

careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in *Baburam Prakash Chandra Maheshwari v. Antaram Zila Parishad, Whirlpool Corpn. v. Registrar of Trade Marks* and *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.* and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order.”

17. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference.

18. We cannot help but disapprove the approach of the High Court for reasons already noticed in *Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works (P) Ltd. and Another, 1997 (6) SCC 450*, observing :-

“32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.”

19. The impugned orders are therefore contrary to the law laid down by this Court under Article 141 of the Constitution and unsustainable. They are therefore set aside and the appeal is allowed.

20. All questions of law and fact remain open for consideration in any application by the aggrieved before the statutory forum under the SARFAESI Act.

**Appeal allowed.**

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**SUPREME COURT OF INDIA**

**Before: R.K. Agrawal & Abhay Manohar Sapre, JJ.**

Civil Appeal No.885 of 2018

Decided on : 25.01.2018

(Arising out of S.L.P.(C) No.15476 of 2016)

Surender Singh

Appellant

Versus

State of Haryana & Ors.

Respondents

*Alongwith*

*CIVIL APPEAL NO.890 OF 2018 (Arising out of S.L.P.(C) No. 18631 of 2016),  
CIVIL APPEAL NO.896 OF 2018 (Arising out of S.L.P.(C) No.19204 of 2016),  
CIVIL APPEAL NO. 888 OF 2018 (Arising out of S.L.P.(C) No. 18594 of 2016),  
CIVIL APPEAL NO. 889 OF 2018 (Arising out of S.L.P.(C) No. 18534 of 2016),  
CIVIL APPEAL NO. 886 OF 2018 (Arising out of S.L.P.(C) No. 15541 of 2016),  
CIVIL APPEAL NO.887 OF 2018 (Arising out of S.L.P.(C) No. 38745 of 2016),  
CIVIL APPEAL Nos. 897-900 OF 2018 (Arising out of S.L.P.(C) Nos. 19859-  
19862 of 2016)  
CIVIL APPEAL Nos. 909-912 OF 2018 (Arising out of S.L.P.(C) Nos. 38735-  
38738 of 2016),  
CIVIL APPEAL NO.904 OF 2018 (Arising out of S.L.P.(C) No. 19955 of 2016),  
CIVIL APPEAL Nos. 891-895 OF 2018 (Arising out of S.L.P.(C) Nos. 38746-  
38750 of 2016),  
CIVIL APPEAL Nos. 901-903 OF 2018 (Arising out of S.L.P.(C) Nos. 38706-  
38708 of 2016),  
CIVIL APPEAL NO.905 OF 2018 (Arising out of S.L.P.(C) No. 21944 of 2016),  
CIVIL APPEAL Nos. 984-985 OF 2018 (Arising out of S.L.P.(C) Nos. 38729-  
38730 of 2016),  
CIVIL APPEAL Nos. 1028-1034 OF 2018 (Arising out of S.L.P.(C) Nos. 38477-  
38483 of 2016),  
CIVIL APPEAL Nos.1140-1146 OF 2018 (Arising out of S.L.P.(C) Nos. 24387-  
24393 of 2017),  
CIVIL APPEAL Nos.920-952 OF 2018 (Arising out of S.L.P.(C) Nos. 38562-  
38594 of 2016),  
CIVIL APPEAL Nos. 1035-1043 OF 2018 (Arising out of S.L.P.(C) Nos.32033-  
32041 of 2016,  
CIVIL APPEAL Nos.914-915 OF 2018 (Arising out of S.L.P.(C) Nos. 26270-  
26271 of 2016,  
CIVIL APPEAL Nos.906-907 OF 2018 (Arising out of S.L.P.(C) Nos. 38710-  
38711 of 2016,  
CIVIL APPEAL NO.1182 OF 2018 (Arising out of S.L.P.(C) No.2785/2018  
D.No.25046 of 2016,  
CIVIL APPEAL Nos.987-992 OF 2018 (Arising out of S.L.P.(C) Nos. 38504-  
38509 of 2016,  
CIVIL APPEAL Nos. 1049-1053 OF 2018 (Arising out of S.L.P.(C) Nos. 38470-  
38474 of 2016,  
CIVIL APPEAL NO.908 OF 2018 (Arising out of S.L.P.(C) No. 38701 of 2016,  
CIVIL APPEAL Nos.972-981 OF 2018 (Arising out of S.L.P.(C) Nos. 38718-  
38727 of 2016,  
CIVIL APPEAL Nos. 916-919 OF 2018 (Arising out of S.L.P.(C) Nos. 38713-  
38716 of 2016,  
CIVIL APPEAL NO.913 OF 2018 (Arising out of S.L.P.(C) No. 38698 of 2016,*

*CIVIL APPEAL Nos.1057-1058 OF 2018 (Arising out of S.L.P.(C) Nos. 2626-2627 of 2017,*

*CIVIL APPEAL Nos.953-971 OF 2018 (Arising out of S.L.P.(C) Nos. 2013-2031 of 2017,*

*CIVIL APPEAL Nos.1012-1027 OF 2018, (Arising out of S.L.P.(C) Nos. 38488-38503 of 2016,*

*CIVIL APPEAL NO.986 OF 2018 (Arising out of S.L.P.(C) No. 29499 of 2016,*

*CIVIL APPEAL Nos.1001-1002 OF 2018 (Arising out of S.L.P.(C) Nos. 38484-38485 of 2016,*

*CIVIL APPEAL Nos.1180-1181 OF 2018 (Arising out of S.L.P.(C) Nos. 2766-2767 of 2018, (Arising out of S.L.P.(C).....CC No. 18530-18531 of 2016,*

*CIVIL APPEAL Nos.1003-1009 OF 2018, (Arising out of S.L.P.(C) No. 38510-38516 of 2016,*

*CIVIL APPEAL Nos.1055-1056 OF 2018 (Arising out of S.L.P.(C) Nos. 38434-38435 of 2016,*

*CIVIL APPEAL NO.982 OF 2018 (Arising out of S.L.P.(C) No. 38703 of 2016,*

*CIVIL APPEAL NO.983 OF 2018, (Arising out of S.L.P.(C) No. 38705 of 2016,*

*CIVIL APPEAL NO.1075 OF 2018 (Arising out of S.L.P.(C) No.8084 of 2017),*

*CIVIL APPEAL NO.1079 OF 2018 (Arising out of S.L.P.(C) No.9551 of 2017),*

*CIVIL APPEAL NO.1078 OF 2018 (Arising out of S.L.P.(C) No.9242 of 2017),*

*CIVIL APPEAL NO.1010 OF 2018 (Arising out of S.L.P.(C) No.30834 of 2016),*

*CIVIL APPEAL NO.1011 OF 2018 (Arising out of S.L.P.(C) No.38659 of 2016),*

*CIVIL APPEAL Nos.1138-1139 OF 2018 (Arising out of S.L.P.(C) Nos. 22957-22958 of 2017,*

*CIVIL APPEAL NO.1048 OF 2018 (Arising out of S.L.P.(C) No.35059 of 2016,*

*CIVIL APPEAL Nos.1044-1047 OF 2018 (Arising out of S.L.P.(C) Nos. 35054-35057 of 2016,*

*CIVIL APPEAL NO.1068 OF 2018 (Arising out of S.L.P.(C) No. 4371 of 2017,*

*CIVIL APPEAL Nos.1066-1067 OF 2018 (Arising out of S.L.P.(C) Nos. 4335-4336 of 2017,*

*CIVIL APPEAL Nos.1170-1179 OF 2018 (Arising out of S.L.P.(C) Nos. 2755-2764 of 2018 (Arising out of S.L.P.(C)... CC No. 24562-24570 of 2016,*

*CIVIL APPEAL Nos.1059-1065 OF 2018 (Arising out of S.L.P.(C) No. 3033-3039 of 2017,*

*CIVIL APPEAL NO.1054 OF 2018 (Arising out of S.L.P.(C) No. 38461 of 2016,*

*CIVIL APPEAL NO.1072 OF 2018 (Arising out of S.L.P.(C) No. 5934 of 2017,*

*CIVIL APPEAL NO.1074 OF 2018 (Arising out of S.L.P.(C) No. 5935 of 2017,*

*CIVIL APPEAL NO.1076 OF 2018 (Arising out of S.L.P.(C) No. 9228 of 2017,*

*CIVIL APPEAL NO.1077 OF 2018 (Arising out of S.L.P.(C) No. 9239 of 2017,*

*CIVIL APPEAL NO.1195-1196 OF 2018 Arising out of S.L.P.(C) Nos. 2805-2806 of 2018 (Arising out of S.L.P.(C)...CC No. 3152 of 2017,*

- CIVIL APPEAL NO.1073 OF 2018 (Arising out of S.L.P.(C) No. 5937 of 2017,*  
*CIVIL APPEAL NO.1081 OF 2018 (Arising out of S.L.P.(C) No. 9924 of 2017,*  
*CIVIL APPEAL NO.1069 OF 2018 (Arising out of S.L.P.(C) No. 4362 of 2017),*  
*CIVIL APPEAL Nos.1070-1071 OF 2018 (Arising out of S.L.P.(C) No. 4369-*  
*4370 of 2017,*  
*CIVIL APPEAL NO.1150 OF 2018 (Arising out of S.L.P.(C) No. 31097 of*  
*2017),*
- CIVIL APPEAL NO.1080 OF 2018 (Arising out of S.L.P.(C) No. 9243 of 2017),*  
*CIVIL APPEAL Nos.1132-1133 OF 2018 (Arising out of S.L.P.(C) No. 11874-*  
*11875 of 2017),*
- CIVIL APPEAL Nos.1082-1131 OF 2018 (Arising out of S.L.P.(C) No. 11440-*  
*11489 of 2017),*  
*CIVIL APPEAL NO.1134 OF 2018 (Arising out of S.L.P.(C) No. 11709 of*  
*2017),*
- CIVIL APPEAL NO.1183 OF 2018 Arising out of S.L.P.(C) No.2793 of 2018,*  
*(Arising out of S.L.P.(C)..... D.No. 12429 of 2017),*
- CIVIL APPEAL NO.1186 OF 2018 Arising out of S.L.P.(C) No.2795 of 2018,*  
*(Arising out of S.L.P.(C)..... D.No. 12432 of 2017),*
- CIVIL APPEAL NO.1184 OF 2018 Arising out of S.L.P.(C) No.2794 of 2018,*  
*(Arising out of S.L.P.(C)..... D.No. 12433 of 2017),*
- CIVIL APPEAL NO.1185 OF 2018 Arising out of S.L.P.(C) No.2796 of 2018,*  
*(Arising out of S.L.P.(C)..... D.No. 12434 of 2017),*
- CIVIL APPEAL NO.1187 OF 2018 Arising out of S.L.P.(C) No.2797 of 2018,*  
*(Arising out of S.L.P.(C)..... D.No. 13789 of 2017),*
- CIVIL APPEAL NO.1190 OF 2018 Arising out of S.L.P.(C) No.2800 of 2018,*  
*(Arising out of S.L.P.(C)..... D.No. 13790 of 2017),*
- CIVIL APPEAL NO.1197 OF 2018 Arising out of S.L.P.(C) No.2807 of 2018,*  
*(Arising out of S.L.P.(C)..... D.No. 13791 of 2017,*
- CIVIL APPEAL NO.1188 OF 2018 Arising out of S.L.P.(C) No.2798 of 2018,*  
*(Arising out of S.L.P.(C)..... D.No. 13792 of 2017,*
- CIVIL APPEAL NO.1189 OF 2018 Arising out of S.L.P.(C) No.2799 of 2018,*  
*(Arising out of S.L.P.(C)..... D.No. 15878 of 2017,*
- CIVIL APPEAL NO.1169 OF 2018 (Arising out of S.L.P.(C) No.372 of 2018),*  
*CIVIL APPEAL NO.1136 OF 2018 (Arising out of S.L.P.(C) No. 21035 of*  
*2017),*  
*CIVIL APPEAL NO.1135 OF 2018 (Arising out of S.L.P.(C) No. 17627 of*  
*2017),*  
*CIVIL APPEAL NO.1149 OF 2018 (Arising out of S.L.P.(C) No. 29983 of*  
*2017),*  
*CIVIL APPEAL NO.1137 OF 2018 (Arising out of S.L.P.(C) No. 21420 of*  
*2017),*
- CIVIL APPEAL Nos.1147-1148 OF 2018 (Arising out of S.L.P.(C) Nos. 29981-*

29982 of 2017),

CIVIL APPEAL Nos.1151-1153 OF 2018 (Arising out of S.L.P.(C) Nos. 31215-31217 of 2017),

CIVIL APPEAL Nos.1154-1158 OF 2018 (Arising out of S.L.P.(C) Nos. 33226-33230 of 2017),

CIVIL APPEAL NOS.1191-1194 OF 2018 Arising out of S.L.P.(C) No.2801-2804 of 2018, (Arising out of S.L.P.(C)..... D.No. 37077 of 2017),

CIVIL APPEAL Nos.1159-1168 OF 2018 (Arising out of S.L.P.(C) Nos. 34271-34280 of 2017),

AND

CIVIL APPEAL Nos.993-1000 OF 2018 (Arising out of S.L.P.(C) Nos. 1046-1053 of 2018)

**A. Land Acquisition Act, 1894 (1 of 1894), Section 4,6,23 – Acquisition of land – Fair price of land – Determination of -- High Court noticed from the facts involved in the case of Pran Sukh, 2010 (11) SCC 175 that the land situated in one village Kasan along with its some adjoining villages was acquired on 15.11.1994 by the State and Court determined the compensation payable to the landowners of Kasan village at the rate of Rs.20,00,000/- per acre -- High Court accordingly gave annual increase of 8% to Rs.20,00,000/- from 1994 and worked out the rate at Rs.62,11,700/- per acre for the entire acquired land by applying one uniform rate – Held, the approach of the High Court in the facts of these cases does not appear to be right inasmuch as the High Court failed to take into consideration several material issues which arose in these cases and had bearing on determination of the fair market rate of the land in question under Section 23 of the Act.**

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

High Court, in the absence of any evidence on any of these issues, could not have determined one flat market rate of the acquired land by applying one isolated rate.

(Para 33-38)

**B. Land Acquisition Act, 1894 (1 of 1894), Section 4,6,23 – Acquisition of land – Fair price of land – Determination of -- Fair market value of the acquired land cannot be decided in isolation on the basis of only one factor -- There are several other factors, which govern the determination of the rate -- These factors need to be proved with sufficient evidence -- It must appear that the Courts have made sincere endeavor to determine the fair market rate of the acquired land and while determining has taken into account all relevant aspects of the case -- It is the duty of the landowners and the State to adduce proper and sufficient evidence to enable the Courts to arrive at a reasonable and fair market rate of the acquired land prevalent on the date of acquisition.**

**(Para 39)**

**C. Land Acquisition Act, 1894 (1 of 1894), Section 18, 23 -- Court Fees Act, 1870 (7 of 1870), Section 13 – Acquisition of land – Fair price of land – Determination of -- Remand of case -- Cases remanded to the Reference Court for fresh adjudication on merits in accordance with law, the appellants (landowners) are entitled to get back the amount of court fee paid by each appellant (landowner) on his appeal memo before the High Court as also before this Court as provided under Section 13 of the Court Fees Act.**

**(Para 46)**

**Cases referred:**

1. Haryana State Industrial Development Corporation vs Pran Sukh & Others [2010 (11) SCC 175].

**JUDGMENT**

**ABHAY MANOHAR SAPRE, J. –**

1. Leave granted.

2. These appeals are filed against the common final judgment and order dated 05.02.2016 passed by the High Court of Punjab & Haryana at Chandigarh in R.F.A. No. 1854 of 2012 etc.etc. whereby the High Court partly allowed the appeals filed by the appellants herein and thereby enhanced the compensation @ Rs.62,11,700/- per acre and other statutory benefits under Land Acquisition Act, 1894 (hereinafter referred to as “the Act”) and accordingly modified the Award dated 27.02.2012 passed by the Reference Court, Gurgaon in LAC No. 551 of 2009/2011 and other connected matters and, in consequence, dismissed the appeals filed by the State.

3. In order to appreciate the entire controversy involved in this bunch of appeals, it is necessary to set out the facts in detail.

4. In exercise of the powers conferred by Section 4 of the Act, the State of Haryana issued a Notification on 11.01.2005 for acquisition of large chunk of land totaling around 520 acres 02 Kanals and 13.5 Marlas situated in 15 villages in the State of Haryana. The acquisition in question was for the public purpose, namely, construction of Express Highway known as “KMP”. It was followed by another notification issued on 17.11.2005 by the State under Section 4 of the Act for the same public purpose in relation to the land situated

in 4 villages.

5. The details of the acquisition, such as name of the villages and the area of the land situated in each village are setout hereinbelow

S.No.	Name of Village	Area acquired (per acre)
1.	Kasan	514 kanal 13 marla
2.	Kukrola	97 kanal 04 marla
3.	Khaintawas	99 kanal 14 marla
4.	Dhana	241 kanal 00 marla
5.	Path Hajipur	960 kanal 04 marla
6.	Sultanpur	499 kanal 01 marla
7.	Fazilwas	11 kanal 13 marla
8.	Mokalwas	185 kanal 18 marla
9.	Bas Lambi	313 kanal 07 marla
10.	Mubarikpur	242 kanal 13 marla
11.	Jhanjhrola	117 kanal 01 marla
12.	Babra Bakipur	100 kanal 19 marla
13.	Shed Mohammadpur	222 kanal 01 marla
14.	Kharkari	14 kanal 11 marla
15.	Fakharpur	182 kanal 14 marla

6. This was followed by two declarations published by the State under Section 6 of the Act. One was published on 31.05.2005. It was in relation to first notification issued under Section 4 of the Act on 11.01.2005 whereas other declaration was published on 08.02.2006. It was in relation to second notification issued under Section 4 of the Act on 17.11.2005.

7. This was followed by the initiation of the proceedings for determination of compensation payable by the State to the landowners whose lands were acquired in the acquisition proceedings in question. Notices to landowners were accordingly issued under Section 9 of the Act.

8. The Land Acquisition Officer held an enquiry as required under Section 11 of the Act and passed separate awards in relation to the lands situated in different villages on 10.05.2006. The Land Acquisition Officer determined the uniform rate applicable to entire acquired land payable to every landowner. In his opinion, all the landowners, whose lands were acquired in the aforementioned 15 villages, were entitled to get the compensation at the uniform rate of Rs.12,50,000/- per acre.

9. Dissatisfied with the awards, the landowners filed their objections under Section 18 of the Act and prayed for making reference to the Civil Court for fresh determination of the compensation and the rate at which it was payable. As a consequence thereof, land references were accordingly made and forwarded to the Reference Court for re-determination of the compensation under the Act. As many as 41 land references were made to the Reference Court.

**10.** By a common Award dated 27.02.2012, the Reference Court (Civil Court) partly allowed all the reference cases and enhanced the rate of compensation at Rs.43,17,841/- per acre. In other words, the Reference Court enhanced the rate from Rs.12,50,000/- per acre to Rs.43,17,841/- per acre.

**11.** This determination gave rise to filing of first appeals by the landowners as well as the State of Haryana in the High Court of Punjab & Haryana under Section 54 of the Act. As stated at the bar, in all, 556 first appeals were filed in the High Court against the award of the Reference Court out of which 258 appeals were filed by the landowners and remaining 298 appeals by the State.

**12.** So far as the appeals filed by the landowners were concerned, the landowners prayed therein for grant of more compensation than what was awarded by the Reference Court. In other words, the case of the landowners in the High Court in support of their appeals was that the Reference Court though was right in enhancing the rate of compensation but was not right in awarding at the rate of Rs.43,17,841/- per acre. According to them, the rate of land determined by the Reference Court should have been much higher than Rs.43,17,841/- per acre because the acquired land had immense potential.

**13.** So far as the appeals filed by the State were concerned, the case of the State in the appeals was that the Reference Court erred in determining the market rate of the land at the rate of Rs.43,17,841/- per acre. According to the State, it was on higher side as compared to what was fixed by the LAO, i.e., Rs.12,50,000/- per acre which, in the facts and circumstances of the case, was just, proper and adequate with no scope of any further enhancement therein.

**14.** By impugned judgment, the High Court partly allowed the appeals filed by the landowners and as a consequence thereof dismissed the appeals filed by the State. The High Court while partly allowing the landowners' appeals further enhanced the rate of acquired land from Rs.43,17,841/- per acre to Rs.62,11,700/- per acre.

**15.** In other words, in the opinion of the High Court, the fair market rate of acquired land should be at Rs.62,11,700/- per acre and, therefore, the compensation be paid to each landowner for their acquired lands, at the rate of Rs.62,11,700/- per acre.

**16.** Against this judgment of the High Court, the landowners as well as the State both felt aggrieved and filed these appeals by way of special leave in this Court.

**17.** So far as the appeals filed by the landowners are concerned, their common case in their appeals is that the High Court was right in enhancing the rate of acquired land but was not right in confining it to Rs.62,11,700/- per acre. According to them, the rate of acquired land should have been much more than what was determined by the High Court, i.e., Rs.62,11,700/- per acre.

**18.** So far as the appeals filed by the State are concerned, the case of the State was that the High Court erred in further enhancing the rate of acquired land to Rs.62,11,700/- per acre. According to the State, there was no case made out for any further enhancement in the rate of the acquired land and on the other hand, the appeals filed by the State deserved to be allowed by the High Court by reducing the rate of acquired land fixed by the Reference Court and restoring the rate fixed by the LAO that being the fair market rate of the land rightly fixed by the LAO, i.e., Rs.12,50,000/- per acre.

**19.** It is essentially with this factual background, the entire controversy on the question of re-determination of the rate of acquired land payable to the landowners is made the subject-matter of these appeals at the instance of the landowners and the State.

**20.** Therefore, the question that arises for consideration in this bunch of appeals, is whether the High Court was right in partly allowing the landowners' appeals and thereby was justified in further enhancing the rate of compensation from Rs.43,17,841/- per acre to Rs.62,11,700/- per acre. In other words, the question is whether the High Court was justified in dismissing the State's appeals and thereby was justified in not reducing the rate of acquired land fixed by the Reference Court and restoring the rate (Rs.12,50,000/- per acre) fixed by LAO.

**21.** To put it in yet another words, what is the fair market value of the acquired land in question - (1) Rs.12,50,000/- per acre as fixed by the LAO; or (2) Rs.43,17,841/- per acre as fixed by the Reference Court; or (3) Rs.62,11,700/- per acre as fixed by the High Court or lastly any other rate between Rs.12,50,000/- per acre and Rs.62,11,700/- per acre or more than Rs.62,11,700/- per acre prevailing on the date of acquisition i.e. 11.01.2005 and 17.11.2005.

**22.** Heard learned counsel for the parties.

**23.** As mentioned above, the submission of learned counsel for the different landowners in support of their respective appeals was more or less common. According to them, there is overwhelming evidence adduced by the landowners to prove the potentiality of the land on the date of acquisition (11.01.2005 and 17.11.2005) which, in fact, found acceptance to the High Court while enhancing the rate of acquired land.

**24.** It was urged that having regard to the situation, proximity and the surroundings of the acquired area which was already developed much prior to the date of the acquisition coupled with the fact that at least one sale deed out of the four exemplar sale deeds filed by the landowners (Exs-P1, P-10, P-12, P-13 and P-14) to prove the real market value of the acquired land as contemplated under Section 23 of the Act should have been made basis by the High Court for fixing the rate of acquired land and had it been done then the rate of acquired land would have been more than Rs.62,11,700/- per acre.

**25.** All the learned counsel for the landowners then took us through the evidence with a view to show the potentiality in the acquired land, its situation, location, proximity with the well developed areas and its surrounding places and on that basis urged that a case for further enhancement in the rate of the acquired land, i.e., more than Rs.62,11,700/- per acre is made out and, therefore, this Court should allow the appeals filed by the landowners and suitably enhance the rate of acquired land for determining the compensation payable to each landowner.

**26.** In reply, learned counsel for the State of Haryana contended that the High Court erred in allowing the landowners' appeals and further erred in dismissing the State's appeals.

**27.** According to learned counsel, the landowners' appeals were liable to be dismissed whereas the State's appeals deserved to be allowed by the High Court by setting aside the award of the Reference Court.

28. His submission was that the High Court cursorily disposed of the appeals without deciding any issue though involved in the appeals thereby causing prejudice to the rights of the State in particular.

29. Learned counsel then took us through the findings of the High Court and the issues raised by the State for proper determination of the rates of the acquired land and on that basis pointed out the prejudice caused due to casual approach of the High Court in deciding the appeals.

30. Having heard the learned counsel for the parties and on perusal of the entire record of the case, we are constrained to allow the appeals filed by the State in part and set aside the impugned judgment of the High Court and also the award passed by the Reference Court and are inclined to remand the cases to the Reference Court (Civil Court) for deciding the reference cases afresh on merits in the light of our observations/directions made hereinbelow.

31. The need to remand these cases to the Reference Court has occasioned essentially for two reasons. First, it is clear from the perusal of the impugned judgment that the High Court essentially based its decision or, we may say, proceeded to decide the appeals by making the decision of this Court in **Haryana State Industrial Development Corporation vs Pran Sukh & Others [2010 (11) SCC 175]** to be the basis to examine the question as to whether the rate of acquired land fixed by the LAO and Reference Court is fair or not.

32. The High Court, however, noticed from the facts involved in the case of **Pran Sukh** (supra) that the land situated in one village - Kasan along with its some adjoining villages was acquired on 15.11.1994 by the State and this Court determined the compensation payable to the landowners of Kasan village at the rate of Rs.20,00,000/- per acre.

33. The High Court felt that Rs.20,00,000/- per acre should be taken as the base price for determining the rate of acquired land in question. The High Court perhaps did this after having noticed that some part of the acquired land in these appeals is situated in Kasan village and, therefore, it is ideal to take the rate of Kasan village land as basis for determining the rate of acquired land also. The High Court accordingly gave annual increase of 8% to Rs.20,00,000/- and worked out the rate at Rs.62,11,700/- per acre for the entire acquired land in question by applying one uniform rate.

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

35. First, the acquired land, in these cases, was a huge chunk of land measuring around 520 acres, 2 kanals and 13.5 marlas. Second, the entire acquired land was not situated in village Kasan but it was spread over in 15 villages as detailed above. Third, there is no evidence to show much less any finding of the High Court as to what was the actual distance among the 15 villages against one another, the location, situation/area of each village, whether any development had taken place and, if so, its type, nature and when it took place in any of these villages, the potentiality and the quality of the acquired land situated in each village, its nature and the basis, the market rate

of the land situated in each village prior to the date of acquisition or in its near proximity, whether small piece of land or preferably big chunk of land, the actual distance of each village *qua* any other nearby big developed city, town or a place, whether any activity is being carried on in the nearby areas, their details. Fourth, whether the acquired land in the case of **Pran Sukh** (*supra*) in village Kasan and the acquired land in question are similar in nature or different and, if so, how and on what basis, their total distance etc.

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

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

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

**39.** The fair market value of the acquired land cannot be decided in isolation on the basis of only one factor. There are several other factors, which govern the determination of the rate. These factors need to be proved with sufficient evidence. It must appear that the Courts have made sincere endeavor to determine the fair market rate of the acquired land and while determining has taken into account all relevant aspects of the case. It is the duty of the landowners and the State to adduce proper and sufficient evidence to enable the Courts to arrive at a reasonable and fair market rate of the acquired land prevalent on the date of acquisition.

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

**41.** We do not blame any party for prosecuting their case in wholly unsatisfactory manner but the fact remains that both the parties failed to adduce sufficient evidence on several material issues, as a result, both the Courts below did not record any finding on any of the material issues arising in the case.

**42.** In the light of the foregoing discussion, we find it difficult at this stage to determine the fair market rate of the acquired land for want of sufficient evidence. If we do, it will cause prejudice to the parties. We, therefore, refrain from doing so.

**43.** In view of the foregoing discussion, we allow the appeals filed by the State, set aside the impugned judgment and the award of the Reference Court (Civil Courts) and remand the cases to the Reference Court for deciding all reference cases afresh on merits keeping in view our observations made *supra*.

44. Parties would be at liberty to adduce additional evidence in support of their respective stand both oral and documentary. The Reference Court will accordingly decide the rate of land as prevalent on the date of acquisition in the light of law laid down by this Court strictly in accordance with law uninfluenced by any finding of the High Court and this Court on the merits.

45. Parties to appear before the Reference Court on 05.02.2018 to enable the Reference Court to proceed in the cases and ensure its disposal within one year from the date of appearance of the parties as an outer limit. The original record of the case, if requisitioned here, be sent back forthwith to the concerned Reference Court.

46. Since we have remanded these cases to the Reference Court for fresh adjudication on merits in accordance with law, the appellants (landowners) are entitled to get back the amount of court fee paid by each appellant (landowner) on his appeal memo before the High Court as also before this Court as provided under Section 13 of the Court Fees Act.

47. The Registry is accordingly directed to issue necessary certificate of refund of Court Fee amount, if paid by any of the landowner on his memo of appeal in the High Court and in this Court under the Court Fees Act to enable the landowners to claim the refund of the court fee amount from the concerned State Treasury.

48. If for any reason, it is not possible for the Registry of this Court to issue refund certificate of the Court Fee amount paid by the landowners (appellants) on their memo of appeals filed in the High Court on their respective appeal memo then the requisite certificate shall be issued by the concerned High Court as per the Rules in favour of each appellant (landowner) under the Court Fees Act.

**Order accordingly.**

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**SUPREME COURT OF INDIA**

**Before: Madan B. Lokur & Deepak Gupta, JJ.**

Civil Appeal No. 3167 of 2017

Decided on : 10.01.2018

I.C. Sharma

Appellant

Versus

The Oriental Insurance Co. Ltd.

Respondent

**Insurance claim -- Under insurance -- Principle of averaging -- “what is under-insurance and the effect thereof?” -- Under-insurance basically means that the insured has taken out an insurance policy in which he has valued the insured items for a sum which is less than the actual value of the insured item – To give an example, in case a person takes out the householder policy covering fire insurance and gives the value of the structure of his house and goods stored therein at Rs.50,00,000/- even though the value of the same is Rs.1,00,00,000/- then even if the entire house and goods are completely lost in a fire, he cannot get an amount above Rs.50,00,000/- even though the value may be more -- Insurance Company can however apply the principle of averaging out when all the**