

Before Anil Kshetarpal, J.

JAI SINGH—*Petitioner*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

RFA No.3000 of 2016 (O&M)

November 15, 2021

Constitution of India, 1950—Land acquisition Act, 1894—Ss. 4, 15, 23, 24, 25 and 54— Assessing the market value of the acquired land—Mandatory imposition of development cut-deduction on the base value arrived on the basis of sale exemplars of sufficiently large tract of land—Section 23 enlists, matters to be considered in determining the compensation and Section 24 enlists the matters which must be ignored—Land owners are allowed solatium i.e. if they are deprived of property against their wishes, they shall be entitled to a sum of 30% of such market value in view of compulsory and involuntary nature of acquisition—Held,

- *if there is no dis-similarity between the acquired land and the sale exemplar produced is of a reasonable size, the court shall not apply proportionate reduction to reduce the market value –*
- *if the sale exemplars produced before the court are of relatively small sized plots being used for residential, commercial or industrial purposes, deduction can be applied in order to moderate the difference between wholesale and retail price –*
- *the development cut can be applied when the comparable sale exemplar is of a plot which is located at a key position like near the road, market, developed residential colony or commercial establishment –*
- *in respect of an undeveloped acquired land, it is not appropriate for the court to apply any deduction made on account of development work —*
- *in case of colonizers, the plots are sold while determining the price on the basis of demand and supply. The development cost for providing such common facilities must be borne by the developer-*
- *if a large chunk of agricultural land is acquired for carving out a residential, commercial, or industrial colony and the*

sale exemplars of plots of a reasonable size of agricultural land are available, then it would not be appropriate for the court to apply development cut towards development costs or towards roads, drains, parks etc.

Held, that in the present case, the acquisition is under the 1894 Act, which has recently been repealed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the 2013 Act'). However, the assessment of the market value is required to be made as per the 1894 Act. Section 15 of the 1894 Act, provides that while determining the market value, the Collector shall be guided by the provisions contained in Section 23 and 24 of the Land Acquisition Act, 1894. Section 23 enlist the matters to be considered in determining the compensation. Clause 1 of sub-Section 1 of Section 23 provides that the market value of the acquired land is to be determined on the date of publication of notification under Section 4 of the 1894 Act. Section 24 of the 1894 Act enlist the matters to be ignored in determining the compensation.

(Para 7.1)

Further held, that thus, it is apparent that the Hon'ble Supreme Court itself has recognized in more than one judgments that if there is no dissimilarity between the acquired land and the sale exemplar produced is of a reasonable size, then, it shall not be appropriate for the court to apply proportionate deduction to reduce the market value.

(Para 7.13)

Further held that, once the market value of the acquired agricultural land is being assessed and many sales exemplars of considerably big sized plots of the agricultural land are available, the application of cut/deduction for development, in the considered opinion of the Court, is not justified unless the court is assessing the market value of a land where the sale exemplars produced before the Court are of relatively small sized plots or are being used for residential, commercial or industrial purposes. The deduction can be applied when comparable sale exemplar is of a plot of a very small size as compared to the acquired land in order to moderate the difference between wholesale and retail prices. The appropriate percentage of cut can also be applied if the sale exemplar is of a plot which was being used or was capable of being used for different purposes like residential, commercial or industrial. The development

cut can also be applied when the comparable sale exemplar is of a plot which is located at a key position like near the road, market, developed residential colony or commercial establishments. There can be more than one reasons to apply the development cut.

(Para 7.14)

Further held that, once a large chunk of agricultural land is being acquired for carving out a residential/commercial or industrial colony and the sale exemplars of plots of reasonable size of agricultural land are available, then in the considered opinion of this Court, it would not be appropriate to apply a development cut for the purpose of assessment either towards development cost or towards the area to be used for passages, roads, drains, parks etc. The landowner stands in the shoes of a loser even if some part of the acquired land is being used for providing common facilities. The landowner does not gain anything exclusively on account of reservation of land for common facilities. In fact, the landowner suffers a dual loss. On the one hand, he is deprived of the acquired land and on the other hand, he does not receive a fair and appropriate amount towards the involuntary deprivation.

(Para 7.16)

Further held, that there is yet another aspect of the matter. The development agency/organization/colonizer or the government do not sell the developed plots on the market value assessed by the court. The plots are sold while determining price on basis of the demand and supply

(Para 7.17)

Sandeep Parkash Chahar, Advocate, Kulvir Narwal, Advocate, N.K. Malhotra, Advocate, Suryakant Gautam, Advocate, for the landowners.

Puneet Bali, Senior Advocate with Gursheer Bhandel, Advocate, *for the appellant*-Maruti Suzuki in RFA No.215 of 2017.

Sanjeev Sharma, Senior Advocate with Vikas Lochab, Advocate, Yashvir Balhara, Advocate, Sandeep Singh, Advocate, Shekhar Verma, Advocate, *for the appellants* in RFA No.4997 of 2017 for respondent No.4 in RFA No.215 of 2017.

Sudhir Hooda, Advocate, for the appellants in RFA Nos.4700, 4701, 4703 to 4705, 4731 of 2016, RFA

Nos.1715, 2748, 2844, 4589, 4590, 4610, 4611, 4613, 4614, 4615, 4616, 4880, 4881, 4882, 4949, 5151, 5297, 5298, 5299, 5393, 5394 of 2017, RFA Nos.90, 91, 130 and 743 of 2018.

Ashwani Bakshi, Advocate, *for the appellant* in RFA No.3910 and 3911 of 2016.

Vikram Singh, Advocate Surjit, Advocate, *for the appellants* in RFA Nos.3702 to 3704 of 2016.

Divyam Singh, Advocate, *for the appellants* in RFA No.1463 of 2017.

Suryakant Gautam, Advocate, *for the appellants* in RFA No.4498 of 2016, 4995 to 5001 of 2017, 3520 to 3523, 3525 to 3527 and 4245 of 2018.

Sandeep K. Sharma, Advocate, *for the appellants* in RFA No.1656 of 2017.

Shivendra Swaroop, AAG, Haryana.

Ashwani Kumar Chopra, Senior Advocate with Pritam Singh Saini, Advocate and Vidul Kapoor, Advocate, for the HSIIDC.

ANIL KSHETARPAL, J.

(1) Through this judgment, a batch of Regular First Appeals, details whereof are provided at the foot of the judgment, filed under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act'), arising from two separate awards dated 30.03.2016 and 08.03.2018, respectively, passed by the Reference Court while deciding the various applications under Section 18 while assessing the same market value of the acquired land, shall stand disposed of. The learned counsels representing the parties are ad-idem that these appeals can be conveniently disposed of by a common judgment.

(2) It would be noted here that Regular First Appeal No.215 of 2017, has been filed by a subsequent allottee of the acquired land-Maruti Suzuki India Limited. The land was acquired by the State of Haryana for developing an Industrial Model township, to be developed by the Haryana State Industrial Infrastructure Development Corporation (hereinafter referred to as 'the HSIIDC').

The Maruti Suzuki India Limited has been allotted approximately 700 acres of the acquired land by the HSIIDC. The maintainability of the appeal filed by the Maruti Suzuki India Limited has been questioned which shall be examined in the later part of the judgment.

THE ISSUE IN QUESTION

(3) In the considered opinion of the Court, the issue which arises for consideration in the present appeals is:-

“Whether while assessing the market value of the acquired land under the Land Acquisition Act, 1894, it is mandatory for the Court to impose a development cut or deduction on the base value arrived on the basis of the sale exemplars of sufficiently large tract of land available for the contemporaneous period?”

3. FACTS

(3.1) The necessary particulars of the acquisition are as under:-

Total land acquired 343 Acres 2 Kanal 8 Marla

13.02.2008	Section 4 Notification
31.12.2008	Section 6 Notification
30.07.2009	LAC Award No. 4 awarded Rs.20,00,000/- per acre
---	Reference u/s 18 filed
30.03.2016	Impugned judgment by ADJ (Reference Court)
	The market value of the acquired land located beyond the depth of 1 acre from National Highway @ Rs.22,49,000/- per acre. Whereas Rs. 25,00,000/- per acre for persons whose land is abutting Rohtak-Sonepat Highway upto depth equivalent to that of one acre.

(3.2) In order to utilise the land measuring 343 acres, 2 kanals and 8 marlas for setting up Industrial Model Township, Rohtak, the State of Haryana initiated acquisition proceedings by issuing notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act'), on 13.02.2008. It was followed by a declaration under Section 6 of the 1894 Act, on 13.12.2008 and the award was passed by the Land Acquisition Collector (hereinafter referred to as 'the LAC'), on 30.07.2009.

(3.3) On the applications of the various landowners, the LAC forwarded the cases to the Reference Court which, as noticed above, have now been decided. The LAC assessed the market value @ Rs.20,00,000/- per acre. The reference Court has held that the market value of the acquired land was @ Rs.22,49,000/- per acre as on 13.02.2008 and the owners of the land, upto the depth equivalent to an acre abutting Rohtak- Sonipat Highway which is a National Highway, have been held entitled to market value @ Rs.25,00,000/- per acre. The owners have also been held entitled to solatium @ 30% as envisaged in sub-Section (2) of Section 23 and an additional amount @ 12% per annum as per the provisions of the Section 23(1A) of the 1894 Act apart from interest @ 9% per annum on the enhanced compensation from the date of taking possession upto a period of one year and @ 15% per annum after the expiry of the said period of one year till the date of payment as envisaged under Section 28 of the 1894 Act.

(3.4) In order to prove existing and future potentiality of the acquired land, the owners have claimed that the acquired land is not only located in National Capital Region (NCR) of Delhi but is also a part of the flourishing city of Rohtak. It has been asserted that MR DAV College, Scholars Rosary Senior Secondary School, Rohtak, a Banquet Hall and building of Radha Swami Centre are located nearby the acquired land. The landowners have claimed that on 13.02.2008, the market value of the acquired land was not less than Rs.12000/- per square yards.

(3.5) The respondents have resisted the claim while asserting that the LAC has assessed the market value on the basis of average sale deeds executed during that particular period while taking into consideration the sale exemplars of land of similar category. Maruti Suzuki India Limited was allowed to be impleaded as a party on 11.09.2015 by the Reference Court.

(3.6) On appreciation of pleadings, the reference court culled out the following issues:-

- (1) Whether the petitioners are entitled to enhanced compensation, as claimed in their petitions? OPP.
- (2) Whether the petitions are not maintainable? OPR.
- (3) Whether the petitions are bad for non-joinder and mis-joinder of necessary parties? OPR.

(4) Whether the petitions are barred by limitation? OPR.

(5) Whether the petitions are false, frivolous and mala-fide?

OPR.

(6) Relief.

4. ORAL EVIDENCE

(4.1) The landowners in order to prove their case have examined Manoj Kumar, Patwari as PW1, who has proved Aks shjra/lay out plan (Ex.P1). Sh. Ashok Kumar, one of the owner has appeared as PW2 and produced the sale deeds (Ex.P2 to Ex.P10). Another landowner Prem Singh appeared as PW3. Yet another landowner Sandeep @ Sanjay appeared as PW4, whereas Baljeet Clerk from the Tehsil Office while appearing as PW5 proved the various sale exemplars. PW6 Jagdeep has produced various sale deeds i.e. Ex.P-11, Ex.P-12 and Ex.P-13. Sumedh @ shamsher while appearing as PW7 has tendered documents (Ex.P14 to P-16). Sh. Ran Singh has appeared as PW8 and tendered his affidavit.

(4.2) On the other hand, HSIIDC and Maruti Suzuki India Limited have examined Krishan Kumar Patwari as RW1 and Surender Kumar as RW2.

5. DOCUMENTARY EVIDENCE

(5.1) The landowners have produced the following documents:-

DOCUMENTS	
Ex. P1	Aks Shizra
Ex. P2	Sale Deed No.10460 dt. 19.02.2007 sold 53K 9M for Rs.2,70,60,000 (Bohar)
Ex. P3	Sale Deed No.10565 dt. 21.02.2007 5 Acres 2K 11M sold for 2,15,40,940/- (Bohar)
Ex. P4	Sale Deed No.1182 dt. 11.05.2006 sold 21 Kanal 7M for 93,40,625/- (Bohar)
Ex. P5	Sale Deed No.11230 dt. 02.01.2006 sold 28K 8M for 1,06,50,000/- (Bohar)

Ex. P6	Sale Deed No.725 dt. 20.04.2007 sold 7K 5M for 38,93,382/- (Bohar)
Ex. P7	Sale Deed No.726 dt. 20.04.2010 sold 1 Acre 3.66 Marla for 43,98,363/- (Bohar)
Ex. P8	Sale Deed No.7507 dt. 10.10.2005 sold 34K 16M for 1,28,32,500/- (Bohar)
Ex. P9	Sale Deed No. 2719 dt. 21.06.2006 sold 8K for 35,00,000/- (Bohar)
Ex. P10	Sale Deed No.10157 dt. 13.02.2007 sold 1A 1K 19M for 58,45,625/- (Bohar)
Ex. P11	Sale Deed No.1182 dt.11.05.2006 (SAME AS P4)
Ex. P12	Sale Deed No.8699 dt. 03.01.2007 sold 4A 7K 11M for 2,20,08,750/- (Bohar)
Ex. P13	Sale Deed No.3088 dated 03.07.2006 sold 8K 14M for 38,06, 250/- (Bohar)

(5.2) On the other hand, the HSIIDC and Maruti Suzuki India Limited have jointly produced the following documents:-

Ex.R1	Sale Deed No.10815 dated 22.02.2008
Ex.R2	Sale Deed No.1892 dated 29.05.2008
Ex.R3	Sale Deed No.9387 dated 14.01 2008
Ex.R4	Sale Deed No.14922 dated 31.03.2006
Ex.R5	Sale Deed No.9854 dated 05.02.2007
Ex.R6	Sale Deed No.736 dated 25.04.2008
Ex.R7	Authority Letter
Ex.R8	Notification dated 07.12.2007
Ex.R9	Supplementary Award No.9 dated 04.02.2011
Ex.R10	Supplementary Award No.6 dated 12.11.2013
Ex.R11	Award No.4 dated 13.07.2009
Ex.R11/A	Statement No.19 of the L.A. Act
Ex.R12	Jamabandi for the year 2008-2009

Ex.R13	Copy of Jamabandi for the year 2008-2009
Ex.R4/1	Power of Attorney
Ex.R4/2	Sale Deed No.3413 dated 27.6.2007
Ex.R4/3	Site Plan
Ex.R4/4	Regular letter of allotment
Ex.R4/5	Conveyance Deed dated 27.08.2014

6. ARGUMENTS OF LEARNED COUNSEL REPRESENTING THE PARTIES

(6.1) Heard the learned counsel representing the parties at length and with their able assistance perused the paper book and the record of the reference court which was requisitioned in the lead cases. The learned counsels representing the parties apart from addressing oral arguments have also filed synopsis of their cases along with the gist of their arguments.

(6.2) The learned senior counsel for the owners, while leading from the front has contended that the reference court after arriving at an average value @ Rs.42,42,560/- per acre on the basis of the relevant sale exemplars has erred in employing a development cut @ 47% to arrive at a figure of Rs.22,49,000/- per acre. He contends that the development cut applied by the Reference Court is on the higher side and it should not be more than 20% particularly when the acquired land is to be utilized for carving out plots for the industries. He has also drawn the attention of the court to the allotment of approximately 700 acres of land @ Rs. 75,00,000/- per acre to Maruti Suzuki India Limited after providing minimum infrastructural facilities. He further contends that the acquired land is abutting the urban area and is located on the National highway and therefore, the Reference Court has erred in granting nominal increase of 9% per annum while adjusting the difference between the date of the sale exemplar and the date of notification under Section 4 of the Land Acquisition Act, 1894.

(6.3) Adv. Sh. Narwal while drawing the attention of the court to Ex.P3, a sale deed dated 01.02.2007 with respect to sale of land measuring 42 kanals and 11 marlas for a sale consideration of Rs.2,15,40,940/-, has contended that the land comprised in Rectangle no.225, khasra no.23 and 24 is part of the acquired land. He has submitted that 12 kanals of land out of 42 kanals and 11

marlas of land from the sale deed (Ex.P-3), which was sold, has been acquired by the State. He contends that the owner purchased the property @ Rs.40,50,000/- per acre approximately. He further submits that the findings of the reference court that the acquired area was an undeveloped area is also factually incorrect. He further submits while referring to the statement of Krishan Patwari (RW1), that the entry gate of the Industrial Model Township is placed on the National Highway. He contends that the acquired land is close to the urban area and is located on the National Highway. Sh. Bakshi, learned counsel further contends that the reference court has committed an arithmetical error in calculating the average price.

(6.4) Per contra, Sh. Chopra, learned senior counsel representing the HSIIDC has contended that the Ex.P3 sale deed dated 21.02.2007 is with respect to land situated in two parcels and therefore, the genuineness of the sale deed is doubtful. He further contends that the reference court has erred in ignoring the sale exemplar produced by the HSIIDC. He further contends that the sale exemplar (Ex.R4/2) at least should have been taken into consideration while calculating the average value. On the other hand, Sh. Sanjeev Sharma, senior counsel also contends that the appeal filed by the Maruti Suzuki India Limited is not maintainable in view of the judgments passed by the Supreme Court in *Peerappa Hanmantha Harijan (D) by LRS. & ORS. versus State of Karnataka and another*¹ and *Satish Kumar Gupta And Etc. Etc versus State Of Haryana And Ors. Etc*². Learned counsel has further relied upon the judgment passed by the Supreme Court in *Subh Ram and others versus State of Haryana and another*³, to contend that the development cut employed by the court is on the higher side. Further while referring to the observations made by the Supreme court in *Sajan versus The State of Maharashtra*⁴ contend that the development cut should not be more than 20%.

7. DISCUSSION

(7.1) In the present case, the acquisition is under the 1894 Act, which has recently been repealed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

¹ (2015) 10 SCC 469

² (2017) 14 SCC 760

³ (2010) 1 SCC 444

⁴ (2020) 14 SCC 139

Resettlement Act, 2013 (hereinafter referred to as 'the 2013 Act'). However, the assessment of the market value is required to be made as per the 1894 Act. Section 15 of the 1894 Act, provides that while determining the market value, the Collector shall be guided by the provisions contained in Section 23 and 24 of the Land Acquisition Act, 1894. Section 23 enlist the matters to be considered in determining the compensation. Clause 1 of sub-Section 1 of Section 23 provides that the market value of the acquired land is to be determined on the date of publication of notification under Section 4 of the 1894 Act. Section 24 of the 1894 Act enlist the matters to be ignored in determining the compensation. Hence, Section 23, 24 and 25 of the 1894 Act are extracted as under:-

“23. Matters to be considered in determining compensation (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

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

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

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

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

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

sixthly the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of

the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.

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

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

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

24. Matters to be neglected in determining compensation -But the Court shall not take into consideration—

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

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

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

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

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

sixthly, any increase to the value of the other land of the

person interested likely to accrue from the use to which the land acquired will be put;

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

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

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

(7.2) Let us first examine the statutory provisions. It is clear that the Legislature never intended that the Court must apply a cut/deduction in each and every case. Rather, it has been laid down that while acquiring the land, the landowners, who stand deprived of the property against their wishes, shall be held entitled to a sum of 30% on such market value in lieu of the compulsory and involuntary nature of acquisition. In common legal parlance, this amount is called solatium. This part of the amount is in the nature of compensation to the owner for depriving him of his property without his consent.

(7.3) This Bench has carefully surveyed/examined the various judgments passed by the courts from time to time providing for deduction or moderation of the market value. In *Lal Chand versus Union of India*⁵ the Court held that 'the deduction for development' consists of two components. The first component is with reference to the area required to be utilized for the development work. In other words, whenever the acquisition is for carrying out a developmental work like setting up a residential/commercial or industrial township in the area, then a certain part of the acquired land is required to be utilized for carving out passages, roads, drains, parks and other facilities. The second component for calculating such deduction is with regard to the cost of such development work to be carried out

⁵ (2009) 15 SCC 769

by the acquiring agency. Further, in *Haridwar Development Authority versus Raghbir Singh and others*⁶ the Supreme Court held that when the market value of a large tract of agricultural land has to be determined with reference to a price fetched by the sale of a small residential plot, it is necessary to make appropriate deduction towards the development cost to arrive at an appropriate value for such large tracts of land. The court held that the deduction can range between 20% to 75% depending upon the facts and circumstances of each case.

(7.4) While applying 47% cut/deduction on the average market value arrived at, the Reference Court relied upon various judgments passed by the Supreme Court which are required to be analyzed. In *Anjani Molu Dessai versus State Of Goa & Anr.*⁷ the Court held that ordinarily calculating/creating an average of the various sale exemplars is not permissible. The sale exemplar of highest market value should be preferred in the absence of any evidence to the contrary. It was further held that in case of several sale exemplars of comparable pieces of land, the average should be calculated on the basis of the prices of the exemplars ranging in a narrow bandwidth. In this case, the Hon'ble Supreme Court was assessing the market value of 3,65,375 square meter of land in village Balli, Goa. The LAC had deducted 45% from the market value depicted in the sale exemplar. In para 16, the Supreme Court held that no deduction is permissible in a case where the sale is of a comparable land of reasonable size, which is extracted as under:-

“16. The Land Acquisition Collector however committed a serious error in deducting 45% from the sale price disclosed by the sale deed dated 30- 8-1989 towards the cost of development. It is well settled that deduction for development cost has to be made only where the value of a small residential/commercial/industrial plot of land in a developed layout is made the basis for arriving at the market value of a nearly large tract of undeveloped agricultural land. Where the land sold under the relied upon sale deed and the acquired lands are both of similar nature (as in this case where both are bharad lands) the question of making any deduction towards development

⁶ (2010) 11 SCC 581

⁷ (2010) 13 SCC 710

cost to arrive at the cost of “undeveloped land” would not arise. Such a deduction would have been necessary if the sale deed relied upon related to a developed residential or commercial plot. Therefore, we are of the view that the Land Acquisition Collector was not justified in making 45% deduction from the price disclosed by the sale deed dated 30-8-1989.”

(7.5) In *Atma Singh versus State of Haryana*⁸ the Supreme Court was into assessing the market value of the land acquired for a Sugar factory. It was observed that the sale exemplars of small parcels of land have been produced to assess the market value of a large tract of acquired land. In those circumstances, the court permitted 10% deduction towards the development of common facilities.

(7.6) In *Chakas versus State of Punjab*⁹ the Supreme Court allowed 10% cut to be applied for common facilities as a considerably big chunk of undeveloped parcel of the acquired land was allotted to an industrial conglomerate. Thus, the court applied a cut of 10% for the development.

(7.7) In General Manager, *Oil and Natural Gas Corporation Ltd. versus Rameshbhai Jivanbhai Patel and another*¹⁰ the Court deliberated on the percentage of increase which should be presumed by the court in the absence of any other material. This judgment lays down the general guidelines in the absence of any other material available for determination of the increase to be awarded.

(7.8) In *Chandrashekar(D) by LRs and others versus Land Acquisition Officer and another*¹¹ the court found out that the sale deed exemplar is with respect to a small piece of land of a developed site and that too with respect to the period post the date of notification under Section 4. The court declared that in the facts and circumstances of the particular case, deduction upto 75% is permissible.

(7.9) In *A.P. Housing Board versus K. Manohar Reddy &*

⁸ (2008) 2 SCC 568

⁹ (2011) 12 SCC 128

¹⁰ (2008) 14 SCC 745

¹¹ (2012) 1 SCC 390

*Ors.*¹² the court held that when a large tract of land is acquired and the sale exemplars produced are of the smaller plots, the best course for the court to arrive at a reasonable and fair valuation, is to deduct a reasonable percentage from the valuation shown in the sale exemplar of the land and to arrive at a fair valuation on the basis thereof.

(7.10) In *Shaji Kuriakose And Anr versus Indian Oil Corpn. Ltd. And Ors.*¹³ the court held that in case of a dissimilarity in respect of locality, shape, size or value of the land between the land covered by the sale exemplar and the land acquired, the court can proportionately reduce the value. The court inter-alia noticed five factors to be applied while assessing the fair market value of the acquired land. The court further went on to hold that in a case where the sale exemplar fulfils all the factors, required to be fulfilled, then, there is no reason for not awarding the price similar to the market value as ascertained in the relevant sale deed exemplar.

The relevant discussion is in Para 3 which is extracted as under:-

“3. It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalization of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfillment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time

¹² (2010) 12 SCC 707

¹³ (2001) 7 SCC 650

proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dis-similarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land. In the present case, what we find is that the first two factors are satisfied. The sale transaction covered by the sale Ext. A-4 is genuine, inasmuch as the sale was executed in proximity to the date of notification under Section 4 of the Act. However, there is a difference in the similarity in the land acquired and the land covered by Ext. A-4. The land covered by Ext. A-4 is situated at Kottayam and Ernakulam, PWD Road, whereas the acquired land is situated at a distance of 3 furlongs from the main road. There is no access to the acquired land and there exists only an internal mud road which belonged to one of the claimants, whose land has also been acquired. Further, the land covered by Ext. A-4 is a dry land and whereas the acquired land is a wetland. After acquisition, the acquired land has to be reclaimed and a lot of amount would be spent for filling the land. Moreover, the land covered by Ext. A-4 relates to a small piece of land which does not reflect the true market value of the acquired land. It is often seen that a sale for a smaller plot of land fetches more consideration than a larger or bigger piece of land. For all these reasons, the High Court was fully justified in lowering the rate of compensation than what was the market value of the land covered by Ext. A-4. We, therefore, do not find any infirmity in the judgment of the High Court.

(7.11) The learned senior counsel relies upon the judgment in *Sajan (supra)*, to contend that 20% deduction would be appropriate

in the present cases. This court has carefully read the aforesaid judgment in which the land was compulsorily acquired for Hiwera Dam Project. The acquired land was measuring around 6 acres. The court while referring to the judgment passed in *Lal Chand* (*supra*) held that 20% deduction would be appropriate. The next judgment relied upon by the learned counsel is in *Subh Ram* (*supra*). In this case, the compulsory acquisition was for establishment of a jail. In para 16 of the judgment, the court held that when the price of the small residential plot is required to be adjusted to work out the market value of the large tract of undeveloped land, the appropriate deduction to the extent of 75% can be ordered. On the other hand, where the value of the acquired land is being assessed with reference to the sale of an adjacent agricultural land, no deduction is required to be made towards the development cut. Para 16 of the aforesaid judgment is extracted as under:-

“Therefore, when deduction is made from the value of a small residential plot towards the development cost, to arrive at the value of a large tract of agricultural or undeveloped land with development potential, the deduction has nothing to do with the purpose for which the land is acquired. The deduction is with reference to the price of the small residential plot, to work back the value of the large tract of undeveloped land. On the other hand, where the value of acquired agricultural land is determined with reference to the sale price of a neighbouring agricultural land, no deduction need be made towards `development cost’.”

(7.12) In the same judgment, the Bench, after referring to the various other judgments, held that the observations made in *Atma Singh versus State of Haryana*¹⁴ are with reference to special facts of that particular case and they should not be read out of context. Para 32 is extracted as under:-

“The above observations in *Atma Singh* no doubt seem to suggest that where the acquisition is for a residential lay out, deduction towards development cost is a must, but if the acquisition is for an industry which does not require forming a layout of sites, the market value of small residential plots may be adopted without any cuts

¹⁴ (2008) 2 SCC 568

towards development cost. The said observations are made with reference to the special facts of that case. If they are read out of context to support a contention that the purpose of acquisition is a relevant factor to avoid the deduction of development cost in valuation, it may then be necessary to consider the said observations as having been made per incuriam, as they overlook a mandatory statutory provision -- section 24 (clause fifthly) of the Act and the series of decisions of larger benches of this Court which hold that when value of large tracts of undeveloped lands is sought to be determined with reference to small residential plots in developed area, it is mandatory to deduct an appropriate percentage towards development cost. But it may be unnecessary to consider whether the observations are per incuriam as para 15 of the decision makes it clear that what is stated therein, is with reference to the special facts of that case, with a view not to disturb the smaller deduction of 10% by the High Court, and not intended to be statement of law.”

(7.13) Thus, it is apparent that the Hon'ble Supreme Court itself has recognized in more than one judgments that if there is no dissimilarity between the acquired land and the sale exemplar produced is of a reasonable size, then, it shall not be appropriate for the court to apply proportionate deduction to reduce the market value.

(7.14) The principle underlined by all these judgments is that while assessing the market value, the court is required to apply the wisdom of a common man and arrive at a figure which a willing seller will get from a voluntary purchaser for the property. Once the market value of the acquired agricultural land is being assessed and many sales exemplars of considerably big sized plots of the agricultural land are available, the application of cut/deduction for development, in the considered opinion of the Court, is not justified unless the court is assessing the market value of a land where the sale exemplars produced before the Court are of relatively small sized plots or are being used for residential, commercial or industrial purposes. The deduction can be applied when comparable sale exemplar is of a plot of a very small size as compared to the acquired land in order to moderate the difference between wholesale and retail prices as observed by the Supreme court in judgment

passed in *LaL Chand* (*supra*). The appropriate percentage of cut can also be applied if the sale exemplar is of a plot which was being used or was capable of being used for different purposes like residential, commercial or industrial. The development cut can also be applied when the comparable sale exemplar is of a plot which is located at a key position like near the road, market, developed residential colony or commercial establishments. There can be more than one reasons to apply the development cut. However, if the price is reduced while assessing the market value of the acquired land, without observing the aforesaid principles while making the deduction in the facts and circumstances of the individual cases, it shall be against the statutory intendment. In a case where the court is making an assessment with respect to an undeveloped acquired land as an undeveloped area and the sale exemplar produced for such determination is also of an undeveloped piece of land of reasonable size, then any deduction which is made on account of development work or development cost, in the considered opinion of this Court, shall not be considered appropriate. This can be explained by an example. Hypothetically, if a farmer purchases a sufficiently large chunk of land just before the notification under Section 4. On the acquisition of the land purchased, he is likely to produce the sale exemplar of the land purchased by him. If the court treats the sale exemplar as the base value and thereafter applies a cut or deduction on account of development cut or development cost per se, he shall stand deprived of the market value paid by him while purchasing the land. It would be against the spirit/intention of the Act. While assessing the market value of the undeveloped /agricultural land, the court is not required to work out the market value of the developed land or plot. In such circumstances, the application of development cut in the considered opinion of the court would not be appropriate and justified. The cut/deduction is applied by the courts in order to arrive at a correct figure representing the true market value of the acquired land on the relevant date. This method has been devised by the Courts in order to tide over the situations where exactly comparable sale exemplars of contemporaneous period are not available. The court, while making adjustments or treating the prices of the developed plots of smaller size as the base, endeavours to work out the fair market value of the acquired land.

(7.15) This matter can be examined from another angle. The intention of the legislature is not to put the landowners who stand deprived of the land through double whammy. On the one hand,

their immovable property is compulsorily taken away, whereas on the other hand, they are not being compensated adequately due to the deduction towards the development. This cannot be the intention of the legislature. The fundamental intention of the Legislature has always been to make the land laws fair, just and reasonable towards the sufferers of compulsory land acquisition.

(7.16) Once a large chunk of agricultural land is being acquired for carving out a residential/commercial or industrial colony and the sale exemplars of plots of reasonable size of agricultural land are available, then in the considered opinion of this Court, it would not be appropriate to apply a development cut for the purpose of assessment either towards development cost or towards the area to be used for passages, roads, drains, parks etc. The landowner stands in the shoes of a loser even if some part of the acquired land is being used for providing common facilities. The landowner does not gain anything exclusively on account of reservation of land for common facilities. In fact, the landowner suffers a dual loss. On the one hand, he is deprived of the acquired land and on the other hand, he does not receive a fair and appropriate amount towards the involuntary deprivation.

(7.17) There is yet another aspect of the matter. The development agency/organization/colonizer or the government do not sell the developed plots on the market value assessed by the court. The plots are sold while determining price on basis of the demand and supply. Usually, the plots are sold on the basis of price determined on per sq. feet or per sq. yard. basis and not on per acre. Therefore, certain percentage of land utilized for carrying out development activities like passages, roads, drains, parks etc. is to be accounted for by the developer and not the landowner. Therefore, in the considered view of this Court, the development cost incurred or to be incurred for providing common facilities is also required to be borne by the developer.

(7.18) It is well settled that while assessing the market value, the court is required to adopt a pragmatic approach. The landowners who stand deprived of the property cannot be permitted to be denied of an adequate and just compensation as well. This is the responsibility of the courts to see that the landowners are adequately compensated. The learned counsel representing the parties have failed to draw the attention of the court to any precedent which lays down that while assessing the market value, the application of

development cut or deduction on the base value is mandatory.

(7.19) It is observed here that Article 141 of the Constitution of India provides that the law declared by the Supreme Court is binding on all courts within the territory of India. The exact phrase used by the Constitution of India is the 'the law declared' and not every case decided. With utmost respect, the judicial discipline requires that all the courts within the territory of India shall follow the law declared by the Supreme Court. However, what is binding is the ratio of the decision and not every or any finding on facts or the mere opinion of the court on any question which was not required to be decided in a particular case. It is the principle that has been laid in the judgment as a whole, in the background of the questions involved before the Supreme Court, which is binding and not any particular words or sentences referred in isolation, devoid of its true relation to the complete text. It has been sufficiently laid in innumerable judgments that it is the ratio decidendi of a judgment which is binding and not the obiter dicta. The Hon'ble Supreme Court in *Krishena Kumar versus Union of India and others*¹⁵ while expounding on the phrase 'Ratio Decidendi' has held as under:-

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

“The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as

¹⁵ (1990) 4 SCC 207

ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi.”

(7.20) The landowners in order to produce and prove that the LAC has not correctly assessed the market value, have relied upon the following sale deeds:-

Exhibit No.	Sale Deed No.	Sale Deed Date	Vendor	Vendee	Area sold	Sale consideration	Village	Rate per acre and gap period in relation to 13.3.2008
R-1	10815	22.2.2008	Sukhbir	Smt. Santosh	2 kanals	Rs.4,50,000/-	Bohar	Rs.18,00,000/ About 9 days later
R-2	1892	29.5.2008	Smt. Chander	Smt. Usha, Smt. Parmila	5 kanals 5 marlas	Rs.12,47,000/-	Bohar	Rs.19,00,190/- About 3 months 16 days later
R-3	9387	14.1.2008	Jitender Kumar	Satish Kumar	5 kanals 12 marlas	Rs.12,60,000/-	Bohar	Rs.18,00,000/ About 1 month earlier
R-4	14922	31.3.2006	Sukhbir Singh	Satish Kumar, Vinod Kumar 26/40 share, Rishi, Rajbir Singh 14/40 share	2 kanals	Rs.1,25,000/-	Bohar	Rs.5,00,000/ About 1 years 10 months 13 days earlier
R-5	9854	05.2.2007	Ramesh 1/8 share, Smt. Laxmi, Jaivir, Jasbir 1/8 share	Smt. Surekha	1 kanal 1 marla	Rs.60,000/-	Bohar	Rs.4,57,142/ About 1 years earlier
R-6	736	25.4.2008	Satpal Singh	Amar Singh	5 kanal 5 marla	Rs.12,60,000/-	Bohar	Rs.19,20,000/

								About 2 months 12 days later
R4/2	3413	27.6.2007	Randhir Singh,	Smt. Darshan,	46 kanal 6 marlas	Rs.1,04,17,500/-	Bohar	Rs.18,00,000/ About 7 months

Exhibit No.	Sale Deed No.	Sale Deed Date	Vendor	Vendee	Area sold	Sale consideration	Village	Rate per acre and gap period in relation to 13.3.2008
P-2	10460	19.02.2007	Zile Singh ½ share, Sumer Singh ½ share	M/s Balbina Real Estates Pvt. Ltd.	53 kanal 9 Marla	Rs.2,70,60,000/-	Bohar	Rs.40,50,140/- About 1 years earlier
P-3	10565 (wrongly mentioned by ld. ADJ as 10010 in table)	21.2.2007 (wrongly mentioned by Ld. ADJ as 7.2.2007 in table)	Krishan Kumar Azad Singh	M/s Balbina Real Estates Pvt. Ltd.	42 kanals 11 marla	Rs.2,15,40,940/- (wrongly mentioned by Ld. ADJ as Rs.2,12,40,940/- in table)	Bohar	Rs.40,50,000/- About 1 year earlier
P-4 (same as Ex. P11)	1182	11.5.2006	Rajender Singh Shishpal	M/s Elixir Infrastructure Pvt. Ltd.	21 kanals 7 Marla	Rs.93,40,625/-	Bohar	Rs.35,00,000/- About 1 year 9 months 2 days earlier
P-5	11230	2.1.2006	Smt. Snahti Devi Rakesh Kumar 1/3 share, Rajender Singh Shishpal 2/3 share	M/s Bliss Infrastructure Pvt. Ltd.	28 kanals 8 marlas	Rs.1,06,50,000/-	Bohar	Rs.30,00,000/- About 2 years 1 month 11 days earlier
P-6	725	20.4.2007	Jagbir Singh Smt. Attro	M/s Label Real Estates Pvt. Ltd.	7 kanals 5 marlas	Rs.38,93,382/-	Bohar	Rs.42,96,145/- About 9 months 24 days earlier
P-7	726	20.4.2007	Surender Singh	M/s Label Real Estates Pvt. Ltd.	8 kanals 3.66 marlas	Rs.43,98,363/-	Bohar	Rs.43,00,000/- About 9 months 24 days earlier
P-8	7507	10.10.2005	Tej Singh Dharam Singh Suresh	M/s Rangoli Infrastructure Pvt. Ltd.	34 kanals 16 marlas	Rs.1,28,32,500/-	Bohar	Rs.29,50,000/- About 2 years 4 months 3 days earlier.

P-9	2719	21.6.2006	Smt. Malho 1/0 share, Krishan, Vinod Kumar, Anil Kumar, Vedpal 9/10 share	M/s Harihar Properties Pvt. Ltd.	8 kanals	Rs.35,00,000/-	Bohar	Rs.35,00,000/- About 1 years 7 months 23 days earlier.
P-10	10157	13.2.2007	Krishan Kumar	M/s Harihar Properties Pvt. Ltd.	9 kanals 19 marlas	Rs.58,45,625/-	Bohar	Rs.47,00,000/- About 1 years earlier
P-11 (same as Ex. P4)	1182	11.5.2006	Rajender Singh Shishpal	M/s Elixir Infrastructure Pvt. Ltd.	21 kanals 7 marlas	Rs.93,40,625/-	Bohar	Rs.35,00,000/- About 1 years 9 months 2 days earlier
P-12	8699	3.1.2007	Rajender Singh Rajbir Singh	M/s Pitamber Projects Pvt. Ltd.	39 kanals 11 marlas	Rs.2,20,08,750/-	Bohar	Rs.44,51,833/- About 1 years 1 months 10 days earlier
P-13	3088	3.7.2006	Rajender 1/3 share, Vijender 5/9 share	M/s Elixir Infrastructure Pvt. Ltd.	8 kanals 14 marlas	Rs.38,06,250/-	Bohar	Rs.35,00,000/- About 1 years 7 months 10 days earlier.

(7.21) On the other hand, HSIIDC and Maruti Suzuki India Limited have jointly produced the following sale deeds:-

Exhibit No.	Sale Deed No.	Sale Deed Date	Vendor	Vendee	Area sold	Sale consideration	Village	Rate per acre and gap period in relation to 13.3.2008
R-1	10815	22.2.2008	Sukhbir	Smt. Santosh	2 kanals	Rs.4,50,000/-	Bohar	Rs.18,00,000/- About 9 days later
R-2	1892	29.5.2008	Smt. Chander	Smt. Usha, Smt. Parmila	5 kanals 5 marlas	Rs.12,47,000/-	Bohar	Rs.19,00,190/- About 3 months 16 days later
R-3	9387	14.1.2008	Jitender Kumar	Satish Kumar	5 kanals 12 marlas	Rs.12,60,000/-	Bohar	Rs.18,00,000/- About 1 month earlier

R-4	14922	31.3.2006	Sukhbir Singh	Satish Kumar, Vinod Kumar 26/40 share, Rishi, Rajbir Singh 14/40 share	2 kanals	Rs.1,25,000/-	Bohar	Rs.5,00,000 /- About 1 years 10 months 13 days earlier
R-5	9854	05.2.2007	Ramesh 1/8 share, Smt. Laxmi, Jaivir, Jasbir 1/8 share	Smt. Surekha	1 kanal 1 marla	Rs.60,000/-	Bohar	Rs.4,57,142 /- About 1 years earlier
R-6	736	25.4.2008	Satpal Singh	Amar Singh	5 kanal 5 marla	Rs.12,60,000/-	Bohar	Rs.19,20,000/- About 2 months 12 days later
R4/2	3413	27.6.2007	Randhir Singh, Smt. Bala, Smt. Nirmala, Jaipal, Vijaypal, Smt. Santosh, Rakesh, Sunil, Smt. Murti, Pardeep Munish	Smt. Darshan,	46 kanals 6 marlas	Rs.1,04,17,500/-	Bohar	Rs.18,00,000/- About 7 months 16 days earlier.

(7.22) Moreover, it has come in evidence that the industrialization in the area had already started before the issuance of notification under Section 4 of the 1894 Act on 13.02.2008. Even the developers had started purchasing large tracts of land in order to develop colonies. A large number of educational institutions had already come up in the area. Hence, it is apparent that the acquired land had the potential to be utilized for residential, commercial or industrial purpose. The reference court while observing/recording that the sale exemplar Ex.P2 is with respect to land measuring 53 kanals and 9 marlas (more than 6 acres of land) and the sale exemplar Ex.P3 is with respect to land measuring 42 kanals and 11 marlas (more than 5 acres) has relied upon the same. In fact, out of the land measuring 42 kanals and 11 marlas, the land measuring 12 kanals comprised in rectangle number 221, khasra no.23 and 24 is a part of the acquired land itself. The average price per acre of the aforesaid sale instance comes to Rs.43, 50,000/-. This sale instance is approximately one year before the notification under Section 4 of

the 1894 Act. The reference court, after taking into consideration the various sale instances in order to make adjustment for the sale of the prime area has worked out the average sale price @ Rs.37,88,000/-, which according to the learned counsel representing the parties is the result of a calculation error.

(7.23) It has been observed that some part of the land from the land sold through sale deed Ex.P3 is the subject matter of acquisition. Moreover, it is appropriate to note that the landowners have produced a copy of the revenue lay out plan Ex.P1 depicting the acquired land in yellow colour. From a careful perusal of the revenue lay out plan Ex.P1, it is apparent that the various parcels of land purchased through sale deeds Ex.P2, Ex.P3, Ex.P4, Ex.P5, Ex.P6, Ex.P8, respectively, are part of the acquired land. It is evident that the acquired land is located on the National Highway abutting the Rohtak-Sonipat Road. On a careful scrutiny of the sale instances produced by the owners, it is evident that the various parcels of land purchased through the sale exemplars Ex.P2, Ex.P3, Ex.P4, Ex.P5, Ex.P6, Ex.P7, Ex.P8, Ex.P11 and Ex.P13 are with respect to the land comprised in rectangle No.183, 220, 221, 224, 129, 219, 189, 190, 219, 226, 220, 219, 190, 219, 220, 225, 226, 227, 101, 102, 189, 190, 96 and 190, whereas the acquired land is comprised in rectangle no.118, 142, 148, 149, 152, 153, 154, 183, 184, 185, 186, 187, 188, 189, 220, 221, 222, 223, 224, 225. Thus, the sale deeds Ex.P2, Ex.P3, Ex.P4, Ex.P5, Ex.P6, Ex.P7, Ex.P8 and Ex.P13 are either a part of the acquired land or with respect to parcels of land bordering on/adjoining to the acquired land. On the other hand, the sale deeds produced by the State are either of a smaller area than the acquired land or located at a distant place. Although learned senior counsel appearing for HSIIDC has submitted that the sale deed Ex.R4/2 should be included for calculating the average, however, it is evident that the piece of land sold through the aforesaid sale deed is out of the land comprised in the rectangle no.70 and it is likely to be located at a far of place. The unit 'Rectangle' in terms of the size of the land holdings denotes a contiguous parcel of land in rectangular shape consisting of 25 (5x5) acres of land. Normally, one acre of land is equivalent to 4840 square yards which is further sub-divided into 8 kanals. Each kanal of the land has 605 square yards area which is further sub-divided into 20 marlas. In order words, each marla normally has little bit more than 30 sq. yards area and each acre of land has 160 marlas of land.

(7.24) As is evidenced, the Supreme Court in *Shaji Kuriakose and another's case* (*supra*) has laid down certain tests in order to determine the market value of the acquired land in accordance with the sale value of the comparable land as claimed by the landowners. The first test is with respect to the fact that the sale must be a genuine transaction. In the present case, no evidence has been led to prove that sale exemplar Ex.P2, Ex.P3, Ex.P4, Ex.P5, Ex.P6, Ex.P7, Ex.P8, Ex.P11 and Ex.P13 are not genuine transactions. Under the second test, the sale exemplar must have been executed at the time proximate to the date of notification under Section 4 of the 1894 Act. In the present case, the time gap between these sale deeds and the date of notification under Section 4 of the 1894 Act is one year, approximately. The third test is that the land covered by the sale exemplar must be in the vicinity of the acquired land. All the sale exemplars referred to above pass this test as well. As regards the fourth test, it is evident that the land sold through these sale exemplars, referred to above, being part of the acquired land or in the vicinity was similar to the land acquired. The State has not led any evidence to prove that the parcels of land covered by the above referred sale exemplars were different in geographical location or in its nature from the aforesaid acquired land in any manner. Hence, test no.4 also stands fulfilled. The fifth test is with respect to the size of the plot of the land covered by the sale exemplar. These sale exemplars are with respect to sufficiently large chunks of land. As all these tests stand fulfilled satisfactorily, there is no reason to deprive the landowners of the price as ascertained in these sale exemplars.

(7.25) The average price of the sale deeds i.e. Ex.P2, Ex.P3, Ex.P4 (same as Ex.P11), Ex.P5, Ex.P6, Ex.P7, Ex.P8, Ex.P13 comes to Rs.36,55,294/- (rounded to the nearest rupee). These sale exemplars are either partly or fully of the acquired land. Through the aforesaid sale deeds, 4093.66 Marlas (25 Acres 4 Kanals and 13 Marlas approximately) of land has been sold for a total amount of Rs.9,35,22,060/-. The total acquisition is with respect to land measuring 343 acres, 2 kanals and 8 marlas. Thus, these sale deeds individually as well as collectively represent a significantly big parcel of land when compared with that of the acquired land. This court has taken a decision to take the average of the various sale exemplars produced by the landowners as sometimes the developer/colonizers pay exorbitant price in order to get contiguous pieces of land in order to develop a compact block of land into a

colony. The village Bohar is not only located within the peripheral road of Rohtak City but is closer to the city as compared to the other villages where acquisitions have taken place. The developers have already purchased large chunks of land to develop the same into colonies. Hence, the land although is reflected as agricultural land in the revenue record, it is, in fact, in the process of being used for residential and commercial purposes. It is further evident that most of the sale deeds are about one year prior to the date of notification under Section 4 of the Land Acquisition Act, 1894. Hence, the average sale price is required to be increased by 10% so as to cover the expected increase in the prices due to the time gap between the date of notification under Section 4 of the 1894 Act and the date of relevant sale exemplars, particularly when the industrialization has taken place in the area in between the relevant time span. Thus, the average market value of the acquired land comes to Rs.40,20,823/- (rounded to the nearest rupee) per acre.

(7.26) However, there is yet another aspect of the matter which needs attention. After arriving at the market value of the acquired land @ Rs.40,20,823/- (rounded to the nearest rupee), the market value of the land located on National Highway is required to be worked out. The learned counsel representing the parties have not drawn the attention of the court to any sale instance with respect to the land abutting the National Highway. The Reference Court, while making value addition of 11.16%, has worked out the market value of the land abutting the National Highway upto the depth of one acre. In the absence of any other material, this court adopts the same method. Once we increase the amount of Rs.40,20,823/- by 11.16%, the amount comes to Rs.44,69,547/-.

(7.27) Now, the stage is set for examining the arguments of learned counsels representing the parties.

(7.28) As regards the first argument with respect to development cut, this Bench has already answered the aforesaid question. Next, with regard to the argument of nominal increase of 9% being on the lower side, this Court has revised the same to 10%. The learned senior counsel Sh. Sanjeev Sharma has also objected to the maintainability of the appeal filed by Maruti Suzuki India Limited. It may be noted here that the aforesaid question is academic and therefore, not required to be answered particularly when the Maruti Suzuki India Limited has been impeladed as a party by the Reference Court and the correctness of the aforesaid order has not

been challenged by any of the parties at that stage.

(7.29) The next argument of the learned counsel representing the owners is with respect to the incorrect finding of the Reference Court in para 24, wherein it has been observed that the sale instance Ex.P3 is of a small piece of land. The aforesaid sale instance has been taken into consideration while assessing the market value by this Court and hence, the argument needs no further discussion.

(7.30) The next argument of the learned counsel is with reference to the statement of Sh. Krishan Patwari, who has admitted the location of the acquired land. This aspect has already been examined.

(7.31) The argument of Advocate Sh. Bakshi, with regard to the error in the calculation also does not need further discussion particularly when the aforesaid calculation has not been relied upon.

(7.32) As regard the argument of learned counsel representing HSIIDC that the sale deed Ex.P3 is with regard to two independent parcels of land, it may be noted that the same developer/colonizer has purchased the different chunks of land. It is well known that such purchases create land bank in order to utilise the same at a subsequent stage. Hence, there is no force in the objection of the learned counsel representing the HSIIDC.

(7.33) The next argument of the learned counsel representing the HSIIDC is with respect to the observation of the reference court ignoring the sale deed produced by HSIIDC on the ground that the sale instances are depicting a price lower than the amount assessed by the Land Acquisition Collector. Section 25 of the 1894 Act does not prohibit the Court from taking into consideration the sale exemplars of price lower than what was assessed by the LAC. Section 25 of the 1894 Act only debars the court from assessing the market value lower than the amount assessed by the Land Acquisition Collector. However, in the present case, the sale instances Ex.R-1, Ex.R-2, Ex.R-3, Ex.R-4, Ex.R-5 and Ex.R-6 are with respect to very small pieces of the land. No doubt, sale exemplar Ex.R4/2 is with respect to a sufficiently big parcel of land, however, the aforesaid piece of land appears to be located at some distance. The HSIIDC did not make any effort to produce a lay out plan in order to prove the comparative location of sale exemplar Ex.R4/2 with the acquired land. As already noticed, under the aforesaid sale deed, the land comprised in Rectangle No.70 has been

purchased, whereas on a perusal of the award, it is evident that the land comprised in Rect. No.70 or any other nearby Rectangle has not been acquired. Hence, Ex.R4/2, also, cannot be relied upon, particularly when a large number of sale instances have been produced by the landowners and they sufficiently relate to the acquired land or adjacent parcels of the acquired land. It may be noted here that in the second award passed by the Reference Court the parties did not produce any new document.

8. RELIEF

(8.1) Keeping in view the aforesaid discussion, the various appeals filed by the landowners are allowed, whereas the appeal filed by Maruti Suzuki India Limited is dismissed. The landowners of the land abutting the National Highway upto the depth equivalent to 1 acre are held entitled to market value @ Rs.44, 69,547/- per acre and the remaining landowners of the acquired land shall be entitled to the market value of the acquired land @ Rs.40,20,823/-per acre along with all statutory benefit as per the amended Land Acquisition Act, 1894.

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

Dr. Payel Mehta