW21/D	Bhaisa Tibba	12 Marla	Vide Sale No.210/1 dated 23.4.1997	3,30,000	909	1151
PW21/E	Bhaisa Tibba	3 Marla	Vide Sale No.1975/1 dated 27.08.1997	1,50,000	1653	2037
PW21/G	Bhaisa Tibba	1 Marla	Vide Sale No.574/1 dated 29.7.1996	45,000	1488	2053
PW21/H	Bhaisa Tibba	1 Marla	Vide Sale No.1809/1 dated 06.02.1996	32,500	1074	1569

(119) The said sale deeds are the same sale deeds which have been exhibited in the earlier 2 notifications. The sale deeds (Exs.P21/G and 21/H) are only of 1 marla and earlier in point of time and therefore, liable to be discarded. The 2 sale deeds which would be relevant are Exs.P21/D & P21/E which are common from the earlier notification. Even amongst the same, there is a difference of over Rs.1000/- per sq. yard since one is for Rs.909/- per sq. yard whereas the other one is Rs.1953/- per sq. yard. As noticed, this Court had taken the average of the relevant sale deeds of the same village to work out the market value @ Rs.890/- per sq. yard and therefore, the same principle is adhered to. Keeping in view the fact that the sale deeds are 25 months apart, the benefit of 12% enhancement forthe first year and 13% enhancement

for the second year, cumulative, has to be applied, to work out the market value @ Rs.1126/- per sq. yard. A 30% cut on account of development charges and 25% cut on account of smallness, reduces the market value @ Rs.507/- per sq. yard. Resultantly, a sum of Rs.24,53,880/- per acre is the market value assessed for the third notification and the appeals of the State are allowed and those of the landowners are dismissed.

(120) The claim of the landowners for the market value on allotment rates of developed plots of Sector 4 MDC (Ex.P8) is without any basis, since it is settled principle that the plots allotted in auction do not give the correct market value, as such, as it has an element of competition in it. The said plots being allotted after proper development, as such, would not be giving the correct market value. Reliance can be placed upon judgment of this Court in ***RFA-2373-2010*** titled ***Madan Pal (III)*** *versus* ***State of Haryana & another, decided on 09.03.2018,*** wherein reliance was placed upon the judgment of the Apex Court in ***Ranvir Singh and others*** *versus* ***Union of India***[21], ***Raj Kumar and others*** *versus* ***Haryana State and others***[22] ***K.R. Mohan Reddy*** *versus* ***M/s Net Work Inc Rep. th. M.D***[23] and ***Karnataka Housing Board*** *versus* ***Land Acquisition Officer, Gadag and others***[24]. The said principle was approved by the Apex Court in ***Wazir & others*** *versus* ***State of Haryana***[25].

(121) Similarly, reliance upon Ex.R11, the judgment in ***R.L. Parashar*** *(supra)* would be of no help to the State, for the notification dated 11.09.1997, wherein Rs.9,81,000/- had been fixed as market value since the said judgment was subject matter of Regular First Appeal, which was, thereafter, converted into Public Interest Litigation. A perusal of the same would go on to show that no sale deed, as such, were exhibited by the landowners and the Reference Court had relied upon the sale deeds provided by the State, to uphold the award of the LAC @ Rs.9,81,000/- per acre. It is settled principle that if the landowners can produce better evidence, they are to be granted higher compensation and they cannot be prejudiced on account of other landowners having failed to lead adequate evidence. Reliance

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[21] 2005 (12) SCC 59
[22] 2007 (7) SCC 609
[23] 2007 (10) SCR 872
[24] 2011 (2) SCC 246
[25] 2019 (1) Scale 364

can be placed upon the observations of the Apex Court in ***Manoj Kumar & others*** *versus* ***State of Haryana & others***[26]. Relevant portion of the judgment reads as under:

> "15. 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 unequal's. As per situation of a village, nature of land its value differ from the distance to distance even two to three-kilometer distance may also make the material difference in value. Land abutting Highway may fetch higher value but not land situated in interior villages.
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> 16. The previous awards/judgments are the only piece of evidence at 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 out rightly 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.
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> 17. .....18. To base determination of compensation on a previous award/ judgment, the evidence considered in the previous judgment/ award and its acceptability on judicial parameters has to be necessarily gone into, otherwise, gross injustice may be caused to any of the parties. In case some gross mistake or illegality has been committed in previous award/judgment of not making deduction etc. and/or sufficient evidence had not been adduced and better evidence is adduced in case at hand, previous award/judgment being not inter-parties cannot be followed

[26] 2018 (2) RCR (Civil) 815

and if land is not similar in nature in all aspects it has to be out-rightly rejected as done in the case of comparative exemplars. Sale deeds are at par for evidentiary value with such awards of the court as court bases its conclusions on such transaction only, to ultimately determine the value of the property."

(122) Similarly, reliance placed by the State Counsel upon the award passed in ***Jarnail Singh, Ex.P5 (***supra) whereby land was acquired vide notification dated 07.07.1998 of Village Saketri under Section 4, for the purpose of the link road of the Saketri-Mahadevpur road to Shri Shiv Mandir Charitable Trust, would also be of no help since the market value was fixed in the said case on the basis of the Collector's rate. The sale deeds which were exhibited in the said case also are pertaining to the year 1996 to 1998 wherein market value ranges from Rs.10 lakhs per acre to Rs.14 lakhs per acre. In view of the exponential growth which had taken placed plus in view of the peculiar location of the land, the said sale deeds are liable not to be taken into consideration, keeping in view the fact that the landowners have been able to get sale deeds of higher market value. It is settled principle that the benefit of the higher sale deeds is liable to be given to the landowners, in view of the observations of the Apex Court in ***Mehrawal Khewaji Trust, Faridkot*** *versus* ***State of Punjab***[27]. Even otherwise, sale deeds mentioned in the said award are not traceable on the site-plans, to show their locations and whether they had any disadvantages wherein lower market value had been paid in the said sale deeds. The said award was upheld by this Court on 07.09.2010, in RFA-5042-2001 titled ***State of Haryana & another*** *versus* ***Jarnail Singh*****.**

Relief:-

(123) Resultantly, the market value is determined as under:

(i) For notification dated 29.09.1997, appeals filed by the Union of India are allowed and the marketvalue is fixed @ Rs.294/- per sq.yard (Rs.14,22,960/- per acre) along with all statutory benefits.

(ii) For the notification dated 16.03.1999, the market value is fixed @ Rs.494/- per sq.yard (Rs.23,96,960/- per acre) along with all statutory benefits. However, for the land of

[27] 2012 (5) SCC 432

Bhainsa Tibbawhich falls on the other side of the railway line, towards Mani Majra and Village Kishangarh of Chandigarh, the market value is fixed @ Rs.26,77,875/- per acre (Rs.553/- per sq.yard) along with all statutory benefits by only allowing the appeals of the concerned set of landowners. The appeals filed by the State are accordingly, partly allowed and those of the other landowners are dismissed.

(iii)For the notification dated 02.06.1999, the appeals filed by the State/MMDSB are allowed andthe market value is fixed @ Rs.507/- per sq.yard (Rs.24,53,880/- per acre) along with all statutory benefits and those filed by the landowners aredismissed.

(iv)For the appeals which were time barred andwhere delay have occurred, the landowners shall notbe entitled for the statutory interest for the delayed period, in view of the law laid down by the Apex Court in ***Imrat Lal and others (supra) and Dhiraj Singh (D) through LRs*** (supra). and as discussed in para No.18 as they have not chosen to agitate for their grievance within the time prescribed.

(v) The State shall also comply with the directions laid down by the Apex Court in ***Haryana State Industrial Development Corporation Vs. Pran Sukh & others 2010 (11) SCC 175***, to ensure that the landowners are not fleeced by the middleman, which read as under:

(a) The Land Acquisition Collector shall depute officers subordinate to him not below the rank of Naib Tahsildar, who shall get in touch with all the land owners and/or their legal representatives and inform them about their entitlement and right to receive enhancedcompensation.

(b) The concerned officers shall also instruct the land owners and/or their legal representatives to open savings bank accountin case they already do not have such account.

(c) The bank account numbers of the land owners should be given to the Land Acquisition Collector within three months.

(d) The Land Acquisition Collector shalldeposit the cheques of compensation in thebank accounts of the land owners.

(124) All the appeals and cross-objections are disposed of accordingly.

(125) Miscellaneous applications, if any, in which no separate orders have been passed, also stand disposed of.

Dr. Sumati Jund