(10) To conclude, it is held that a prisoner on bail cannot claim special remission towards prison sentence, derived in absentia while on bail, unless he voluntarily and timely surrenders himself to the Court or Jail Authorities before the issuance of a warrant of re-arrest.

(11) For the foregoing reasons, this petition fails and is hereby dismissed without any order as to costs.

N.K.S.

FULL BENCH

Before P. C. Jain, C.J., S. P. Goyal and I. S. Tiwana, JJ.

STATE OF PUNJAB,...*Appellant.*

versus

POHU AND ANOTHER,...*Respondents.*

Regular First Appeal No. 882 of 1984.

September 24, 1985.

Land Acquisition Act (I of 1894)—Sections 23 and 24—Evidence Act (I of 1872)—Sections 35, 65 and 91—Acquisition of land for a public purpose—Assessment of compensation to be paid—Criterion for such assessment—Sale instance relied upon by the parties—Average price of such instances—Whether generally a good criterion for determining the market price—Price of the highest sale instance —When alone to be considered—Mutation—Whether evidence of the terms and conditions of the sale.

Held, that the market price of the acquired land has to be assessed according to the average price of the relevant or comparable sale instances relied upon by the parties and not according to a sale instance which might be fetching the maximum price, except where sale instances have been produced by the Government and are relied upon, then a particular sale deed representing the highest value should be preferred unless there are other strong circumstances which may justify resorting to a different course.

(Para 12)

State of Punjab *vs.* Mohinder Singh.

R.F.A. No. 604 of 1983 decided on February 23, 1977.

(OVER RULED)

Held, that from the plain language of Sections 91 and 65 of the Evidence Act, it is evident that mutation is neither a primary nor secondary evidence of the terms or conditions of a contract of sale and as such would not be admissible, apart from the factum of sale, to prove any of the terms or conditions of the contract including the sale consideration.

(Para 14)

Bharat Singh *vs.* State of Haryana, 1979 P.L.R. 27.

(OVER RULED)

Case referred by Hon'ble Mr. Justice S. P. Goyal, dated 18th January, 1985, to Full Bench as the case contains some important question of law. The Full Bench consisting of Hon'ble the Chief Justice Mr. Prem Chand Jain, Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice I. S. Tiwana decided the issues and remanded the case back to Single Bench for decision of the case.

Regular First Appeal from the order of the Court of Shri S. K. Jain, District Judge, Rupnagar, dated 5th March, 1984, directing the enhanced compensation to be paid for the land acquired through notification published on 11th May, 1979 in award No. 82 of 22nd July, 1981, at the following rates:—

Chahi/Nehri	...	*Rs. 20,000/- per acre.*
Barani	...	*Rs. 16,500/- per acre.*
Sailab	...	*Rs. 12,500/- per acre.*
Banjar Qadim and Gair Mumkin	...	*Rs. 11,800/- per acre.*

and for the land acquired through notification published on 19th January, 1981, in award No. 81 of 22nd July, 1981, at the following rates:—

Chahi/Nahri	...	*Rs. 23,000/- per acre.*
Barani	...	*Rs. 18,975/- per acre.*
Sailab	...	*Rs. 14,375/- per acre.*
Banjar Qadim and Gair Mumbin	...	*Rs. 12,650/- per acre.*

The claimants will further be paid 15% of the compensation amount on account of compulsory acquisition and interest at the rate of 6% per annum with effect from March, 1981 till the payment of the compensation amount to them.

Sarup Chand Goyal, Advocate with J. P. Singh Sandhu and Jasbir Singh, Advocates.

V. K. Jain, Advocate with Jai Ram Joshi and P. S. Saini, Advocates.

JUDGMENT

Prem Chand Jain, C.J.—

(1) The judgment of ours would dispose of this and other R.F.A. Nos. 883 to 891 of 1984 (filed by the State) and R.F.A. Nos. 1157 to 1165 of 1984 filed by the claimants as common question of law and fact arises in all these appeals.

(2) In order to appreciate the controversy, certain salient features of this appeal may be noticed:—

(3) Land measuring 326 Kanals 18 Marlas was acquired within the revenue limits of village Nuhon, Tehsil and District Ropar for a public purpose, i.e., Ropar Thermal Project. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was published in the official Gazette on January 19, 1981. Urgency powers were invoked under Section 17 of the Act and possession of the land was taken in March, 1981. Notification under Section 6 of the Act was also published in the Official Gazette on Jannary 19, 1981. The landowners claimed compensation for the acquired land at the rate of Rs. 80,000/- per acre. The Land Acquisition Collector adopted the market rates of the land, furnished to him by the Collector, Ropar, and awarded compensation at the following rates:—

(1) Chahi/Bagh Chahi/Nehri/ Chahi Nehri	...	Rs. 14,375/- per acre.
(2) Barani/Bagh Barani	...	Rs. 11,500/- per acre.
(3) Sailab	...	Rs. 8,625/- per acre.
(4) Banjar Jadid	...	Rs. 10,062/- per acre.
(5) Banjar Qadim	...	Rs. 5,750/- per acre.
(6) Gair Mumkin (same as for Banjar Qadim)	...	Rs. 5,750/- per acre.

Besides this, solatium at the rate of 15 per cent and interest at the rate of 6 per cent per annum were also awarded by the Land Acquisition Collector.

(4) Similarly, land measuring 526 Kanals, 5 Marla had been acquired earlier in village Nuhon through notification dated April 23, 1979, issued under Section 4 of the Act and published in the Official Gazette on May 11, 1979. Notification under Section 6 of the Land Acquisition Act was published in the Punjab Government Gazette on February 16, 1981. There was no dispute about the measurement of the acquired land, nor the classification of the land was disputed. In the award announced on July 22, 1981, the landowner claimed compensation at the rate of Rs. 80,000/-, but the Land Acquisition Collector awarded the compensation at the rates referred to above in the earlier part of the judgment.

(5) Feeling aggrieved from the award several references were filed under Section 18 of the Act by the claimants. The learned District Judge, Rupnagar decided all the references and determined different rates of Chahi/Nehri, Barani, Sailab, Banjar Jadid, Banjar Qadim and Gair Mumkin land and accordingly enhanced the amount of compensation.

(6) It appears that the State of Punjab felt dissatisfied from the award made by the learned District Judge and has consequently, filed these appeals calling in question the legality of the award by which amount of compensation has been enhanced. The appeals came up for hearing before a learned Single Judge of this Court and, finding some conflict in the decisions of this Court, the learned Judge formulated the following three points to be decided by a Full Bench :—

(i) Whether the market price of the acquired land is to be assessed according to the average price of various sale instances relied upon by the parties or according to the sale instance fetching the maximum price.

(ii) Whether the production of certified copy of mutation is admissible to prove apart from the factum of sale, its terms and conditions?

(iii) If question No. (ii) is answered in the affirmative, whether the production of certified copy of the mutation would be sufficient to prove the passing of the sale consideration even though no admission by vendor of the receipt of consideration is recorded in the mutation?

That is how we are seized of these appeals.

(7) As is apparent from point No. (i) as formulated by the learned Single Judge, the conflict that needs to be solved is whether the market price of the acquired land is to be assessed according to the average price of various sale instances relied upon by the parties or according to the sale instance fetching the maximum price. The established rule which has been laid down in several judgment by the Supreme Court is that one of the accepted methods of arriving at the market value is to draw a fair average from all the transactions which are relevant with regard to the land having similar advantages and in closest proximity of time. In *The Special Land Acquisition Officer, Bangalore* v. *T. Adinarayan Setty* (1), the Court observed that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under Section 4(1) of the Act and the methods of valuation may be, (1) opinion of experts (2) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantage and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. The aforesaid view in *T. Adinarayan Setty's case* (supra) has been affirmed the Supreme Court in *Smt. Tribeni Devi and other* v. *The Collector Ranchi* (2), wherein in para 4 it has been observed thus:—

> "4. The general principles for determining compensation have been set out in Sections 23 and 24 of the Act. The compensation payable to the owner of the land is the market value which is determined, by reference to the price which a seller might reasonably expect to obtain from a willing purchaser, but as this may not be possible to ascertain with any amount of precision, the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard. The land acquired has, therefore, to be valued not only with reference to its condition at the time of the declaration under Section 4 of the Act but its potential value also must be taken into account. The sale deeds of the land situated in the vicinity and the comparable benefits and advantages which they have, furnish a rough and ready method of computing the market value. This, however, is not the only method. The rent which an owner was actually

(1) A.I.R. 1959 S.C. 429.
(2) A.I.R. 1972 S.C. 1417.

receiving at the relevant point of time or the rent which the neighbouring lands of similar nature are fetching can be taken into account by capitalising the rent which, according to the present prevailing rate of interest is 20 times the annual rent. But this also is not a conclusive method. This Court had in *Special Land Acquisition Officer, Bangalore* v. *T. Adinarayan Setty* (3), indicated at page 412 the methods of valuation to be adopted in ascertaining the market value of the land on the date of the notification under Section 4(1) which are:

(i) opinion of experts;

(ii) the price paid within a reasonable time in bona fide transaction of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantage; and

(iii) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. These methods, however, do not preclude the Court from taking any other special circumstances into consideration, the requirement being always to arrive as near as possible at an estimate of the market value. In arriving at a reasonable correct market value it may be necessary to take even two or all of those methods into account inasmuch as the exact valuation is not always possible as no two lands may be the same either in respect of the situation or the extent or the potentiality nor is it possible in all cases to have reliable material from which that valuation can be accurately determined."

Again *in the Dollar Company, Madras* v. *Collector of Madras* (4) similar view has been reiterated.

(8) However, in view of the judgement of the Supreme Court in *Sri Rani M. Vijayalakshmammu Rao Bahadur, Ranee of Vuyyur* v. *The Collector of Madras*, (5) a conflict has arisen inasmuch what has been debated now and what was urged in some of the cases earlier before this Court was that it is not the fair laverage from all

(3) 1959 Suppl. 1 S.C.R. 404.
(4) AIR 1975 S. C. 1670
(5) 1969 (1) M.L.J. 45.

the transactions which should form the basis for arriving at the market value and that an instance of bona fide sale which fetches the highest price alone should be taken into consideration for evaluating the amount to the exclusion of other instances on the record. The relevat observations of Mudholkar, J. (as his Lordship then was) read as under:—

> "It seems to us that there is substance in the first contention of Mr. Ram Reddy. After all when the land is being compulsorily taken away from a person, he is entitled to say that he should be given the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. It is not disputed that the transaction represented by Exhibit R. 19 was a few months prior to the notification under Section 4 that it was a bona fide transaction and that it was entered into between a willing purchaser and a willing seller. The land comprised in the sale deed is 11 grounds and was sold as Rs. 1961 per ground. The land covered by Exhibit R. 27 was also sold before the notification but after the land comprised in Exhibit R. 19 was sold. It is true that this land was sold at Rs. 1096 per ground. This, however, is apparently because of two circumstances. One is that betterment levy at Rs. 500 per ground had to be paid by the vendee and the other that the land comprised in it is very much more extensive, that is, about 93 grounds or so. Whatever that may be, it seems to us to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. In any case we see no reason why an average of two sale deeds should have been taken in this case."

(9) In the *State of Punjab* v. *Mohinder Singh*, (6) my learned brother S. P. Goyal, J., while following the view in *Ranee of Yuggur's case* (supra), relied on a sale which fetched the highest price, with the result that the amount of compensation awarded by the District Judge was allowed to be maintained. The State of Punjab filed Letters Patent Appeal against the judgement of the

(6) RFA 604/73 decided on 23rd February, 1977.

learned Single Judge in *Mohinder Singh's case* (7) The learned Advocate-General appearing for the State of Punjab raised a solitary contention before the Bench that the learned Single Judge was in error in fixing compensation solely on the basis of instance, P.3, which evidenced the highest sale price out of the instances relied upon by the parties. It was also urged by the learned Advocate-General in that case that the decision in *Ranee of Vayyur's case* (supra) should not have been followed and instead decisions in *Smt. Tribeni Devi's case and T. Adinarayan Setty's case* (supra) should have been followed. On this contention of the learned Advocate-General, the Bench in the appeal made the following observations and disposed of the appeal against the State:—

> "Apparently there seems to be conflict between the decisions of the Supreme Court in *Sri Rani Vijayalakshmamma Rao Bahadur's case* and that of *The Special Land Acquisition Officer* (supra). This conflict can only be resolved by the Supreme Court. If the learned Single Judge has followed the decision of the Supreme Court in *Sri Rani M. Vijayalakshmamma Rao Bahadur's case* (supra) in awarding compensation according to the Law laid down therein, in letters patent, it is not open to us to disturb that judgement unless we find the same to be erroneous. On the basis of the judgement of the Supreme Court in *Sri Rani M. Vijayalakshmamma Rao Bahadur's case* no fault in the judgement of the learned Single Judge has been pointed out by the learned Advocate-General. The decisions of the Supreme Court in *Smt. Tribeni Devi and others* (supra) and *The Dollar Company Madras* (supra) do not help the appellant and instead support the respondents in fixing the compensation. The decision of the Supreme Court in the case of *The Special Land Acquisition Officer* (supra) does not help the contention of the learned Advocate General, but since the learned Single Judge has chosen to follow the other decision of the Supreme Court in *Sri Rani M. Vijyalakshmamma Rao Bahadur's case* (supra), we are helpless in the matter. The proper course open to the State of Punjab is to have the conflict resolved by taking this case to the Supreme Court.
>
> For the reasons recorded above, we find no merit in these appeals and dismiss them with costs."

(7) LPA 110/77.

(10) However, in *State of Punjab* v. *Munshi etc.* (8) when a similar question was raised, the Bench did not accept the theory of the single highest instance of sale and, on the basis of the judgements of the Supreme Court in *Smt. Tribeni Devi's case, T. Adinarayan Satty's case* and *The Dollar Company's case* (supra) followed the rule that one of the accepted methods of arriving at the market value is to draw a fair average from all the transactions which are relevant with regard to the land having similar advantages and in closest proximity of time. The Bench sought to overcome the difficulty which had arisen because of the affirmance of the judgment of the learned Single Judge in R.E.A. No. 604 of 1973, decided on February 23, 1977, by the Bench in L.P.A. No. 110 of 1977, decided on April 12, 1979, by observing that the matter before the Letters Patent Bench was in the limited jurisdiction of a Letters Patent Appeal where the true criterion for interference is undoubtedly constricted especially when the judgment under appeal was rested on an authority of the Supreme Court. The Bench also observed that there was conflict between the view taken by the Supreme Court in *Ranee of Vuyyur's case* (supra) and the other three judgments, but the learned Judge preferred to follow the view enunciated in those three judgments.

(11) As earlier observed, it is on the basis of the so called conflict between the judgments of this Court that the first point was formulated by the learned Single Judge for consideration by a larger Bench.

(12) We have heard the learned counsel for the parties at length and, in our view, we find absolutely no conflict between the decision of the Supreme Court in *Ranee of Vuyyur's case* and the other judgments of the Supreme Court to which reference has been made earlier. The relevant observations of Mudholkar, J. have been reproduced in the earlier part of the judgment and a close scrutiny of these observations would show that in that case what has been observed is that where the sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying different courses. Now, these observations, in my view, do not lay down a rule that in every case a sale deed representing the highest value should be preferred. The principle which has always been followed is that average price of

(8) RFA 462/77 decided on 10th May, 1979.

the sale transactions relied upon should be taken into account for determining the market value of the acquired land. But in *Ranee of Vayyur's case,* the Bench made the aforesaid observation because the transaction on which the claimants had placed reliance had been placed by the opposite party, i.e., the Government, and it is in that context that the learned Judge observed that when the Government itself was relying on a document which represented the highest value, then unless there were strong circumstances justifying a different course, the same should be followed. These observations cannot be read to mean that in every case a sale deed representing the highest value should be preferred to the rest. The principles enunciated by their Lordships of the Supreme Court in different judgments, referred to above, have to be kept in mind while determining the market value. However, in a given case, as observed in *Ranee of Vayyur's* case, where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. To emphasize, these observations of the Supreme Court pertain only to the sale deeds which have been produced by the Government in defence and do not have any applicability in general. In this view of the matter, it is held that the market price of the acquired land has to be assessed according to the average price of the relevant or comparable sale instances relied upon by the parties and not according to a sale instance which might be fetching the maximum price, except where sale instances have been produced by the Government and are relied upon, then a particular sale deed representing the highest value should be preferred unless there are other strong circumstances which may justify resorting to a different course. Consequently, the decision in *Mohinder Singh's* case, which are arrived at as a result of the reliance placed on a sale which fetched the highest price, is overruled.

(13) On the second question, the learned counsel for the appellant for his contention that a certified copy of mutation would be no evidence of the sale consideration referred to the provisions of Section 91 of the Evidence Act which provides that when the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or

of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible. The copy of the mutation being neither primary nor secondary evidence of the sale transaction effected through a registered deed would not be admissible in evidence to prove the sale consideration which is essentially one of the terms of the contract of sale. The learned counsel for the respondent, on the other hand, urged that irrespective of the provisions of section 91, a certified copy of the mutation would be relevant piece of evidence being an order passed, under section 35 of the Evidence Act. He further argued that the entries in the mutation register prescribed by the Financial Commissioner through standing orders are made by the Patwari in the discharge of his public duties and column No. 13 which relates to the price of the sale is usually filled in on the basis of the registered deed. Entries in this column, therefore, would also be by themselves relevant on the issue of the price of the land under the said section. Support for this contention was sought from a Single Bench decision of R. N. Mittal, J. in *Bharat Singh* v. *State of Haryana*, (9). There can be no dispute with the proposition that the entries made in the mutation register by the Patwari in the discharge of his public duties or the orders passed thereon by the Revenue Officer would be a relevant piece of evidence under section 35 if they contain any fact in issue or a relevant fact. However, so far as proof of the terms of a contract is concerned, section 91 has specifically barred the leading of any other evidence except the document itself or the secondary evidence whenever permissible under the other provisions of Evidence Act. So, a copy of the mutation would be admissible so far as the factum of sale is concerned, but it would not be admissible to prove the terms and conditions of the sale transaction. In *Bharat Singh's* case (supra) the learned Judge held that a copy of the mutation could be admissible to prove the sale price on the ground that the provisions of section 34 of the Land Revenue Act being a special provision would override the provisions of sections 91 and 65 of the Evidence Act. With due respect to the learned Judge, we are unable to appreciate the ratio of that decision. The said section 34 lays down the procedure regarding the entries in the mutation register and the order to be passed by the Revenue Officer. This section, therefore, does not at all deal with the subject of relevancy or admissibility in evidence of the entries in the mutation register

(9) 1979 P.L.R. 27.

and the order of the Revenue Officer. As a matter of fact, there is no provision in whole of the Punjab Revenue Act which even remotely deals with the question of relevancy or admissibility of any piece of evidence. By no stretch of reasoning, therefore, can it be said that the provisions of section 34 contain a special provision regarding the relevancy or admissibility of entries in the mutation register or the mutation order of the Revenue Officer and as such the question of its overriding the provisions of sections 65 and 91 of the Evidence Act does not arise at all. There is very little case law on this matter, may be because the provision itself is very clear. Directly this question came up for consideration before Godfray, J. in *Maung Tun* v. *Maung Khan and another* (10), where the mortgage in the absence of a registered document was sought to be proved by survey map and a counterfoil of entry in the revenue register. Both the documents were held to be inadmissible in evidence in proof of the mortgage in spite of the fact that they were relevant under section 35 of the Evidence Act (wrongly mentioned as section 23 in the report). Though the matter before the Privy Council in *K. S. Bannerji, Official Receiver* v. *Sitanath Das and another,* (11), did not relate to the admissibility of a revenue entry, yet the following observations made at page 212 clearly show that in case of a written contract no other evidence than the document itself or secondary evidence when permissible, could be adduced to prove its terms :—

> "Their Lordships desire to point out that if a proper case has not been established for the admission of secondary evidence of the contents of a written document, and objection has been taken to the fact that the document has not been produced, it is not permissible to go to other evidence for the purpose of indicating what the contents of the written document may prove to be if once it were examined."

Again, in *Chaudhri Janardhan Paride and others* v. *Pradhan Dass,* (12), though the question was as to the admissibility of oral evidence to prove the terms of contract but it was ruled in unequivocal terms that where the terms of contract were reduced to writing at the same time when it was made, the document, or if permissible, a

(10) 1925 Rangoon 61.
(11) A.I.R. 1922 P.C. 209.
(12) A.I.R. 1940 Patna 245.

secondary evidence of its contents, can be the only evidence available to the parties to prove the contract. Recently the question of the evidentiary value of mutation order of sale came up for consideration before a Division Bench of the Himachal Pradesh High Court in *Saunu* v. *The Collector, Land Acquisition, B. S. L. Mandi,* (13), and it was observed:—

> "The mutation can only prove the factum of sale but it is no evidence of the price paid. Nor it would prove that the sale was effected by a willing seller and a willing purchaser."

(14) Consequently, from the case law whatever is available and the plain language of sections 91 and 65 of the Evidence Act, it is evident that mutation is neither a primary nor secondary evidence of the terms or conditions of a contract of sale and as such would not be admissible, apart from the factum of sale, to prove any of the terms or conditions of the contract including the sale consideration. The principle of law laid down in *Bharat Singh's* case (supra) as regards the admissibility of the copy of the mutation is, therefore, overruled.

(15) Having answered question No. (ii) in the negative, it is not necessary to deal with question No. (iii) as it becomes redundant.

(16) No other point arises for consideration. The cases would now go back to the learned Single Judge for disposal on merits.

S. P. Goyal, J.—I agree.

I. S. Tiwana, J.—I agree.

N. K. S.

(13) A.I.R. 1982 Him. Pradesh 48.

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