

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **LA.APP. 966/2010**

Reserved on: 26.02.2016

Date of decision: 30.03.2016

JUGAL KISHORE SHAH Appellant

Through: Appellant in person

versus

UNION OF INDIA & ANR Respondents

Through: Mr. Sanjay Kumar Pathak, Ms.
K. Kadmudi Pathak, Mr. Sunil
Kumar Jha, Mr. Kushal Raj
Tater & Ms.Shreya Kasera,
Advs. for UOI
Mr.Kunal Sharma, Adv. for
DDA.

+ **LA.APP. 992/2010**

VINOD K SHARMA & ORS Appellants

Through: Mr. Sanjeev Sindhwani, Sr.
Adv. with Ms. Maldeep Sidhu,
Ms. Shifalika Dalmia & Mr.
Vanshdeep Dalmia, Advs.

versus

UOI & ORS Respondents

Through: Mr. Sanjay Kumar Pathak, Ms.
K. Kadmudi Pathak, Mr. Sunil
Kumar Jha, Mr. Kushal Raj
Tater & Ms.Shreya Kasera,
Advs. for UOI

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR , J.

1. The appellants in both the appeals have challenged the judgment dated 23.07.2010 passed in LAC No. 63/2008 by the Additional District Judge, South II, Delhi arising out of Award No. 20/1989-90 for the land acquired in village Kalu Sarai whereby the market value of the land in question on the date of notification under Section 4 of the Land Acquisition Act, 1894 (herein after called the Act) i.e. 30.09.1987, has been assessed at the rate of Rs. 5000/- per sq. yard along with all statutory benefits including solatium at the rate of 30% on the market value, and additional amount at the rate of 12% per annum on the market value from the date of notification to the date of possession or award, whichever is earlier as well as interest on the enhanced compensation at the rate of 9% per annum from the date of award or dispossession whichever is earlier till expiry of one year and thereafter at the rate of 15% per annum till the payment are made.

2. The land in question belonged to M/s Birla Cotton Spinning and Weaving Mills Ltd., a public limited company (hereinafter called the company). The company had purchased the land bearing Khasra Nos. 485/116 (3-10), 477/117 (5-14), 478/117 (0-5) and 118(5-17), total area measuring 15 Bighas and 6 Biswas, situated in the revenue estate of Village Kalu Sarai, New Delhi, for the purposes of providing housing facilities to its employees. The aforesaid land, after its purchase, was mutated in the name of the company in the year 1951. The land abuts on Aurbindo Marg and two important benchmarks of the area are Azad Apartments and The Mother's International School. The area in question is also very close to Qutab Institutional Area.

3. A brief account of the developments which have taken place in this case regarding the land in question is necessary to understand and appreciate the contentions of the parties.
4. A general notification for acquisition of land, including the acquired land was issued under Section 4 of the Act on 13.11.1959, which was followed by a notification under Section 6 of the Act. The aforesaid notifications were quashed by the Delhi High Court vide its judgment dated 19.05.1972 and the aforesaid judgment of the High Court was approved, affirmed and upheld by the Supreme Court in civil appeal no. 761/1973, preferred by the UOI vide judgment dated 13.11.1986.
5. After the above notification for acquisition of land was set aside, the company carved out small plots in the aforesaid land, roughly measuring about 330 sq. yards each, and transferred such parcels of smaller plots to its individual employees by executing sale deeds in their names, after obtaining proper permission from the concerned authorities. The sale deeds were executed for the purposes of construction of individual houses with common areas which were also carved out for roads, parks and other amenities of a civil life. Mutation with respect to each transaction was sanctioned in the individual names of the purchasers.
6. Thus, the purchasers who are the claimants (appellants before this Court) came in possession of their specified share of the land.
7. After some time, respondent no.1 i.e. UOI, again issued a notification under section 4 and thereafter under Section 6 of the Act on 30.09.1987 & 19.10.1987 respectively. This notification was also challenged whereby out of the area of 15 Bighas and 6 Biswas, 4 Bighas and 16 Biswas of land were, later, released from acquisition by the order of

the Hon'ble Supreme Court, leaving behind a total area of 10 Bighas and 10 Biswas only.

8. The appellants processed their claim petitions for their respective shares, each one claiming Rs 12,000/- per sq. yard as compensation for the acquired land.

9. The Land Acquisition Collector, vide Award No. 20/89-90 dated 16.10.1989 fixed the market rate at the rate of 78,000/- per Bigha, thus fixing an amount of slightly less than Rs. 78/- per sq. yard to the claimant/appellants.

10. While assessing the market value of the acquired land, the LAC held that the sale deeds/agreements relating to the plots falling in Hauz Khas, South Extension (Part I and II) and Greater Kailash etc., furnished by the claimants were of land measuring between 200 sq. yards and 925 sq. yards which were sold for prices ranging between Rs.25 Lakhs to Rs.1.25 Crores. However, the LAC observed, the consideration amount included the cost of structure also and it was not possible to bifurcate the cost of the structure from the cost of the land. The LAC was also of the opinion that the sale deeds/agreements, adduced as evidence, were of posh and developed colonies with higher potential in terms of amenities and the prospects and the colonies in which such sale had taken place were at some distance from the acquired land. The exemplars which were placed before the LAC were also stated to be post notification. The land acquired, in the opinion of the collector, was still undeveloped, barren and not divided into plots and roads, as was claimed. The sale exemplars were therefore totally discarded by the LAC.

11. Further, the LAC, in order to arrive at a reasonable market value, directed the field staff to check up the revenue record to find out whether

any sale had been executed in the vicinity of the land in question during the period of notification under Section 4 of the Act. No sale was reported to have taken place during that period. Alternatively, the previous awards with respect to land of the same village was also checked up. Out of the 5 awards, 3 awards related to the notification of the year 1959, one of the year 1960 and the other of 1962. The LAC, on the basis of the aforesaid awards held as follows:

“To arrive at a reasonable value of the land, the field staff was directed to consult the revenue record to find out whether any sale deed has been executed in the vicinity of the land during the period of notification under section 4. No sale deed is reported to have been taken place during this period. Thus the previous Awards, which were announced in this village from time to time, were consulted.

Out of the five awards, three awards relate to the material date i.e. the date of notification under section 4 which is 13.11.1959. One award relates to 18.8.60 and other is that of 25.2.62. The rates awarded by the Land Acquisition Collector in Award No. 1251 were Rs. 4000/- per bigha but the High Court was pleased to enhance the compensation to Rs. 17,000/- per bigha. No Letter Patent Appeal is reported to have been filed against the order of the High Court. Thus, the market value of the land acquired in village Kalu Sarai was Rs. 17,000/- per bigha as on 13.11.1959; the date of notification under section 4 in the above Award. The land in the present case is situated at a distance of about 200 sq. yards from the land acquired in the above awards. Thus, this award will help us to a great extent to assess the market value of the land. The

date of notification in the present case is 30.9.87 and there is a difference of about 27 years and 332 days between these two dates of notifications.

There is no denying the fact that the prices of the land have appreciated by the passage of time. To arrive at a reasonable market value of the land, we may add 12% per annum as an additional amount in the shape of interest on Rs. 17,000/- per bigha for the period 1959 to 1897. The amount so calculated comes to Rs. 56,935/- per bigha. Thus by adding amount of Rs. 56,935/- in the value of Rs. 17,000/- per bigha as awarded by the High Court on 13.11.1959, the total amount comes to Rs. 73,935/- or say Rs. 74,000/- per bigha.

Before arriving at any final conclusion, it may be pointed out that the claimants have also filed a copy of the sale deed dated 26.7.74 executed by M/s Birla Cotton And Spinning & Weaving mills Ltd. in favour of one Sh. Laxman Pd. Mittal. According to this sale deed, the plot measuring 400 sq. yds. out of the land under acquisition was sold for Rs. 12,000/- i.e. @Rs. 30,000/- per bigha as on 26.7.74. In para 6(i) under the terms and conditions between the vendor and the purchaser in the sale deed - under the "caption" "The Vendor covenants with the Purchaser". It is inter alia stated that "in case of breach of this condition, the purchaser shall sell the land to other employee/officer of the Vendor as may be nominated by the Vendor at a price calculated on the basis of the purchase price together with simple interest @12% per annum". In other words the matter of fixing the price of land at a later date is itself laid down in the said sale deed though in different

circumstances. However, the land is being acquired by the Government at public expense and in that case the claimants would be more benefited, as on the purchase price of the plot besides the interest @12% they will also be entitled to solatium @30% and 12% additional amount as admissible under the provisions of the Land Acquisition Act.

The claimants have not filed any solid document or any sale deed to show the prices prevailing in the proximity of the land under acquisition on the date of notification under section 4. In the absence of any other relevant document, we may adopt the principle laid down in sale deed of the land involved for fixing the market value by adding element of interest @12% per annum on Rs. 30,000/- being purchase price of the plot. The amount of interest for the period from 27.7.74 (date of sale deed) to 30.9.87 (date of notification u/s 4 in the present case) comes to Rs. 47,400/-. After adding this amount to on the purchase price of the land, it comes to Rs 77,400/- i.e 78,000/- per bigha.

It will be seen from the above that if we calculate the market value of the land on the basis of the previous award, it comes to Rs. 74,000/- per bigha whereas on the basis of the sale deed of the plot of this very land, it comes to Rs. 78,000/- per bigha. Out of these two proportions, the latter is more justifiable. In view of the above, a sum of Rs. 78,000 per bigha is determined and I award the same accordingly.”

12. Thus the LAC rejected the exemplars submitted by the claimant and based his award upon, inter alia, a sale deed 26.07.1974 wherein the market value of the land in question was ascertained at Rs.30,000/- per Bigha

(Rs.30 per sq. yard). Upon adding a simple interest of 12% per annum, the market value on the date of notification, was assessed at Rs.78,000 per bigha (Rs. 78 per sq. yard).

13. The aforesaid award was challenged before the ADJ, South-II, Delhi, vide LAC No. 63/2008. The Reference Court assessed the market value of the land in question at the rate of Rs.5,000/- per sq. yards and awarded the enhanced compensation on such terms along with all statutory interest including solatium and statutory interest.

14. The reference court, after detailing the factual background and the pleadings of the parties framed the following issues:

- (i) *“What was the market value of the acquired land as on the date of notification under Section 4 of the Act?”*
- (ii) *To what enhancement compensation, if any, are the petitioners entitled?*
- (iii) *Whether the petitioners are also entitled to cost for structure boundary wall etc. if any existing on the acquired land?*
- (iv) *Relief.”*

15. Before the Reference Court, the sole appellant in LA (A) 966/2010, namely Jugal Kishore Sah and the first appellant in LA(A) No. 992/12010 namely Vinod Kumar, examined themselves as PW1 and PW2. On behalf of the respondents, only one witness namely Amit Kumar Yadav, Patwari of Village Kalu Sarai, SDM Office, Hauz Khas, New Delhi, was examined as DW1.

16. Jugal Kishore Shah PW1/ appellant in LA(A) No. 966/2010 averred that the acquired land was located in a thickly populated are of South Delhi which, according to the master plan of 1962, was earmarked for residential use.

17. The affidavit furnished by him contained reference of an affidavit of Mr. Sharda Prasad, Commissioner Land Disposal, DDA dated 04.03.1999

which was filed in Supreme Court in Contempt Petition No. 470/1998 arising out of CA No. 4579/1995 wherein it was admitted that the land use was residential as per the master plan. The affidavit of PW1 also contained the reference of another affidavit dated 22.11.1995 by one Mr. P.C. Jain, Additional Commissioner, DDA, wherein it was stated that the land fell in Malviya Nagar zone as per the approved zonal development plan and the acquired land was located opposite IIT, on Mehrauli Road between Azad Apartment and The Mother's International School.

18. In his oral deposition before the reference court he stated that the Mother's International School is situated about 10 -15 ft. away and that Green Park and Hauz Khas colonies are situated at a distance of 1 Km whereas Safdarjung is at a distance of 1.5 Kms from the land in question. Green Park and Hauz Khas have been stated to be situated on the opposite side.

19. The suggestions regarding the land being agricultural was denied.

20. Vinod Kumar, one of the appellants in LA(A) 992/2010 (PW2) reiterated the claim that the acquired land is surrounded by posh residential colonies. There is a special reference in his deposition about the acquired land being adjacent to Azad Apartments, Sarvodaya Vihar, a residential multistoried building at a distance of about 500 sq. yards. The acquired land is in the vicinity of nearby posh residential colonies of Green Park, Hauz Khas, Panchsheel Enclave, Safdrjung Enclave, Qutab Institutional Area. It was also affirmed by PW.2 in his evidence that the acquired land was residential as per the master plan of Delhi, 1962, and that opposite the road, IIT campus had been operational since 1964-65. The Azad Apartments were also, as stated, constructed in the year 1970-71.

21. The following documents were exhibited on behalf of the claimants/appellants:

S.No	Exhibit	Documents
1		Affidavit of Sharda Prasad dated 04.03.1999
2		Affidavit of Sharda Prasad dated 27.08.1999
3		Affidavit of P.C. Jain dated 22.11.1995 with annexures.
4		Sale Deed dated 04.07.1988 pertaining to property bearing C-46, South Extension - II (wherein market value was arrived at Rs. 17,092/- per sq. yard.)
5		Affidavit of Sharda Prasad dated 23.04.2001
6		Sale Deed dated 18.03.1988 pertaining to R-19, Hauz Khas Enclave (wherein market value was arrived at Rs. 10,097/- per sq. yard.)
7		Order dated 12.12.1995 passed by the Supreme Court in CA No. 4579/95.
8		Order dated 07.04.1997 passed by the Supreme Court in Cont. Petition No. 209/97 in CA No. 4579/95.
9	Px1	Sale Deed dated 24.09.1986 pertaining to E-62 Greater Kailash - I (wherein market value was arrived at Rs. 7,553/- per sq. yard)
10	Px2	Sale Deed dated 24.04.1987 pertaining to M-39 GK - II. (wherein market value was arrived at Rs. 7,200/- per sq. yard) The said plot was constructed upon.
11	Px3	Sale Deed dated 25.08.1986 pertaining to E-48, GK -II. (wherein market value was arrived at Rs. 4,720/- per sq. yard)

12	Px4	Sale Deed dated 12.09.1986 pertaining to M-10 GK - II. (wherein market value was arrived at Rs. 13,846/- per sq. yard)
13	Px5	Sale Deed dated 28.11.1986 pertaining to U-I, Green Park Extension. (wherein market value was arrived at Rs. 1,711/- per sq. yard)
14	Px6	Sale Deed dated 27.11.1986 pertaining to C-146, Sarvodaya Enclave. (wherein market value was arrived at Rs. 2,077/- per sq. yard)
15	Px7	Sale Deed dated August 1986 pertaining to N-24, Panchsheel Enclave. (wherein market value was arrived at Rs. 5,000/- per sq. yard)
16	Px8	Sale Deed dated 19.03.1987 pertaining to L-2, Green Park. (wherein market value was arrived at Rs. 6,475/- per sq. yard)

22. Amit Kumar Yadav, Patwari of Village Kalu Sarai, SDM Office, Hauz Khas, New Delhi (DW1) proved the Aks Sizra (Village Map) of Village Kalu Sarai. In regard to the location of the said land, he stated before the reference court that in North of the acquired land is the boundary of Village Kharera and Shapur Jat, whereas the southern portion of the acquired land touches the boundary of Village Adhchini and Begumpur. According to him the western side of the plot is flanked by the boundary of Village Jiya Sarai and Village Sarai Shahjee touches the eastern portion of the land. The land, according the DW1, falls on the main road as per the Ask Izra (Ex.DW.1/1) and the lands of Khasra 116 & 117 of Village Kalu Sarai falls on Aurobindo Marg. The aforesaid witness on behalf of the respondents has also admitted that the area is very near to GK, Sarvapriya Vihar, Masjid Moth and Sheikh Sarai.

23. No Exemplars were, however, cited by the defence witness.

24. The following documents were exhibited on behalf of the defendants:

S.No	Documents
1	Aks Sizra of Village Kalu Sarai
2	Sale Deed dated 24.07.1974 executed by M/s Birla Cotton Spinning and Weaving Mills Ltd. in favour of Jugal Kishore (wherein plot was purchased at the rate of Rs. 30/sq. yard).

25. The reference court on the basis of the evidence adduced on behalf of the parties, oral and documentary, came to the following conclusion:

- i The land use of the area was residential as per the master plan of Delhi, 1962, and as per zonal development plan, the land was earmarked for setting up of institutions.
- ii The claimants/appellants had to pay Rs. 7970/- per sq. meter for their own land, which was released from acquisition by the Apex Court, the location of land was opposite IIT and adjacent to Azad Apartments and The Mother's International School.
- iii No agricultural land existed in the entire vicinity and the entire land was never used for agricultural purposes since its purchase in 1951 and had been plotted for the purposes of residential colony.
- iv The surrounding areas were colonised and developed with parks and street lights etc. by the local authorities in accordance with the master plan.

26. The reference court also took note of the fact that the Delhi High Court, in case of an acquisition pursuant to notification dated 12.10.1983 of the land situated in Yusuf Sarai, a nearby locality, has assessed the amount

of compensation to the land owner at the rate of Rs.12,500 per sq. yard. (Mahanth Atma Ram, RFA No.204/1999)

27. The manner of calculation of the market value as well as the amount to which the appellant would be entitled to, is set out in the following paragraphs of the judgment of the reference court.

“25. There is in no manner of doubt that the land in question, much prior to notification under Section 4(1) of the Act, had a great potential not only as a site for residential buildings to which it was nearly put to sue as per the Master Plan, but also for Commercial and Institutional development, which aspect has to be taken note of by a reference Court.

26. The tentacles of development have transgressed the borders of Delhi and spread to the National Capital Region. Though rates of land of different colonies differ, there is a basic yardstick that can be applied. Prices or market value of land situated within a few kilometers of each other in a fully developed city, (as Delhi was in 1987) would still be comparable and not be substantially different. The amount of compensation cannot be ascertained with mathematical accuracy. To come to any conclusion, I would also be guided by the market values assessed by the Hon’ble High Court of Delhi for lands acquired in different localities of South Delhi keeping the period of notification in mind.

*27. In the matter of **Krishna Yachendra Bahadurvaru vs. The Special Land Acquisition Officer, City Improvement Trust Board, Bangalore & Ors. Reported in AIR 1979 SC 869**, the Apex Court has held that the process of determination of market value in any case must depend largely on evaluation of any*

imponderables and hence it must necessarily be to some extent a matter of conjecture or guess work.

28. In Mahant Atmaram's case (Supra), the Hon'ble High Court has adjudicated the market value of the land in Yusuf Sarai at Rs.12,500/- per sq. yard as on 12.10.1983. The location of land in the present reference is not very far from the land in Yusuf Sarai. Market value of land acquired in Jasola as on 15.06.1979 was determined at Rs.2,240/- per sq. yard for land situated in Jasola. The location and development of the land under the present reference was at a better pedestal.

29. There has been a steep rise in the land prices in Delhi due to spiraling demand and paucity of availability. The Courts have been granting progressive capitalization over the market values adjudicated at different times. Even this falls short of the reality, but for the purpose of adjudication mere judicial notice is not enough and a firm basis is required to come to some conclusion.

30. Keeping in view the various parameters such as location of the acquired land in reference, its potential, the existence of some of the better know posh and developed colonies of South Delhi surrounding it, the market value of land acquired in Yusuf Sarai in 1983, it would be equitable to award a just compensation of Rs.5,000/- per sq. yard to the petitioners for their land compulsorily acquired by the respondents in 1987. This difference in valuation of the land in Yusuf acquired in 1983 with the land under reference acquired in 1987 is due to the possibility that the former land have been smaller in size or placed in a better commercially viable location.

Issue no.1 is decided as the market value of the acquired land being adjudicated at Rs.5,000/- per sq. yard as on the date of notification.”

28. With respect to issue no.2 (as to what enhancement of compensation would the claimants be entitled to), the reference court was of the opinion that the claimants were entitled to the balance compensation of Rs. 4922/- per sq. yard. The issue with respect to assessment of cost for structure, boundary wall etc. was decided against the claimants for the paucity of evidence in that regard. Thus what was decided by the reference court was that the claimants were entitled to receive compensation in terms of market value determined at the rate of Rs. 5000 per sq. yard with all statutory benefits including solatium at the rate of 30% and an additional amount of 12% per annum on the market value, as provided under section 23(1A), from the date of notification till the date of possession whichever is earlier. Over and above the aforesaid amount, the reference court made provision for statutory interest at the rate which is provided in the Act.

29. The appellants have challenged the judgment of the Reference Court primarily on the ground that though the Reference Court accepted the contentions of the appellants on law and facts but without describing any mechanism for arriving at the market value of the land in question, computed it at the rate of Rs.5,000/- per sq. yard and awarded compensation in terms of the aforesaid assessed market value.

30. The appellants are aggrieved by the fact that low market value was assessed and no reason has been assigned which would suggest any mechanism or mode for the Reference Court to have arrived at the said figure regarding the market value of the acquired land.

31. The further contention of the appellants is that the respondents did not lead any evidence with respect to either the price of acquired land, building potentiality or the lack of it as also whether any development was required over the aforesaid land permitting any reasonable deductions. The respondents also did not lead any evidence with respect to non-plotting of the land in question individually with respect to the appellants.

32. The contentions of the appellants, on summing up, are as hereunder:

- i. They are entitled to the highest value which a similar land in the locality has fetched in a bonafide transaction entered into between a willing purchaser and a willing buyer near or about the time of acquisition.
- ii. The sale deed dated 04.07.1988 (Ex.PW.1/8) which is the highest exemplar with respect to the plot of 509 sq. yards bearing no. C-46, South Extension Part-II and which fetched a price of Rs.17,092/-per sq. yard ought to have been used as the correct reference.
- iii. Since the sole witness on behalf of the defendant (DW.1) did not give any evidence regarding the price/value of the land nor any exemplars were put forth, there was no reason for the Reference Court not to have accepted the highest exemplar, if it was found to be bonafide.
- iv. The respondents, it has been urged, did not cross-examine the two witnesses on behalf of the appellants with respect to sale price and thus the exemplars which were exhibited and duly

proved were the only material before the Reference Court to have decided the reference.

- v. The appellants have further claimed that after accepting the sale exemplar (Ex.PW.1/8), which is the sale deed dated 04.07.1988 describing a price of 509 sq. yards at the rate of Rs.17,092/- per sq. yard, no deductions are required to be made as the land was fully developed and had all the amenities before the acquisition, not requiring any additional expenditure for its development.

33. Additionally, it has been argued that the building potentiality has always had a positive incremental effect on the market value of the acquired land in as much as the true market value is to be ascertained with reference to the better use to which the land could reasonably be capable of being put to in the immediate or near future.

34. The respondents have also assailed the judgment of the Reference Court by filing cross objections under Order 41 Rule 22 of the CPC. The challenge to the impugned judgment on their behalf is on the ground that the compensation awarded by the Land Acquisition Collector vide Award No.20/1989-90 at that rate of Rs.78/- per sq. yard was based on sound reasoning and did not warrant any interference by the Reference Court. The enhancement in compensation from Rs.78/- per sq. yard to Rs.5,000/- per sq. yard overlooked material evidence especially the fact that the appellants had themselves purchased the land in question at Rs.30 per sq. yard in the year 1974. Thus, even if an increase at the rate of 12% per annum is added on that value of land from 1974 to 1987 (the year of

notification), the same would come to approximately Rs.77 per sq. yard, which is roughly the assessment of the Collector regarding the market value of the land.

35. The respondents have further assailed the judgment of the Reference Court by arguing that for assessment of the market value of the land in question, the Reference Court was first required to assess the price paid by the purchaser for the said land and similar land situated in the adjoining area i.e. Village Mehrauli. They have relied upon the judgment of the Delhi High Court in *Nand Kishore vs. Union of India: 73 (1998) DLT 108*, wherein village Mehrauli, and an adjoining village was acquired vide notification dated 21.11.1978, for which the market value was assessed at the rate of Rs.30,000/- per bigha which is approximately Rs.30 per sq. yard. This had to be taken as a reference point, it has been argued, and not with respect to sale of lands in areas like South Extension, Hauz Khas, Safdarjung Development Area, etc. The contention of the respondents is that the land in question was not in a developed stage as there was no layout plan. In that view of the matter, the advantage potentialities of the area was not comparable with the area of developed and posh localities.

36. It now, therefore, has fallen upon this Court to determine whether the Reference Court was justified and was correct in fixing the market value of the land in question at Rs.5,000/- per sq. yard on the basis of the evidence adduced and whether the Reference Court had any mechanism in mind so as to come to a valuation/price of the acquired land.

37. To this effect, it might be necessary to refer first to the relevant statutory provisions of the Land Acquisition Act, 1894 and the development of law with regard to the assessment of market value of the land and whether any deductions are required to be made and if so, when and to what extent.

38. Now in order to appreciate the contentions of the parties for fixing the market rate of the acquired land, it would first be necessary to refer to the provisions of Sections 23 & 24 of the Land Acquisition Act, 1894 as also the case laws with regard to the principles on which the market value of the acquired land is to be assessed for the purposes of determination of the compensation to be granted to the claimants/land owners.

39. Section 23 of the Land Acquisition Act, 1894 deals with matters to be considered in determining compensation:-

“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.

(1A) In addition to the market value of the land above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on 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.”

40. Section 24 of Land Acquisition Act, 1894 with regard to the matters to be neglected in determining the compensation:-

“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 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, subsection(1); [or]

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

41. The law with respect to calculation of the market value of the acquired land and the compensation to be given to the land owners is well established. Section 23 of the Act clearly lays down the principles.

42. Market value of the land means what a willing purchaser would pay to a willing seller for the property having regard to the advantages available to the land and the development activities which may be going on in the vicinity and the potentiality of the land.

43. While fixing the market value of the acquired land, what are required to be kept in mind are the geographical situation of the land; the existing use of the land and the location as well as other advantages appurtenant to the land. The market value of the other land situated in the same locality or adjacent locality would also be an

important factor for determination of the reasonable market value of the acquired land.

44. In *Viluben Jhalejar Contractor vs. State of Gujarat*, (2005) 4 SCC 789, the Supreme Court laid down the following principles for determination of market value of the acquired land:-

17. Section 23 of the Act specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification under sub-section (1) of Section 4.

18. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

20. *The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:*

<i>Positive factors</i>	<i>Negative factors</i>
<i>(i) smallness of size</i>	<i>(i) largeness of area</i>
<i>(ii) proximity to a road</i>	<i>(ii) situation in the interior at a distance from the road</i>
<i>(iii) frontage on a road</i>	<i>(iii) narrow strip of land with very small frontage compared to depth</i>
<i>(iv) nearness to developed area</i>	<i>(iv) lower level requiring the depressed portion to be filled up</i>
<i>(v) regular shape</i>	<i>(v) remoteness from developed locality</i>
<i>(vi) level vis-a-vis land under acquisition</i>	<i>(vi) some special disadvantageous factors which would deter a purchaser</i>
<i>(vii) special value for an owner of an adjoining property to whom it may have some very special advantage</i>	

45. It has been the practice to adopt the comparable sales method for determining the market value of the land as aforesaid method is

more preferable than computing the valuation of the land on the basis of capitalization of net income method or by taking expert opinion. The reason for the same is that a willing purchaser would always pay the same price which was fetched of other land with same geographical location and advantage.

46. In *Karnataka Urban Water Supply and Drainage Board vs. K.S.Gangadharappa & Ors*, (2009) 11 SCC 164, the Supreme Court held that when sale is within a reasonable time of the date of notification under Section 4(1); it is a bona fide transaction and the sale is of the land adjacent to the land acquired having similar advantages, it remarkably reduces the element of speculation in fixation of market value of the land with reference to comparable sales.

47. Similar view was taken by the Supreme Court in *Land Acquisition Officer vs. T.Adinarayan Setty*, AIR 1959 SC 429 and *Ravinder Narain vs. Union of India*, (2003) 4 SCC 481.

48. In *Mahabir Prasad Santuka and Ors. vs. Collector, Cuttack and Ors.* (1987) 1 SCC 587, the Supreme Court took into account the evidence on record and found that the land in dispute was adjacent to the industrial area which included number of factories and came to the conclusion that it had the potential of future course as factory or building site. It was held by the Supreme Court in *Mahabir Prasad Santuka and Ors.* (Supra) at para 6 as follows:-

“6. The High Court further held that since the appellants had purchased the land at the rate of Rs. 100 per acre in the year 1956, they were not entitled, in any event, to

compensation more than Rs. 7,500 per acre, this view is untenable. There is evidence on record to show that the land which was purchased in the year 1956 had no potentiality at that stage, as Industrial area had not developed near the land. After the setting up of industrial area of Charbatiya the price of the land situated in its vicinity had increased tremendously. It is a matter of common knowledge that price of land near the vicinity of industrial area is bound to rise. Admittedly the appellants' land is situated near the industrial area, therefore its value had increased and the High Court committed error in ignoring this aspect by determining the compensation. Plot No. 177 is a big plot having various sub-plots which are owned by different persons. The appellants are owners of Plots Nos. 177/16, 177/16-A, 177/17 and 177/17-A. The land contained in other sub-plot Nos. 177/19, 177/10 and 177/7 was also acquired and the compensation in respect thereof was determined by High Court uniformly at the rate of Rs. 15,000 per acre. There are five judgments of the High Court on record in respect of various sub-plots of Plot No. 177. On a perusal of those judgments, it is evident the High Court has awarded compensation at the rate of Rs. 15,000 per acre for the land which is quite adjacent to the appellants' land. The High Court has observed in its Judgment in First Appeal No. 173 of 1971 connected with First Appeal No. 174 of 1971, Collector, Cuttack v. Karunakar Mohanty, decided on October 21, 1975, that the Advocate General appearing on behalf of the State conceded

that in view of the decision of the High Court in respect of the similar land in the vicinity it was not possible on his part to question the valuation of the acquired land as fixed by the Subordinate Judge at the rate of Rs. 15,000 per acre. In that case plot No. 177/13 was the subject matter of the acquisition. We have also perused a copy of the map which is on record. We find that the appellant's land is quite adjacent to those plots which were the subject matter of the decision in the appeals decided by the High Court where compensation has been awarded at the rate of Rs. 15,000 per acre. In the circumstances there is no valid reason to award compensation to the appellant at a reduced rate specially so when the respondents have failed to point out any material difference in the situation, topography, lay out of the appellants' land with that of the adjacent land in respect of which compensation has been awarded at the rate of Rs. 15,000 per acre. If the impugned order of the High Court under appeal is upheld an anomalous position would arise inasmuch as the appellants will be denied that amount of compensation which has been awarded to other claimants in respect of similar adjacent land. We are therefore of the opinion that the High Court committed error in interfering with the order of the Subordinate Judge and in determining the compensation at the rate of Rs. 7,500 per acre. We hold that the appellants are entitled to compensation at the rate of Rs. 15,000 per acre as determined by the learned Subordinate Judge.”

49. The Supreme Court in the aforesaid case took note of the fact that there was no reason for the land owners to be paid at a low rate as it would have created an unfair circumstance against the land owners in the event of their being denied fair compensation which has been awarded to the other claimants in respect of adjacent land.

50. The market value of the land is to be determined with reference to the above market sale of comparable land in the neighbourhood by a willing seller to a willing buyer on or before the date of notification for acquisition. This is because such sale exemplars give a fair indication of the market value of the land.

51. A “willing seller” is a person who is not acting under any pressure to sell his property (in distress sale), he knows the advantages and disadvantages of his property and sells the same after ascertaining the prevailing market prices at fair and reasonable value. Correspondingly a willing purchaser is a person who has a choice in the matter of purchase of different properties and out of the choice, he, voluntarily decides to buy a particular property by assessing its advantages and disadvantages and the prevailing market value thereof.

52. Another issue which has gained general acceptance is that the sale transactions under the registered sale deeds are to be assumed as normal sales by a willing seller to a willing purchaser. However, in the absence of such registered sale deeds, even auction sales, which stand on a different footing, can be accepted if they are the only comparable sale transactions available in terms of proximity in situation and proximity in time to the acquired land.

53. The Supreme Court in *Raj Kumar v. Haryana State*, (2007) 7 SCC 609 has observed that the element of computation in an auction sale makes them unsafe guides for determining the market value. However, in *Executive Engineer, Karnataka Housing Board vs. Land Acquisition Officer, Gadag & Ors*, (2011) 2 SCC 246, the Supreme Court held as hereunder:-

“7. But where an open auction sale is the only comparable sale transaction available (on account of proximity in situation and proximity in time to the acquired land), the court may have to, with caution, rely upon the price disclosed by such auction sales, by providing an appropriate deduction or cut to off-set the competitive-hike in value. In this case, the Reference Court and High Court, after referring to the evidence relating to other sale transactions, found them to be inapplicable as they related to far away properties. Therefore we are left with only the auction sale transactions. On the facts and circumstances, we are of the view that a deduction or cut of 20% in the auction price disclosed by the relied upon auction transaction towards the factor of ‘competitive - price hike’ would enable us to arrive at the fair market price.”

54. Thus what the Supreme Court cautioned was that in the absence of any comparable sale exemplars, there was no difficulty in accepting auction sales as well but with appropriate deductions which would offset the competitive hike in valuation.

55. In *Executive Engineer, Karnataka Housing Board* (Supra), the Supreme Court, taking into consideration the existence of gap of three

years between the relevant date for determination of compensation and sale exemplars and taking into account that the acquired lands were within the municipal limits with considerable development potential, gave 10% increase per annum for three years for assessing the market value on the concerned date.

56. With respect to the issue regarding compensation for acquisition of a large piece of land on the basis of sale instances relating to smaller pieces of land, the law is very clear that it would always not be an absolute rule that sale instances relating to small pieces of land are unsafe guides and cannot be considered. Under certain circumstances sale deeds of small pieces of land could be used for determining the value of acquired land which is comparatively large in area.

57. In *Land Acquisition Officer vs. Nookala Rajamallu*, (2003) 12 SCC 334, it has been held:-

“6. Where large area is the subject-matter of acquisition, rate at which small plots are sold cannot be said to be a safe criterion. Reference in this context may be made to few decisions of this Court in Collector of Lakhimour v. Bhuban Chandra Dutta MANU/SC/0597/1971: AIR 1971 SC 2015, Prithvi Raj Taneja v. State of M.P. MANU/SC/0281/1977: AIR 1977 SC 1560 and Kausalya Devi Bogra v. Land Acquisition Officer MANU/SC/0241/1984: AIR 1984 SC 892.

7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in

appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices.”

58. In ***Bhagwathula Samanna vs. Tehsildar and Land Acquisition Officer***, (1991) 4 SCC 506, it was held:-

13. The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted....

59. In ***Land Acquisition Officer vs. L.Kamamma***, (1998) 2 SCC 385, the Supreme Court held as under:-

“...when no sales of comparable land was available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a lay out, lump sum payment as also the waiting

period required for selling the sites that would be formed.”

60. In *Smt. Basavva and Ors vs. Special Land Acquisition Officer and Ors*, (1996) 9 SCC 640, the Supreme Court gave a direction that the Courts have to consider whether sales relating to smaller pieces of lands are genuine and reliable and whether they are in respect of comparable lands. In case said requirements are met, sufficient deductions should be made to arrive at the just and fair market value of large tracts of land. The time lag for real development and the waiting period for development are also relevant consideration for determination of just and adequate compensation. Each case depends upon its own facts. In *Basavva* (Supra), the Supreme Court, on such principle made a total deduction of 65% in determining the compensation.

61. It is true that in normal course it would be an extremely difficult proposition to look for sale instances of large tracts of land as they are very few in number. More often than not similar plots are sold and purchased and it would be rather harsh for the Courts to ask from the claimants, sale instances of lands which are comparable in size to the acquired land. The aforesaid principles of using, as an exemplar, sale instances of small tracts of land with necessary deductions was approved by the Supreme Court in the case of *Special Land Acquisition Officer and Anr. vs. M.K. Rafiq Saheb* in (2011) 7 SCC 714.

62. A question arose as to what course is required to be adopted in case several relevant exemplars are available before the Courts. The

Supreme Court in *M.Vijayalakshamma Rao Bahadur vs. Collector*, (1969) 1 MLJ 45 and *State of Punjab vs. Hansraj*, (1994) 5 SCC 734 held that averaging the prices fetched by sales by different lands of different kinds at different times may not lead to the correct result regarding the market value of the land in question. Such method ought not to be adopted regularly.

63. In *Anjani Molu Dessai vs. State of Goa*, (2010) 13 SCC 710 the Supreme Court held as under:-

“20. The legal position is that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bona fide transaction, will be considered. Where however there are several sales of similar lands whose prices range in a narrow bandwidth, the average thereof can be taken, as representing the market price. But where the values disclosed in respect of two sales are markedly different, it can only lead to an inference that they are with reference to dissimilar lands or that the lower value sale is on account of undervaluation or other price depressing reasons. Consequently, averaging cannot be resorted to. We may refer to two decisions of this Court in this behalf.”

64. The two decisions referred to in the aforesaid judgment are *M.Vijayalakshamma Rao Bahadur (Supra)* and *State of Punjab vs. Hansraj (Supra)*.

65. If there are several exemplars with reference to smaller lands, the safest proposition is to adopt the highest of the exemplars if it

appears to be a bonafide transaction. This principle is in accord with the element of fairness in grant of compensation as a land owner is entitled to the highest valuation of the land which a similarly located land in the vicinity has fetched.

66. Keeping the aforesaid legal position in mind, I proceed to analyze the evidence adduced on behalf of the appellants.

67. What is not in dispute is that the acquired land was a residential, non-agricultural land falling on what is known today as Aurbindo Marg. There cannot be any gainsaying that the surrounding areas are well-developed and well-colonized with all the amenities.

68. Jugal Kishore Shah, PW.1, has categorically stated that Green Park and Hauz Khas colonies are situated at a distance of 1 km. whereas Safdarjung is at a distance of 1.5 km. from the land in question.

69. Similarly, Vinod Kumar, PW.2, has also stated about residential multi storeyed buildings at a distance of about 500 sq. yards from the acquired land. The Qutub Institutional Area is also situated very close and near to the land in question. The presence of IIT Campus since 1964-65 and the construction of Azad Apartments in the neighbourhood of the land acquired in the year 1970-71, speak volumes about the geographical location of the land, and its potential.

70. DW.1, the sole witness on behalf of the defendant, has also ratified that the land is adjacent and very near to areas like Greater Kailash, Sarvpriya Vihar, Masjid Moth and Sheikh Sarai.

71. The appellants have furnished, as evidence, various sale deeds of the land sold in the surrounding area at around the same time when the notification for the present acquisition had been issued.

72. For brief reference, a chart of the sale deed (exemplars) which has been exhibited by the appellants is being reproduced:

Exhibit No.	Property No.	Area (Sq yrds)	Date of Sale Deed	Sale Amount (Rs.)	Sale Amount/Sq yrds (Rs.)
Px1	E-62, Greater Kailash Part-I	556	24.09.1986 (ATS-03.09.1986)	42,00,000/-	7,553/-
Px2	M-39, Greater Kailash Part-I	250	24.04.1987	18,00,000/- (Basement and GF)	7,200/-
Px3	E-48, Greater Kailash Part-II	250	Aug.,1986	11,80,000/-	4,720/-
Px4	M-10, Greater Kailash Part-II	195	12.09.1986 (ATS-16.05.1986)	27,00,000/-	13,846/-
Px5	U-1, Green Park Extn.	555	28.11.1986 (ATS-26.09.1986)	9,50,000/-	1,711/-
Px6	C-146, Sarvodaya Enclave	400	27.11.1986	8,31,000/- (Leasehold)	2,077/-
Px7	N-24, Panchsheel Enclave	800	August, 1986	40,00,000/-	5,000/-
Px8	L-2, Green Park	471	19.03.1987 (ATS-09.06.1986)	30,50,000/-	6,475/-
PW1/8 (Ex.PW1/A)	C-46, South Ex., Part-II	509	04.07.1988 -ATS dt.04.02.1988 -Part payment made on	87,00,000/-	17,092/-

			23.01.1988		
PW1/9	R-19, Hauz Khas Enclave	515	18.03.1988	52,00,000/-	10,097/-

73. It has to be borne in mind that the date of notification is 30.09.1987. The sale deed, Ex.PW.1/8, which is actually Ex.PW.1/A, is the sale price of 509 sq. yards of land in South Extension Part-II at the rate of Rs.17,092/- per sq. yard. The aforesaid sale took place on 04.07.1988 which is after the date of notification i.e. 30.09.1987 though it has been claimed by the appellants that the agreement to sell the aforesaid property was made on 04.02.1988 and part payment was made on 23.01.1988 and therefore, this sale instance was only four months later than the date of notification. Similarly, the exemplar, Ex.PW.1/9 which is the sale deed with regard to the sale of 515 sq. yards of property in Hauz Khas Enclave, fetching a price at the rate of 10,097/- is of the year 1988, which again, is a post notification sale (18.03.1988). Thus, both the exemplars which are sale instances in nearby areas are post notification instances.

74. The law with regard to acceptance of post notification sale deed as an exemplar is very clear. In *Administrator General of W.B. vs. Collector, Varanasi: (1988) 2 SCC 150*, the Hon'ble Supreme Court has held as hereunder:

“13. ... Such subsequent transactions which are not proximate in point of time to the acquisition can be taken into account for purposes of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further under certain circumstances where it is shown that the market was stable and there

were no fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value. This Court in State of U.P. v. Major Jitendra Kumar [(1982) 2 SCC 382] observed:

'3. ... It is true that the sale deed, Ext. 21 upon which the High Court has relied is of a date three years later than the notification under Section 4 but no material was produced before the court to suggest that there was any fluctuation in the market rate at Meerut from 1948 onwards till 1951 and if so to what extent. In the absence of any material showing any fluctuation in the market rate the High Court thought it fit to rely upon Ext. 21 under which the Housing Society itself had purchased land in the neighbourhood of the land in dispute. On the whole we are not satisfied that any error was committed by the High Court in relying upon the sale deed, Ext. 21.'

But this principle could be appealed to only where there is evidence to the effect that there was no upward surge in the prices in the interregnum. The burden of establishing this would be squarely on the party relying on such subsequent transaction." (emphasis supplied)

75. As a result of the acquisition, the market value of the adjacent land is expected to go up and therefore the aforesaid exemplars which are post notification transactions would not be sound criteria for determining and assessing the value of the acquired land. The appellants have not adduced any evidence to show that the market value of the land shown in the exemplars (Ex.PW.1/A and Ex.PW.1/9) have not increased after the notification. Thus the aforesaid exemplars are not being considered for the assessment of the market value.

76. From amongst the exemplars exhibited as Ex.PX.1 to Ex.PX.8, Ex.PX.5 is with respect to the sale of a plot of 555 sq. yards in Green

Park Extension on 28.11.1986 for a price at the rate of Rs.1,711/- per sq. yd. Ex.PX.6 is the sale deed with regard to the plot in the same area i.e. Green Park, the plot having a size of 400 sq. yard for a price at the rate of Rs.2,077/- per sq. yd. Ex.PX.7 and Ex.PX.8 are sale deeds with respect to the plots falling in Panchsheel Enclave and Green Park, prior to the date of notification at the rates of Rs.5,000/- and Rs.6,475/- per sq. yards respectively.

77. Ex.PX.1, Ex.PX.2 and Ex.PX.3 are instances with respect to the sale of varying sizes of plots in Greater Kailash colony, Part-I. All the aforesaid sale deeds are prior to the date of notification for prices varying between Rs.7,553/- to Rs.4,720/- per sq. yd.

78. The highest price is in the list of exemplars is Ex.PX.4 which is the sale price of 195 sq. yards in Greater Kailash Part-II for a price at the rate of Rs.13,846/- per sq. yd.

79. Thus, out of the aforesaid sale exemplars, the highest priced sale deed is Ex.PX.4 referred to above. It may also be noted that with respect to the property sold in Greater Kailash Part-II, there are two sale instances i.e. Ex.PX.3 & Ex.PX.4 which were sold roughly in the same period but the price difference is rather high. Thus Ex.PX.3 is not being relied upon, as for huge difference in the price, an inference can be drawn that the location of the land of the aforesaid exemplar was different from the land of Ex.PX.4.

80. The normal proposition with regard to acceptance of the market value is on the basis of the highest exemplar. Under certain circumstances when there are several instances of sales of smaller lands and prices range in a narrow band-width, an average of the

aforesaid prices can also be taken as representing the correct market value. However, in the present case, the properties in various instances fetched different prices in the same area at around the same time and the price difference between each one of them is fairly high. Thus, it would not be a safe proposition to take out the average of the prices of Ex.PX.1 to Ex.PX.4. Be it noted that the purpose of averaging is only to avoid any miscalculation or taking of any wrong reference.

81. This Court, therefore, is of the opinion that Ex.PX.4 would serve as the safest reference because the sale price indicated therein is the highest with respect to sale in a neighbouring area, a year prior to the notification in the present case. To bring it at par with the market price on the date of the notification, if 12% is added to the price (Rs.13,846/-), the figure comes to Rs.15,464.32/- per sq. yd.

82. Once having assessed the correct reference for computing the market value, what would be of importance is to find out and determine the percentage of deductions for development, which would be required to be applied in the present case.

83. The principles of deductions from the determined market value of the acquired land are more or less well-settled. Though, as a judicial precedent, there have been deductions ranging from as low as 10% to as high as 80% but such deductions are predicated on certain set of principles regarding the same. Broadly speaking, the following principles operate in the aforestated field:

- a. It is not possible to precisely formulate the percentage of deductions and it would depend upon the facts of each case.

- b. Deductions are to be made to account for developmental activities like building of roads and providing of civic amenities such as electricity and water.
- c. Deductions are required to be made where sale instances (exemplars) relate to smaller pieces of land compared to the larger tract of land under acquisition. Deductions are to account for wastage of land as well.

84. In *Land Acquisition Officer vs. Nookala Rajamalu, (2003) 12 SCC 334*, the Supreme Court clearly observed that it would be advisable to apply some deductions on account of exemplars of plots of smaller size which are relied upon by way of an evidence by the parties.

85. However, this is not the normal rule and it is not feasible to predict with exactitude the percentage of deductions which would be required in a particular case as it is dependent on number of variables. If an acquired land is already fully developed, having all the amenities before the acquisition, one can infer that such land would not require any further expenditure for its development. But for arriving at such a conclusion viz, that no developmental activity is required to be carried out, the same has to be proved by leading evidence by the party who claims or advances the proposition of no deductions. Normally, such instances are very rare as some developmental activity is bound to take place after acquisition. Thus the extent of deduction differs in various cases and the same has to be assessed on the basis of many facts and circumstances, some of which has been listed above. The

facts of each case/acquisition would be peculiarly different and no specific mechanism could be formulated. However, the general/normal rule which has been consistently followed by the courts is that 1/3rd deductions are made, keeping in mind the requirement of developmental activities like roads, civic amenities etc. as also for wastage of land. If the acquired land is a semi-developed urban area and not an un-developed rural area, the deductions for development may be as much less i.e. ranging from 10% to 20% because some basic infrastructure will already be available.

86. From the evidence adduced, namely the depositions of the two witnesses on behalf of the appellants and one on behalf of the defendant, what has come to the fore is that the land in question had earlier been purchased by the company and was later carved out into small plots after making provisions for roads and other amenities. It has also come in evidence that all the neighboring areas of the acquired land are fully developed. There is no evidence to the contrary on behalf of the respondents.

87. There is no reason for this Court to believe that the quality and the geographical location of the land would, in any view, be different from the neighbourhood lands. The fact that IIT Campus lay across the road and one of the multi storeyed buildings would only be as distant as 50 sq. yards, are evidences for the land in question being a fairly developed one. But it cannot be denied that some developmental activities would definitely be required and that must be accounted for.

88. From the evidence on record, what transpires is that the land in question was already carved out into smaller plots after making provisions for civic amenities, roads, etc. by the company.

89. Thus, taking that evidence into account, deduction of 20% from the market rate assessed would be appropriate for the purposes of developmental work which includes some of the components of development, viz. (a) the area required for developmental work; (b) the cost of development work and (c) wastage of land, etc.

90. If 20% is deducted from Rs.15,464.32/-, the figure would come to Rs.12,371.456/-.

91. Since fixing compensation with exactitude or with mathematical accuracy is neither required nor is feasible, therefore, some guesswork is bound to take place. Calculations are made with reference to a specific data. The Courts have formulated a concept of “*guesstimate*” which is basically an estimate based on a mixture of guess work and calculations which is a process in itself and does not remain merely a simple guess work or conjecture. The “*guesstimate*” provides higher degree of certainty than simple guess work or conjecture.

92. Thus, keeping in mind that there was an enhancement of compensation by the Court, with respect to a land acquired in Yusuf Sarai in the year 1994 at the rate of Rs.12,500/- (Mahanth Atma Ram, RFA No.204/1999), it would only be fair to round off the figure to arrive at the price of Rs.12,370/- per sq. yard.

93. The grounds raised in the cross-objection by the respondents are not tenable and worth acceptance as the mechanism suggested for coming to the correct market value, viz. adding increment at the rate

of 12% per annum on the price paid by the claimant/appellants for the same land in the year 1974 at the rate of Rs.30 per sq. yd., is fraught with serious lacuna and inconsistencies. Such suggested mechanism/mode does not account for the passage of 13 years in between the year of purchase and the year of notification for acquisition and the growth in the value and potentiality of the land with such geographical location. The rate of growth and development far surpasses the suggested increment of 12% per annum. The future potentiality of the land is also to be accounted for.

94. The appeal is, ergo, allowed on the following terms:

- a. The appellants shall be entitled to compensation at the rate of Rs.12,370/- per sq. yd.
- b. They would be entitled to solatium at the rate of 30% with interest.
- c. The appellants shall be entitled to 12% per annum on the market value as additional amount from the date of notification till the date of possession or award, whichever is earlier, in terms of section 23(1A) of Land Acquisition Act.
- d. They will get interest on the enhanced compensation at the rate of 9% per annum from the date of award or dispossession whichever is earlier for one year and thereafter, at the rate of 15% per annum till payment.

95. The cross objection is dismissed.

96. The appeals are disposed of in terms of the above.

CM Appln.7734/2011 in LA.APP.992/2010

1. In view of the petition having been allowed, the application has become infructuous.
2. The application is disposed of accordingly.

ASHUTOSH KUMAR, J

MARCH 30, 2016/ab