Before I. S. Tiwana, J.

UNION OF INDIA,—*Appellant.*

versus

AMRIK SINGH and others,—*Respondents.*

Regular First Appeal No. 2013 *of* 1979.

October 1, 1980.

Land Acquisition Act (1 *of* 1894)—*Sections* 4, 6, 11 *and* 48-*A*—*Punjab Town Improvement Act* (4 *of* 1922)—*Section* 59 *and Para* 14 *of the Schedule—Land acquired for purposes other than those of an Improvement Trust—Delay in pronouncement of the award for compensation—State—Whether liable to pay damages under section* 48-*A for such delay.*

Held, that section 48-A of the Land Acquisition Act, 1894 as introduced by paragraph 14 of the Schedule to the Punjab Town Improvement Act, 1922 is operative only when some land is sought to be acquired under the Act for purposes of a Trust. This section or the modification of the Act is only for a limited purpose and that is when the land is acquired for purposes of an Improvement Trust and the award is not announced within a period of one year from the date of publication of the declaration under section 6 of the Act then the owner of the land would be entitled to damages for the delayed pronouncement of the award. Section 48-A is not applicable where land is not acquired for purposes of a Trust. Thus, where the land is acquired for a purpose other than that of an Improvement Trust, the State would not be liable to pay damages under section 48-A of the Act. (Para 7).

Regular First Appeal from the order of the Court of Shri Amarbir Singh Gill, Additional District Judge, Ludhiana, dated the 17*th day of April,* 1979, *entitling the claimant to compensation for the acquisition of his land at the rate of Rs.* 11,778 *per acre with solatium at the rate of* 15 *per cent on the calculated difference in amount now payable together with* 6 *per cent interest on the amount from the date of possession till realisation and also to get Rs.* 4,180 *per acre as damages and leaving the parties to bear their own costs.*

Gopi Chand Bhalla, Advocate with Mani Ram, Advocate, *for the Appellant.*

H. L. Sibal, Senior Advocate with S. C. Sibal, Advocate.

Vijay Jhanji, Advocate, *for respondents Nos.* 1 *to* 5.

JUDGMENT

Iqbal Singh Tiwana, J.

The State Government acquired 137.11875 acres of land situated within the Revenue Estate of Village Halwara, Tehsil Jagraon, District Ludhiana, for purposes of the Union of India, that is for the construction and extension of Halwara Airfield, through notification dated November 26, 1968, published under Section 4 of the Land Acquisition Act (hereinafter referred to as the Act). The Land Acquisition Collector determined the rate of compensation payable to the claimants after hearing them, at the following rates :—

1.	Khalas Chahi	..	Rs. 9,228 per acre
2.	Niai, Nehri, Khalas Nehri Niai.	..	Rs. 9,528 per acre
3.	Dakar Rosli	..	Rs. 5,400 per acre
4.	Banjar Jadid/Banjar Kadim/Gair Mumkin.	..	Rs. 5,000 per acre

(2) As the awardees were not satisfied with the rate of compensation they sought various references under section 18 of the Act and as a result thereof, the learned lower Court through different but similar judgments determined the rate of compensation payable to the claimants at Rs. 11,778 per acre for the acquired land besides Rs. 4,180 per acre as damages for the delayed pronouncement of the award under section 48-A of the Act. Through these twenty-two R.F.As. Nos. 2013 to 2016 and 2022 to 2039 of 1979, the State has made a grouse of this enhancement and the award of damages under section 48-A of the Act. On the other hand, all the claimants have filed Cross Objections Nos. 17-CI to 21-CI and 23-CI to 39-CI of 1979 to these appeals claiming compensation at still a higher rate. Admittedly in all these appeals and cross-objections identical questions of law and fact arise for consideration and thus these are being disposed of through this common judgment. The learned counsel for the parties are agreed that for this purpose a reference to the facts and records of R.F.A. No. 2013 of 1979 would suffice.

(3) It deserves to be noticed here that the entire acquired land prior to the publication of the notification under section 4 of the Act on November 26, 1968 was already in possession of the Air Force

Authorities w.e.f. 1958 under the provisions of the Acquisitioning and Requisitioning of Immovable Property Act and the landowner-claimants were only being paid a nominal rent for the same in terms of the said Act.

(4) It is not in dispute that after entering into possession of this land the Air Force Authorities had built a number of roads and constructions for their residential, professional and miscellaneous uses.

(5) The learned counsel for the Union of India has raised two contentions before me — (i) the Land Acquisition Court could not possibly award any damages under section 48-A of the Act for the reason that the said section is only applicable to cases where the land is acquired for the Improvement Trusts constituted under the Punjab Town Improvement Act, 1922 (hereinafter referred to as the Trust Act), and (ii) the lower Court has wrongly discarded their evidence, Exhibits R-1 to R-4 and erred in relying upon a award, dated April 4, 1972, given by the Sub-Divisional Officer (Civil), Jagraon, as Collector as the same was non-est in the eye of law because the said Collector had no jurisdiction to announce the same. On the other hand, Mr. H. L. Sibal, learned Senior Advocate for the landowner-claimants while supporting the judgment of the lower Court on both the above noted counts, maintains that most of the evidence produced and proved by the claimants which was favorable to them in the sense that the rate of compensation indicated by the said evidence was much higher, has wrongly been ignored.

(6) After hearing the learned counsel for the parties I find that the first contention of the State counsel is full of merit. Section 59 of the Trust Act — an Act brought about to make provisions for the improvement and extension of towns in Punjab — provides that for purposes of acquiring land under the Land Acquisition Act, 1894, for the Trust, the said Act, i.e., the Land Acquisition Act shall be subject to such other modifications as are indicated in the schedule to the Trust Act. The relevant provision is reproduced as under :—

> "59. For the purposes of acquiring land under the Land Acquisition Act, 1894, *for the Trust*:—
>
> (a) * * * * *
>
> (b) the said Act shall be subject to the further modifications indicated in the Schedule to this Act ;

(c) * * * * * *

(d) * * * * " *

(Emphasis added).

Paragraph 14 of the Schedule which only is relevant to the point in issue is reproduced as under :—

"14. After section 48 of the said Act, the following shall be deemed to be inserted, namely:—

48-A : (1) If within a period of one year from the date of the publication of the declaration under section 6 in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall, unless he has been to a material extent responsible for the delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

(7) Thus, it is apparent that section 48-A reproduced above has been added only by way of modification of Act and is operative only when some land is sought to be acquired under the Act for purposes of the Trust. The submission of Mr. Sibal that this section 48-A stands incorporated in the Act for all intents and purposes has thus no weight. This section or the modification of the Act is only for a limited purpose and that is when the land is acquired for purposes of an Improvement Trust and the award is not announced within a period of one year from the date of publication of the declaration under section 6 of the Act, then the owner of the land would be entitled to damages for the delayed pronouncement of the award. Mr. Sibal then contends that if this interpretation is to be given to section 59 of the Trust Act and the Schedule thereto, then this provision would, on the face of it, be violative of Article 14 of the Constitution of India for being discriminatory in the matter of payment of compensation to landowners who are though similarly situated, yet whose lands are being acquired under the two Acts that is, one under the Trust Act and the other under the Land

Acquisition Act. In support of this argument, the learned counsel relies on a Full Bench judgment of this Court in *Devinder Kaur* v. *The Ludhiana Improvement Trust, Ludhiana, through its Chairman and others* (1). Besides the fact that this case was a converse case where the awardees were being paid less compensation for the acquisition of their land for purposes of the Improvement Trust than what would have been payable to them had their lands been acquired under the Act in the absence of the modification of the same in terms of the Schedule of the Trust Act; I feel this argument is not at all available to the learned counsel in view of the judgment of their Lordships of the Supreme Court in *Sarwan Singh etc.* v. *The State of Punjab and others* (2), wherein the vires of section 59 of the Trust Act have been upheld. Even in *Davinder Kaur's case* (supra) only the provisions of section 23 of the Act as modified by paragraph 10 of the Schedule to the Trust Act were held to be *ultra vires* and the verdict of the Supreme Court in *Sarwan Singh's* case (supra) was accepted and followed. Otherwise also as held by me earlier, section 48-A as introduced by Paragraph 14 of the Schedule to the Trust Act is not applicable to the facts of this case for the reason that the present acquisition is not for purposes of the Trust, no question of discrimination arises in this case. It is beyond dispute that only the person against whom discrimination is practised can complain thereof. Even if for argument's sake section 48-A referred to above is held to be violative of Article 14 and thus void, even then the claimants would not gain anything or cannot be given any relief under the said section. In *Devinder Kaur's* case (supra), the awardees were being paid less compensation under section 23 of the Act as modified by the Trust Act and it was under these circumstances that it was held that the modified section 23 of the Act had the effect of reducing the amount of compensation to an amount less than the amount payable under the Land Acquisition Act and was thus *ultra vires* Article 14 of the Constitution of India and was struck down. Here no such contingency arises. The landowner-claimants in a nutshell claim that they should be paid compensation or damages under a provision of law, which is not applicable to them. Thus, I sustain the objection raised by the learned counsel for the State and set aside that part of the order of the lower Court where by damages at the rate of Rs. 4,180 per acre

(1) A.I.R. 1975 Punjab & Haryana 241.
(2) A.I.R. 1975 S.C. 394.

have been allowed to the landowner-claimants under section 48-A of the Act referred to above for the delayed pronouncement of the award. In view of this conclusion of mine I need not go into the method and manner of working out the damages which too otherwise appears to be unsustainable.

(8) So far as the question of fixation of the market price of the acquired land is concerned, I do not find much substance in the contention of the learned counsel for the State. Before dealing with the rival contentions of the parties, I feel it proper to make a reference to the details of the sale instances relied upon by the parties :—

PRODUCED AND PROVED BY THE LANDOWNER-CLAIMANTS :

Exhibit	*Date of sale*	*Area sold*	*Consideration*	*Average per acre.*
		K. M.	Rs	Rs
A—3	2-7-1971	9—5	30,000	25,946
A—4	6-7-1976	0—13	2,000	24,615
A—5	14-2-1978	1—7	5,000	29,630
A—6	15-7-1977	0—13	2,500	30,768
A—7	1-8-1972	0—12	5,000	66,667
A—8	23-9-1977	0—14	5,000	68,751
A—9	23-9-1977	0—12	5,000	66,667
A—10	22-4-1969	0—8½	1,000	19,200
A—11	8-7-1975	0—8½	1,500	28,800
A—12	18-7-1978	2—0	7,500	30,000
A—13	18-7-1978	2—0	7,500	30,000
A—14	18-7-1978	2—0	7,500	30,000

Besides these instances the claimants also relied upon **Exhibit A. 1,** an award pronounced by the Sub-Divisional Officer (Civil) Jagraon, as Collector on May 23, 1975, with regard to the acquisition of 39 Kanals 8 Marlas of land for allotment of house sites to Harijans,— *vide* this award the rate of compensation was determined

Rs. 22,000 per acre and the notification under section 4 of the Act had been published on June 7, 1974.

PRODUCED AND PROVED BY THE STATE APPELLANT :

			Rs	Rs
R—1	4-7-1968	29—4	8,000	2,192
R—2	31-5-1968	0—19	500	4,210
R—3	12-7-1968	177—14	37,500	1,695
R—4	31-12-1968	9—19	10,000	4,010

(9) As would be apparent from the above chart, the average price per acre indicated by Exhibits R-1 to R-4 is far below than what has even been offered by the Collector through his award referred to in the earlier part of the judgment. This obviously means that even the Collector did not find these instances as relevant for purposes of determining the rate of compensation, or these instances did not relate to land similar to one under acquisition. Though these instances do relate to the land of village Halwara, yet the location of the lands covered by these vis-a-vis the acquired land is also not very clear. The lower Court has also found that the land under acquisition had ceased to be agricultural land on account of its having been converted almost into a residential area and thus had to be evaluated at a flat rate. In the light of this finding these sale instances become totally irrelevant and cannot be taken as safe guide for the determination of the market price of the acquired land. Thus I do not find any thing wrong with the approach of the lower Court in discarding these instances out of consideration.

(10) Now to examine the claim of the landowners for still a higher rate of compensation it is pertinent to note the location and the potentiality of the land as determined by the lower Court. This is what has been said by the lower Court after examining the evidence on record:—

> "In these circumstances the claimants' land requisitioned or later on acquired for the Aerodrome has to be assessed in one category at one flat rate. It has also come in the evidence that because of the controlled area being under

the Air Force there could not be instances of sale nor any industry could come up, as no construction could be made without prior permission of the Air Force Authorities. In these circumstances, market price can only be assessed on average price criteria. A reference to the site plan and the evidence would show that the claimants' land about or is near to a metalled road known as Halwara-Raikot road and there is a huge shopping centre at Pulsudhar."

(11) This conclusion of the lower Court is fully supported by the evidence of AW 1 Malkiat Singh and AW 2 Joginder Singh claimants, AW 3 Bikram Singh Patwari, who has produced and proved the site plan Exhibit A-1, AW 4 Gurdev Singh Patwari Halqa Halwara, who has proved the site plan Exhibit AW 4/1 and Pritam Singh Qanungo RW 1. According to AW 2 Joginder Singh, Halwara is a big village and there is a cinema-hall at a distance of about two furlongs from the acquired land and a marketing centre had also come into existence near this land prior to the date of notification under section 4 of Act. There is a degree college and Central School near Pulsudhar (a bridge on the Sirhind Canal near village Sudhar) which is at a distance of about 1½ miles from the acquired land. The Aerodrome was completed somewhere in 1947-48 and number of residential colonies of the officers and other personnel of the Air Force had also been constructed in and around the acquired land. He has further stated that 4 acres of land was acquired by the State Government for being allotted as house sites to Harijans of village Halwara near to the village Abadi and the acquired land in the present case and the compensation for that land was determined by the authorities at Rs. 22,000 per acre. This evidence of the claimants has remained unrebutted and is rather supported by other A.Ws., that is, Malkiat Singh, Bikram Singh and Gurdev Singh in material particulars.. Even Pritam Singh, Kanungo, examined on behalf of the Collector Land Acquisition as R.W. 1, has not contradicted or rebutted the statements made by the claimants and supported by A.Ws. with regard to the location and the construction of various buildings in and around the acquired area or its potentiality and has rather admitted that at the time of the pronouncement of the earlier award, dated April 4, 1972, by the Sub-Divisional Officer (Civil), Jagraon, the market value of the Banjar land had been assessed by him at Rs. 18,640 per acre. This award of the Collector, however, was not taken to be legal or valid for the reason

that he had not been conferred with the powers of the Collector under the Act. This led to the present re-assessment of the market price by another Collector with the result already indicated in the opening part of the judgment. The learned counsel for the State appears to be right in saying that award, dated April 4, 1972, cannot be taken as a legal one for the reason that the same was the determination of the market price by a person who was not competent to pronounce that award, yet he does not appear to be right in submitting that it should have been totally excluded by the lower Court from consideration for the reason that this award was undoubtedly an assessment of the market price of the acquired land by a revenue officer of the Sub-Division, on the basis of the revenue record available with him. This award may not be binding on the acquiring authorities yet it cannot be said that it had no legal value as a piece of evidence. Even the person who prepared the necessary data for the said award, i.e., Pritam Singh Kanungo, R.W. 1, has deposed about the rate of market price as assessed in that award. Thus from the evidence noted above it is apparent that the Banjar land, which in all probability included the land meant or sold for Abadi areas was rated at a higher price than other types of agricultural land, i.e., Khalas Chahi, Chahi-Nehri, Niai Chahi, etc. It is the admitted case of the parties that the entire acquired land being already in possession of the Air Force Authorities had become Banjar land and various constructions had been raised therein and was practically in use as a residential colony. Another piece of evidence which has remained unrebutted on record is the statement of Joginder Singh claimant, when he says that 4 acres of land was acquired for providing house sites to the Harijans of the village near the village Abadi at the rate of Rs. 22,000 per acre. Learned counsel for the claimants appears to be very right in submitting that the learned Land Acquisition Court has gone entirely wrong in determining the market price of the acquired land as agricultural land even after having recorded a finding that the entire acquired land had to be treated at par or in one category for determination of its market price. What the lower Court has done is that after accepting the rates of the various types of land as determined by the Sub-Divisional Officer (Civil), Jagraon,—*vide* his award, dated April 4, 1972, it has taken the average of the same and fixed the market price of the land at Rs. 11,778 per acre. This obviously is wrong. If the land has to be treated in one category as it has to be being Banjar or Abadi land, then to take into consideration the price of other types of agricul-

tural land is wholly irrelevant. As pointed out earlier, price of the Banjar land had been determined by the Collector,—*vide* award dated April 4, 1972 at Rs. 18,640 per acre. Besides this, 4 acres of land had been acquired by the State Government near to the village Abadi of Halwara at the rate of Rs. 22,000 per acre, for providing house sites to the Harijans of the village. This, to my mind, indicates the price of areas which could be utilised as Abadi areas. Though the above noted award related to an acquisiiion on June 7, 1974, yet as the evidence stands on record, the entire acquired land was virtually a residential colony or at least was having the potentiality for being utilised in that manner and had the acquisitioning or Air Force Authorities walked out of this land on the date of the notification under section 4 of the Act, the claimants would have been in a position to sell this land if not at higher rates then at least on the highest of the two rates noted above, i.e., Rs. 22,000 per acre. Thus keeping in view the surroundings and the potentiality of the acquired land. I determine the market price of the acquired land at a flat rate of Rs. 22,000 per acre. Besides this the claimants would also be entitled to the statutory solatium and interest at the rate of 15 per cent and 6 per cent respectively on the enhanced amount of compensation. All this, however, would be subject to the claim made by them and the Court fee paid thereupon.

(12) The net result, therefore, is that all the State appeals fail and are dismissed with no order as to costs and the cross objections filed by the claimants succeed to the extent indicated above and are allowed with proportionate costs.

N. K. S.

Before Harbans Lal and C. S. Tiwana, JJ.

RAJINDER KUMAR and another,—*Appellants.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Appeal No. 1138 *of* 1979.

October 8, 1980.

Indian Penal Code (XLV of 1860)—*Sections* 34 *and* 302—*Several accused charged for the offence of murder read with section* 34—*All but one of such accused acquitted—No evidence of complicity of others besides the acquitted accused—The remaining one accused—Whether could be convicted under section* 302 *read with section* 34.